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**UNION INTERNATIONALE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES**  
GENÈVE

**CONSEIL**

**Vingt-cinquième session extraordinaire**  
**Genève, 11 avril 2008**

**EXAMEN DE LA CONFORMITE DU PROJET DE LOI  
SUR LA PROTECTION DES VARIETES VEGETALES  
DU MONTENEGRO AVEC L'ACTE DE 1991  
DE LA CONVENTION UPOV**

*Document établi par le Bureau de l'Union*

Introduction

1. Dans une lettre datée du 19 mars 2008, adressée au secrétaire général de l'UPOV, Son Excellence M. Milutin Simovic, ministre de l'agriculture, de la sylviculture et de l'hydrologie du Monténégro, a demandé l'examen de la version finale du "projet de loi sur la protection des variétés végétales" (ci-après dénommé "projet de loi"), que le Gouvernement du Monténégro a approuvé le 19 mars 2008, pour en déterminer la conformité avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). Cette lettre est reproduite dans l'annexe I du présent document. L'annexe II contient une traduction en anglais du projet de loi, remise par les autorités du Monténégro.

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 autre 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."

3. Le Gouvernement du Monténégro a engagé la procédure pour devenir membre de l'UPOV par lettre datée du 11 septembre 2007, dans laquelle Son Excellence M. Milutin Simovic, ministre de l'agriculture, de la sylviculture et de l'hydrologie, demandait

l'avis du Conseil de l'UPOV sur la conformité avec l'Acte de 1991 de la "loi sur la protection des variétés végétales", adoptée le 24 juillet 2007.

4. À sa quarante et unième session ordinaire tenue le 26 octobre 2007, le Conseil a décidé ce qui suit :

“a) de prendre note des renseignements communiqués dans le document C/41/14;

“b) de recommander au Monténégro d'incorporer des dispositions additionnelles et des modifications dans la loi, telles qu'elles figurent dans le document C/41/14, et de remplacer “30 jours” par “60 jours” dans l'alinéa 3 de l'article 12 de la loi; dès que ces dispositions additionnelles et ces modifications auront été incorporées dans la loi, la loi ainsi modifiée devra être soumise au Conseil pour examen de sa conformité avec l'article 34.3) de l'Acte de 1991;

“c) de demander au Bureau de l'Union d'offrir son concours au Gouvernement du Monténégro pour la rédaction des dispositions additionnelles et des modifications nécessaires; et

“d) d'autoriser le secrétaire général à informer le Gouvernement du Monténégro de cette décision.”

5. Conformément à la décision susmentionnée prise par le Conseil le 26 octobre 2007 et en application de l'article 34.3) de l'Acte de 1991, le Gouvernement du Monténégro a présenté une nouvelle demande (voir le paragraphe 1 du présent document) afin d'obtenir l'avis du Conseil sur la conformité du projet de loi avec l'Acte de 1991.

#### Fondement de la protection des obtentions végétales au Monténégro

6. Au Monténégro, la protection des obtentions végétales sera régie par le projet de loi une fois celle-ci adoptée. On trouvera ci-après une analyse de ce projet, dans l'ordre des dispositions du droit matériel de l'Acte de 1991.

#### Article premier de l'Acte de 1991 : Définitions

7. L'article 2 du projet de loi contient des définitions conformes aux définitions correspondantes figurant dans l'article premier de l'Acte de 1991.

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

8. Le premier alinéa de l'article premier du projet de loi prévoit que “[c]ette loi régira les modalités et la procédure de protection des variétés végétales (ci-après appelées les variétés) ainsi que les droits et obligations des titulaires de droits d'obtenteur”; ce faisant, elle s'acquitte de l'obligation fondamentale prévue par l'article 2 de l'Acte de 1991.

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

9. Le deuxième alinéa de l'article premier du projet de loi dispose que "[c]ette loi s'applique à tous les genres et espèces végétaux", ce qui est conforme à l'article 3.2)ii) de l'Acte de 1991. Il sied de noter que, conformément à l'article 36.1)ii) de l'Acte de 1991, lorsqu'il dépose son instrument d'adhésion, le Monténégro doit notifier dans une déclaration que la loi s'appliquera à tous les genres et espèces végétaux.

Article 4 de l'Acte de 1991 : Traitement national

10. L'article 3 du projet de loi prévoit que "[e]n ce qui concerne la protection des variétés au Monténégro, les personnes physiques et morales étrangères auront les mêmes droits que les ressortissants". Cette disposition est conforme aux obligations 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

11. Les articles 5 et 7 à 10 du projet de loi contiennent les conditions de la protection qui sont conformes aux dispositions des articles 5 à 9 de l'Acte de 1991.

12. L'article 57 du projet de loi instaure 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

13. Les articles 15 à 18 du projet de loi traitent du dépôt de demandes. Le projet de loi ne contient pas de dispositions incompatibles avec l'article 10 de l'Acte de 1991.

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

14. L'article 19 du projet de loi contient des dispositions sur le 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

15. Les articles 16 à 18 et 20 à 24 du projet de loi contiennent des dispositions sur 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

16. L'article 31 du projet de loi contient des dispositions sur 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

17. L'article 28 du projet de loi contient des dispositions sur 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

18. L'article 29 du projet de loi contient des dispositions portant sur les exceptions au droit d'obtenteur qui sont conformes à l'article 15 de l'Acte de 1991.

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

19. L'article 30 du projet de loi contient des dispositions concernant 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

20. Les articles 37 à 41 du projet de loi contiennent des dispositions sur l'octroi de licences obligatoires.

21. L'article 37 du projet de loi prévoit l'octroi de licences obligatoires pour des raisons d'intérêt public conformément à l'article 17.1) de l'Acte de 1991.

22. L'article 17.2) de l'Acte de 1991 requiert que l'"obtenteur reçoive une rémunération équitable". À cet égard, l'article 39 du projet de loi se réfère à la rémunération pour des licences obligatoires et prévoit que "[l]e titulaire de la licence obligatoire versera au titulaire du droit d'obtenteur le montant arrêté par consentement mutuel. En l'absence d'un accord sur le montant à verser et sur la méthode de paiement, le montant de la rémunération sera fixé par le tribunal compétent, compte tenu des circonstances de chaque cas pris individuellement et de la valeur économique de la licence obligatoire". L'article 39 du projet de loi est en conformité avec l'article 17.2) de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

23. L'article 52 du projet de loi dispose ce qui suit :

“Aux fins de la protection du droit d'obtenteur prévu dans la présente loi, le contrôle de l'application de la présente loi sera effectué par l'administration compétente qui nommera un inspecteur phytosanitaire, conformément à la loi.

“Toutes dispositions d'autres lois ou règlements régissant la production, la certification et la commercialisation du matériel de variétés ou l'importation ou l'exportation de ce matériel, ne devront pas porter atteinte à l'application des dispositions de la présente loi.”

24. Le projet de loi ne semble pas contenir de dispositions incompatibles avec l'article 18 de l'Acte de 1991.

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

25. L'article 6 du projet de loi contient des dispositions sur 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

26. Les articles 11 à 14 du projet de loi contiennent des dispositions sur les 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 43 du projet de loi contient des dispositions sur 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 44 du projet de loi contient des dispositions sur la déchéance de l'obtenteur qui sont conformes à l'article 22 de l'Acte de 1991.

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

29. 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), le projet de loi prévoit ce qui suit :

a) les articles 46 à 51 du projet de loi se réfèrent aux actions et recours civils disponibles pour faire respecter les droits d'obtenteur;

b) les articles 55 et 56 du projet de loi prévoient des sanctions administratives et des amendes; et

c) l'article 57.a) du projet de loi prévoit ce qui suit :

"Les dispositions de la loi sur l'application des textes législatifs régissant la protection des droits de propriété intellectuelle (journal officiel n° 45/2005 de la République du Monténégro) et la réglementation des actions des autorités douanières applicables aux produits suspectés de porter atteinte à des droits de propriété intellectuelle (journal officiel n° 25/2005 de la République du Monténégro) s'appliquent par analogie aux droits d'obtenteur prévus par la présente loi."

30. L'alinéa premier de l'article 23 du projet de loi prévoit que "[s]ur la base des résultats de l'examen, le service compétent prend une décision sur la protection de la variété ou le rejet de la demande de protection de la variété, selon qu'il convient"; le projet de loi est donc conforme à l'obligation requise par l'article 30.1)ii) de l'Acte de 1991.

31. L'alinéa 9 de l'article 23 du projet de loi dispose que "[l]es données sur la protection d'une variété, y compris la dénomination de la variété, et les données sur l'obtenteur, le titulaire du droit et son principal établissement ou domicile, selon qu'il convient, sont publiées dans le 'Journal officiel du Monténégro', dans un délai de 30 jours à compter de la date d'inscription au registre des variétés protégées". Cette disposition est conforme à l'obligation de publier des renseignements sur les droits d'obtenteur délivrés et les dénominations approuvées comme le requiert l'article 30.1)iii) de l'Acte de 1991.

32. L'article 25 du projet de loi prévoit que "[t]oute personne intéressée qui juge que le demandeur n'est pas habilité à recevoir le droit d'obtenteur, qu'il n'a pas le droit de priorité ou que les conditions de la protection d'une variété en vertu de cette loi n'ont pas été respectées, peut déposer plainte auprès du Ministère concernant l'inscription de la demande au registre des demandes ou l'inscription de la variété au registre des variétés protégées dans les 60 jours qui suivent la date de publication des données sur l'inscription". En outre, l'alinéa 3 de l'article 12 du projet de loi prévoit que "toute personne intéressée peut, dans un délai de 60 jours à compter de la date de publication de la dénomination proposée, former opposition à la dénomination proposée". Ces dispositions sont conformes à l'obligation de publier des renseignements sur les demandes de droit d'obtenteur et les dénominations proposées comme le requiert 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 contient les dispositions de fond de l'Acte de 1991. Une fois la loi adoptée, le Monténégro sera en mesure de "donner effet" aux dispositions de l'Acte de 1991 comme le requiert son article 30.2).

34. *Le Conseil est invité à :*

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

b) *se prononcer en faveur de la conformité du projet de loi sur la protection des variétés végétales du Monténégro avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales; une fois que la loi aura été adoptée, sans modifications, et qu'elle sera entrée en vigueur, le Monténégro pourra ainsi déposer son instrument d'adhésion à l'Acte de 1991; et*

c) *autoriser le Secrétaire général à informer le Gouvernement du Monténégro de cette décision.*

[Les annexes suivent]

ANNEXE I

Lettre du ministre de l'agriculture, de la sylviculture et de l'hydrologie  
du Monténégro au secrétaire général de l'UPOV

Traduction d'une lettre datée du 19 mars 2008 (référence n° 320/07-0202-2005/18)

adressée par : le ministre de l'agriculture, de la sylviculture et de  
l'hydrologie du Monténégro

à : M. le Secrétaire général de l'UPOV

Monsieur le Secrétaire général,

J'ai l'honneur de vous informer que le parlement du Monténégro procède à l'adoption de la loi modifiée sur la protection des variétés végétales. Le projet de loi ci-annexé comprend les modifications recommandées par le Conseil de l'UPOV à sa quarante et unième session, tenue le 25 octobre 2007. Ce texte constitue la version finale élaborée par le gouvernement.

Conformément aux dispositions de l'article 34.3) de la Convention UPOV, je vous saurais gré de faire en sorte que le Conseil de l'UPOV puisse examiner la conformité de la loi du Monténégro avec les dispositions de la Convention UPOV.

Veillez agréer,...

(Signé :) Milutin Simovic

Pièce jointe : traduction officielle de la loi en anglais

[L'annexe II suit]

ANNEX II / ANNEXE II / ANLAGE II / ANEXO II

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

MONTENEGRO

[DRAFT] LAW ON PROTECTION OF PLANT VARIETIES

I. GENERAL PROVISIONS

Subject-matter of the Law  
Article 1

This Law shall govern the terms and the procedure for the protection of plant varieties (hereinafter referred to as: varieties) as well as rights and obligations of holders of the breeder's rights.

This Law shall apply to all plant genera and species.

Article 2

For the purposes of this Law, the terms used shall have the following meaning:

- 1) Variety shall mean 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 and is distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered a unit with regard to its suitability for being propagated unchanged;
- 2) Protected variety shall mean a variety protected in accordance with the provisions of this Law;
- 3) Breeder shall mean:
  - the person who bred or discovered and developed a new variety,
  - the person who is the employer of the aforementioned person referred to in indent 1 of this item, or the person who has commissioned the latter's work; or
  - the successor in title of the person referred to in first or second indent of this item, as the case may be.
- 4) Breeder's right shall mean the right of the breeder acknowledged by registration of the protected variety into the Register of Protected Varieties, in accordance with this Law;
- 5) Breeder's right holder shall mean a person who has been granted a breeder's right in accordance with provisions of this Law, or his successor in title or heir;
- 6) Register of Applications for variety protection shall mean the register into which duly filed applications for protection of a plant variety are recorded (hereinafter referred to as: Register of Applications);
- 7) Register of Protected Varieties shall mean a register into which protected varieties are recorded;
- 8) UPOV means the International Union for the Protection of New Varieties of Plants.



Rights of Foreign Persons  
Article 3

Foreign legal and natural persons shall enjoy the rights identical to those of domestic persons with respect to variety protection in Montenegro.

Article 4

In the proceedings before the competent authority, any foreign legal and natural person shall be represented by a local representative.

II. VARIETY PROTECTION

1. CONDITIONS AND DURATION

Conditions  
Article 5

A variety shall be protected in accordance with this Law provided that it is new, distinct, uniform, stable and designated by an appropriate denomination.

Period of protection  
Article 6

The period of protection of a variety shall expire after twenty five years, and in the case of trees and vines it shall expire thirty years from the day of the grant of the breeder's right.

2. NEW VARIETY  
Article 7

A variety shall be considered new if, at the date of filing of the application for a variety protection, the 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, for the purpose of exploitation of the variety in Montenegro for the period longer than one year or in a territory other than Montenegro for the period longer than four years or, in the case of trees and vines, longer than six years from the said date.

The variety referred to in the paragraph 1 of this Article shall also be considered new in cases when it is disposed of to others in one of the following ways:

- 1) By a contract on the transfer of the breeder's right;
- 2) By a contract on the basis of which the propagating material of the variety is multiplied on behalf of the holder of the breeder's right, provided that the propagating material multiplied is returned to the holder of the breeder's right and that the propagating material multiplied is not used for production of another variety;
- 3) By a contract on the basis of which researches are made in the experimental field and in laboratories, for the purpose of variety evaluation.

3. DISTINCTNESS  
Article 8

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 at the time of the filing of the application.

In particular, the filing of an application for granting of a breeder's right or for entering of another variety into 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 into the official register of varieties, as the case may be.

The methods for checking the distinctness of a variety shall be laid down by the Ministry responsible of agriculture (hereinafter referred to as: Ministry).

4. UNIFORMITY  
Article 9

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.

The methods for checking the uniformity of a variety shall be laid down by the Ministry.

5. STABILITY  
Article 10

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

The methods for checking the stability of a variety shall be laid down by the Ministry.

6. VARIETY DENOMINATION

Variety  
Article 11

The variety denomination may be a word, a combination of words, a combination of words and numbers or a combination of letters and numbers, meaningful or meaningless, provided that the designation enables the variety to be identified.

Where a variety denomination has already been used in Montenegro or some other country or where an application is filed or the denomination already registered in Montenegro or some other country, only the variety denomination which has been proposed may be used in the protection procedure before the competent authority.

Where a variety denomination proposed is inappropriate for use in Montenegro, the breeder shall propose another denomination which, if it is appropriate, shall be registered in the Register of Applications and the Register of Protected Varieties.

A variety denomination may not consist solely of figures unless this is an established practice for designating specific varieties. A variety denomination may not mislead or cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. A variety denomination shall be different from any other denomination used on the territory of UPOV Members for designation of existing variety of the same plant species or a closely related species.

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

The obligation concerning the use of the registered variety denomination shall not expire even after the expiration of the period of variety protection referred to under the Article 6 of this Law, except where, in accordance with the provisions of paragraph 8 of this Article, prior rights prevent such use.

When a variety is marketed or advertised, a trademark, trade name or other similar indication may be associated with the registered variety denomination, provided that the variety denomination is easily distinguishable.

Where use of a variety denomination is forbidden to a person who is bound to use it, for reasons of any of the prior rights of a third person, the competent authority in responsible for plant variety protection (hereinafter referred to as: competent authority) shall request from the breeder to propose another denomination for the variety.

#### Denomination Proposal Article 12

The applicant shall propose a variety denomination in the application.

The applicant may temporarily postpone the proposal of a denomination, but not longer than 30 days from the day of filing the application. If the applicant fails to submit the proposal in due time, the competent authority shall reject the application.

An interested person may, within the period of 60 days from the date of publication of the proposed denomination, file an objection to the proposed denomination.

The competent authority shall notify the applicant of the objection referred to in paragraph 3 of this Article and invite him to submit a reply to the objection within the period of 30 days from the day of the receipt of the notification.

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

In case the denomination proposed does not comply with this Law, the competent authority shall order the applicant to file a proposal for a new denomination of the variety within the period of 60 days from the day of the receipt of the notification.

If the applicant fails to submit the proposal of the new denomination within the prescribed period of time, the competent authority shall reject the application.

The variety denomination is granted by the competent authority in the decision on variety protection.

Reasons for Rejection of Denomination Proposed  
Article 13

The competent authority shall reject the proposal of a variety denomination, which:

- 1) Is inappropriate for a variety identification;
- 2) Consists solely of signs or indications that may serve for indication of a variety, kind, quality, quantity, intended objective, value geographic origin or time of production;
- 3) Is contrary to Article 11 of this Law;

The Ministry shall prescribe which species are to be deemed closely related .

Denomination Cancellation  
Article 14

The competent authority shall cancel a variety denomination under the circumstances referred to in Article 13 paragraph 1 of this Law, or on the basis of a court decision prohibiting the use of the denomination.

The competent authority shall issue a notification on cancellation of the variety denomination and invite the holder of the breeder's right to propose a new denomination within the period of 30 days from the day of receipt of the notification.

### III. VARIETY PROTECTION PROCEDURE

#### 1. APPLICATION

##### Article 15

The procedure for protection of a variety instigated by the filing of an application filed to the competent authority by the breeder or his representative.

The form and contents of the application referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Additional Information  
Article 16

The application referred to in Article 15, paragraph 1 of this Law shall be supplemented by the information, documents and material necessary for examination purposes.

The method of submission of the information, documents and material referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

Examination of the Application  
Article 17

The competent authority shall examine whether the application is complete, i.e. whether it meets the requirements as laid down by this law.

If the application is found not to be complete, the competent authority shall, stating the reasons, invite the applicant to correct the deficiencies identified within the period of 30 days from the day of receipt of the notification.

If the applicant does not correct deficiencies within the period referred to in paragraph 2 of this Article, the competent authority shall reject the application.

Entry into the Register of Applications  
Article 18

Where it is established that the application meets the requirements, the competent authority shall register it into the Register of Applications.

The contents of the Register of Applications shall be prescribed by the Ministry.

The Register of Applications shall be kept by the competent authority.

2. RIGHT OF PRIORITY

Article 19

Any breeder who has duly filed an application for the protection of a variety with the competent authority of another UPOV member for the grant of a breeder's right shall enjoy a right of priority for a period of twelve months from the day of filing the application.

If two or more breeders have independently bred or discovered and developed a new variety, the right of priority shall be enjoyed by the breeder who was the first to file an application for the variety protection to the competent authority.

In order to avail himself of the right of priority, the breeder shall furnish the competent authority with the evidence on the priority date within a period of 90 days.

If the competent authority accepts the evidence on the priority date, the application shall be deemed as filed on the priority day.

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, an appropriate time after such rejection or withdrawal, in which to furnish, to the competent authority, any necessary information, document or material required for the purpose of the examination of the application,

The Minister shall prescribe the appropriate time referred to in paragraph 5 of this Article.

### 3. VARIETY EXAMINATION

#### Examination Article 20

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under this Law. In the course of the examination, the competent authority 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. For the purposes of examination, the competent authority may require the breeder to furnish all the necessary information, documents or material.

#### Examiner Article 21

Examination of a variety may be carried out by a natural or legal person that meets the requirements for carrying out such examination in terms of human resources, facilities and equipment (hereinafter referred to as: examiner).

Requirements that need to be met by the examiner shall be prescribed by the Ministry.

Compliance with requirements referred to in paragraph 2 of this Article shall be prescribed by the competent authority.

#### Processing of Examination Results Article 22

The competent authority shall conclude the contract with the examiner on the basis of public announcement procedure.

The competent authority shall process the examination results obtained from the examiner.

The Ministry shall prescribe the methods for processing of the results referred to in paragraph 2 of this Article.

### 4. DECISION ON VARIETY PROTECTION AND GRANT OF BREEDER'S RIGHT

#### Article 23

Based on examination results, the competent authority shall issue a decision on protection of the variety or refusal of the application for the protection of the variety, as the case may be.

Based on the decision on protection of the variety, the variety shall be registered into the Register of Protected Varieties.

The applicant shall have the right to lodge an appeal to the Ministry against the decision on refusal of the variety protection.

In the appeal procedure, the examination of the variety in the examination field and the laboratory for the purpose of the supervision shall be conferred to another examiner.

When the supervision results confirm that the variety meets the requirements for protection and entry into the Register of Protected Varieties, the supervision costs shall be borne by the examiner who initially presented the examination results.

When the supervision results confirm the initial examination results, the supervision costs shall be borne by the applicant who has lodged the appeal.

The contents of the Register of Protected Varieties shall be prescribed by the Ministry.

The Register of Protected Varieties shall be kept by the competent authority.

The information on the variety protection, including the variety denomination and information on the breeder, the holder of the right and their domicile or corporate domicile, as the case may be, shall be published in the "Official Journal of Montenegro of Montenegro", within the period of 30 days from the day of entry in the Register of Protected Varieties.

#### Availability of Information and Confidentiality Article 24

Any interested person may peruse the following:

- 1) the Register of Applications for Variety Protection;
- 2) the results of variety examination in the protection procedure;
- 3) the Register of Protected Varieties.

When a variety production requires repeated use of another variety (component), the applicant may request in his application that the documents and results of component examination be treated as confidential.

#### 5. APPEAL

##### Right to Appeal Article 25

Any interested person who alleges that the applicant is not entitled to the breeder's right or that he does not have the right of priority or that conditions for protection of a variety under this Law have not been complied with, may lodge an appeal to the Ministry with respect to the entry of the application into the Register of Application or to the entry of the variety into the Register of Protected Varieties within the period of 60 days from the day of publicizing the information on the entry.

The appeal shall be lodged in writing, accompanied with the appropriate evidence.

The appeal referred to in paragraph 1 of this Article shall be forwarded to the applicant or holder of the right, together with an invitation to provide a reply to the appeal within the period of 15 days from the date of the receipt of the complaint.

Decision on the Appeal to the Entry into the Register of Applications  
Article 26

If the applicant fails to present a reply to the appeal within the period prescribed, the application shall be deemed withdrawn.

If the applicant presents a reply to the appeal and demands the decision on his application, with or without amendments, the decision on the application and the appeal shall be made concurrently.

Appeal to Registration in the Register of Protected Varieties  
Article 27

The appeal to registration in the Register of Protected Varieties may be submitted by a person who alleges that the variety is not new, distinct, uniform or stable.

The appeal referred to in paragraph 1 of this Article shall be lodged to the Ministry. Additional examination of the variety may be ordered in the appeal procedure in order to verify the statements of the appeal.

At the request of the body that decides the appeal, the person who has lodged the appeal shall present, within the period of 15 days, the additional information and documents to substantiate the appeal or reproduction material necessary for the examination.

When the person who lodged the appeal fails to act in compliance with paragraph 3 of this Article, the appeal shall be rejected.

Based on the findings in the proceedings initiated upon the appeal, the appeal may be either accepted, thus canceling the entry into the Register of Protected Varieties, or dismissed.

#### IV. THE RIGHTS AND OBLIGATIONS OF THE BREEDER

##### 1. RIGHTS

##### Scope of the Breeder's Right Article 28

The holder of the breeder's rights shall be entitled to indication of his name and the denomination in acts, registers, documents and publications.

The propagating material of a protected variety shall be used only with authorization of the holder of the breeder's right, who sets the conditions for granting the authorization.

Subject to Articles 29 and 30 of this Law, the following acts in respect of the propagating material of a protected variety shall require the authorization of the breeder:

- 1) Production or reproduction (multiplication) of the variety protected;
- 2) Conditioning for the purpose of propagation of the protected variety;
- 3) Offering the protected variety for sale;



- 4) Selling or other marketing of the protected variety;
- 5) Exporting or importing of the protected variety;
- 6) Stocking for any of the purposes referred to in items 1 to 5 of the paragraph 3 of this Article.

Subject to Articles 29 and 30 of this Law, acts referred to in the paragraph 3 items 1 to 6 of this Article, in respect of the harvested material, including whole plants and parts of plants obtained through the unauthorized use of the propagating material of the protected variety shall require the authorization of the holder of the breeder's right, unless the holder has had reasonable opportunity to exercise his right in relation to the propagating material concerned.

The authorization of the holder of the breeder's right shall also be required for the acts referred to in paragraphs 3 and 4 of this Article for a variety:

- 1) Which is essentially derived from the protected variety where the protected variety is not in itself an essentially derived variety;
- 2) Which is not clearly distinguishable from the protected variety; and
- 3) Whose production requires the repeated use of the protected variety.

A variety shall be deemed to be essentially derived from 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 resulting from the genotype or combination of genotypes of the initial variety;
- 2) It is clearly distinguishable from the initial variety; and
- 3) With the exception of the differences resulting from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or a combination of genotypes of the initial variety.

For the purpose of paragraph 5, subparagraph 1 and paragraph 6 of this Article, an essentially derived variety may be obtained, for example, by 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.

#### Exceptions to the Breeder's Right Article 29

Authorization of the holder of the breeder's right shall not be required for the acts undertaken for:

- Personal use and for non-commercial purposes;
- Experimental purposes;
- For the purpose of breeding other varieties, and, except where the provisions of Article 28 paragraph 5 apply, acts referred to in Article 28 paragraphs 3 and 4 of this Law, in respect of such other varieties.

The Ministry may, taking into account the need for safeguarding the breeder's rights, restrict within reasonable limits the breeder's right, subject to remuneration that shall not be lower than the market one, in relation to selected agricultural crops to allow farmers to use for

propagation purposes, on their own holdings, the harvested material obtained by planting the protected variety on their own holdings.

The Ministry shall prescribe the list of agricultural crops referred to in paragraph 2 of this Article.

The exception referred to in paragraph 2 of this Article shall not apply to fruits, ornamentals and vegetables.

#### Exhaustion of the Breeder's Right Article 30

The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 28, paragraph 5 of this Law, which has been sold or otherwise marketed by the breeder or with his consent in the territory of Montenegro, or any material derived from the said material, unless such acts:

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

For the purposes of paragraph 1 of this Article, "material" shall mean, in relation to a variety,

- 1) Propagating material of any kind,
- 2) Harvested material, including entire plants and parts of plants, and
- 3) Any product made directly from the harvested material.

#### Provisional Protection Article 31

During the period between publication of the application for the grant of the variety protection and the granting of the right on the variety protection, the holder of the breeder's right shall be entitled to equitable compensation from any person who, during the period concerned, has carried out acts which, once the right is granted, require the authorization of the holder of the breeder's right, as provided in Article 28 of this Law.

#### Several Breeders, Breeder and Employer Article 32

If two or more persons have jointly bred or discovered and developed a variety, they shall have equal rights to protection. The rights and obligations of such persons may be regulated by a contract.

When a variety is bred or discovered and developed during the employment, the rights of the employee who bred, discovered or developed the variety concerned and the rights of the employer shall be laid down by this Law, general legal acts and a contract between the employer and the employee or their representatives, as the case may be.

## 2. OBLIGATIONS

### Maintenance of the Protected Variety Article 33

The holder of the breeder's right shall ensure maintenance of the protected variety unchanged during the period of protection.

### Monitoring of Variety Maintenance Article 34

The competent authority shall issue a decision on cancellation of the breeder's right if it is established that the holder of the breeder's right has failed to maintain the variety.

### Providing Samples of the Variety Article 35

At the request of the competent authority, the holder of a breeder's right shall provide an appropriate quantity of samples of the propagating material of the protected variety deemed necessary for verifying the maintenance of the variety.

At the request of the competent authority, the holder of the breeder's right shall maintain or keep the sample of the variety.

## V. LICENSES

### Transfer and Licensing of Breeder's Right Article 36

A holder of the breeder's right may transfer his right to a protected variety as a whole, or license some of his rights to another person.

The transfer of right and granting the license shall be made by a written contract, which shall include provisions on the following: the scope of right, the period of time for which the right is transferred and the fee for use of the right, if any.

For the purpose of entry into the Register of Protected Varieties, the holder of the breeder's right shall inform the competent authority of any transfer or license of rights. The information shall include the particulars of the transferee or the licensee, scope of right, and the period of time for which the right is transferred or licensed.

### Compulsory License Article 37

When the holder of the breeder's right refuses to transfer his right of economic use of the variety protected to other persons, or when he sets unjustified conditions for such transfer, the competent authority may grant the compulsory license, provided that the use is of public interest for development of plant production, for protection and development of the environment or for a specific economic branch.

Prior to filing the request referred to in paragraph 1 of this Article, the interested person shall have to provide evidence on his attempt to obtain the authorization from the holder of the breeder's right for the acts referred to in Article 28 of this Law reasonable economic conditions, and the evidence that the authorization was not granted to him within the reasonable period of time.

The compulsory license referred in paragraph 1 of this Article shall be granted only to the interested person who proves its capability and capacity required for the economic use of the protected plant variety.

#### Time Limit for Requesting the Compulsory license Article 38

The request for grant of the compulsory license may not be filed earlier than four years from the date of filling the application, or three years from the date of grant of the breeder's right, whichever expires later.

The compulsory license shall not be granted if the holder of the breeder's right proves that there are reasons justifying his refusal to grant the authorization for use of the protected variety or conditions for such a use.

#### Compulsory License Fee Article 39

The holder of the compulsory license shall pay the holder of the breeder's right the fee mutual agreed. In the absence of the agreement on the amount and method of paying the fee, the amount of the fee shall be set by the competent court, taking into account the circumstances of each individual case and the economic value of the compulsory license.

#### Scope and Duration of the Compulsory License Article 40

The scope and the duration of the compulsory license shall be limited to the purpose it was granted for.

The compulsory license shall not be exclusive.

The compulsory license may be transferred only together with the company or part of the company in which it is used, as the case may be.

The compulsory license shall be granted primarily for the purposes of supplying the domestic market.

The compulsory license may be cancelled if and when the circumstances that have led to its grant cease to exist and if it is unlikely that they will reoccur. Upon the substantiated request, the competent authority shall review the existence of such circumstances.

The compulsory license may also be cancelled when the competent authority establishes that the person to whom it was granted fails to meet the conditions under which it was granted.

Obligation to Supply Propagating Material  
Article 41

The holder of the breeder's right shall, at the request of the competent authority and subject to payment of the appropriate remuneration, supply the propagating material necessary for utilization of the compulsory license to the person to whom the compulsory license has been granted.

VI. TERMINATION OF BREEDER'S RIGHT

Reasons for Termination of Breeder's Right  
Article 42

The breeder's right shall terminate before the term referred to under the Article 6 of this Law if:

- 1) The right holder informs the competent authority in writing form that he wants to terminate the breeder's right, effective as of the date stated or as of the filing date;
- 2) The holder of the breeder's right dies or ceases to exist without a heir or successor in rights, on the date of death or cessation;
- 3) The annual costs of variety protection have not been paid on the due date.

The decision on termination of the breeder's right shall be made by the competent authority which shall enter it into the Register of Protected Varieties.

Nullity  
Article 43

The competent authority may declare null and void the decision on protection of the variety throughout the period of protection, *ex officio* or at the proposal of an interested person if:

- 1) It is established that the variety was neither new nor distinct at the time of the grant of the breeder's right;
- 2) It is established that the decision on granting the breeder's right has been essentially based upon information and documents furnished by the applicant, while conditions of stability and uniformity were not complied with at the time of the grant of the breeder's right;
- 3) The breeder's right has been granted to a person who is not entitled to it, except in the case where, in the meantime, it has been transferred to the person who is so entitled.

The decision referred to in paragraph 1 of this Article shall be entered into the Register of Protected Varieties.

After the decision referred to in paragraph 1 of this Article becomes final and enforceable, the competent authority shall delete the variety from the Register of the Protected Varieties.

An appeal against the decision referred to in paragraph 1 of this Article may be lodged to the Ministry.

Cancellation of the Decision  
Article 44

The competent authority shall cancel the decision on protection of the variety if:

- 1) It is established that the variety is no longer uniform or stable;
- 2) The holder of the breeder's right fails to furnish the competent authority with information, documents or material deemed necessary for verification of the variety maintenance;
- 3) The holder of the breeder's right fails to propose another denomination for the variety if the variety denomination has been cancelled after the grant of the right;
- 4) The breeder fails to pay the fee for maintenance of the breeder's right.

The decision referred to in paragraph 1 of this Article shall be entered into the Register of Protected Varieties.

After the decision referred to in paragraph 1 of this Article becomes final and enforceable, the competent authority shall delete the variety from the Register of the Protected Varieties.

## VII. COSTS

### Article 45

The costs of variety examination in the examination field and the laboratory and annual costs of variety protection shall be borne by the applicant or the holder of the breeder's right, as the case may be.

The amount of the costs referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

## VIII. CIVIL LAW PROTECTION

### Article 46

The holder of the breeder's right or his successor in rights or heir, as the case may be, shall be entitled to file a civil action against the person infringing his right through actions referred to under the Article 28 paragraph 2, 3 and 4 of this Law without authorization, and shall have the right to claim the following:

- 1) Ascertaining of infringement of the breeder's right;
- 2) Prohibition of actions infringing the breeder's right;
- 3) compensation for damages caused by infringement, including direct damages, lost profits and justifiable legal costs and expenses;
- 4) Publicizing of the court decision at the expense of the defendant;
- 5) Forfeiture or destruction, without compensation of any sort, of the items and equipment predominantly used for infringement of the breeder's right;
- 6) Forfeiture or destruction, without compensation of any sort, of infringing products.

General regulations on compensation of damages shall be applied to issues related to compensation of the damage done by infringement of the breeder's right that have not been provided for by this law.

If a violation of rights has been committed intentionally or out of gross negligence, the plaintiff may, instead of the amount of compensation referred to paragraph 1, item 3 of this Article, claim an amount equal to the threefold amount of remuneration that would have been paid had the use of the right been lawful.

#### Statute of Limitations Article 47

The action referred to in Article 46, paragraph 1 of this Law may be filed within a period of three years from the date of obtaining information of the infringement and the offender, but not later than five years from the date on which the infringement has been committed.

Proceedings for the violation of breeder's right shall be administered in an expedited manner.

#### Provisional Measures Article 48

At the request of a right holder who makes it credible that his right has been infringed, or that such infringement is imminent, the court may order a provisional measure involving the seizure or removal from the market of the object with which the infringement has been made and/or a provisional measure involving a prohibition against the acts under way, which could be conducive to violation.

#### Securing of Evidence Article 49

At the request of the right holder who makes it credible that his/her right has been violated, or that such violation is imminent or that irreparable harm is likely to occur, or that there is a reasonable doubt that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.

For the purposes of Paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the seizure of documents and infringing goods, depositions of witnesses and expert witnesses.

The court decision ordering measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

#### Request for Provisional Measures Article 50

Measures referred to in Articles 48 and 49 of this Law may be requested even before filing an action.

In the case referred to in Paragraph 1 of this Article, decision establishing the measure shall contain the period in which the action has to be filed, which shall not be shorter than 30 days from the execution of the measure.

An appeal lodged against a decision ordering a provisional measure shall not stay the execution of the decision.

#### Obligation of the Defendant to Furnish the Information Article 51

The court may order the defendant to furnish information about third parties related to the violation or hand over documents relating to the violation.

The person failing to meet the obligation referred to in paragraph 1 of this Article liable shall be liable for any damages thus incurred.

### IX. INSPECTORIAL SUPERVISION

#### Article 52

For the purpose of protection of breeder's rights granted under this Law, inspectorial supervision over the enforcement of this Law shall be performed by the competent authority through a phytosanitary inspector, in compliance with the law.

Any provisions of other laws or regulations that regulate the production, certification and marketing of material of varieties or the importing or exporting of such material, shall not affect the application of the provisions of this Law.

#### 1. POWERS OF A PHYTOSANITARY INSPECTOR

#### Article 53

A phytosanitary inspector shall perform inspectorial supervision particularly in regard to:

- 1) Examination of distinctness, stability or uniformity of varieties in the experimental field or laboratory of the examiner;
- 2) Examiner's compliance with the conditions for examination of varieties in the experimental field or laboratory;
- 3) Unauthorized acts in relation to the protected variety referred to in Article 28 of this Law;
- 4) Use of the protected variety denomination;
- 5) Sampling of propagating material, free of charge, for the purpose of establishing the compliance with the conditions prescribed by this Law.

#### 2. ADMINISTRATIVE MEASURES AND ACTIONS

#### Article 54

In cases where a breach of law or other regulation has been established, a phytosanitary inspector shall, in addition to administrative measures and actions laid down by the law



governing the inspectorial supervision, undertake the following administrative measures and actions:

- 1) Prohibit placing on the market, import or export of propagating material of varieties if it is established that the propagating material fails to meet the conditions prescribed by this Law, or that the right of the holder of the breeder right has been infringed;
- 2) Prohibit the examiner the examination of varieties in the experimental field or in the laboratory if he fails to remove the deficiencies in regard of conditions laid down by this Law.

## X. PENAL PROVISIONS

### Article 55

A fine ranging from 200 to 300 minimum wages in Montenegro shall be imposed on a state authority, company or other legal person or entrepreneur who:

- 1) Uses the variety denomination not granted by the decision of the competent authority (Article 12 paragraph 8);
- 2) Without authorization by the holder of the breeder's right, produces or reproduces, conditions for the purpose of propagation of the protected variety, offers for sale, sells or markets in any other way, exports or imports, or stocks for any of the said purposes the protected variety (Article 28, paragraph 3);

A fine of 20 minimal wages shall also be imposed on the responsible person in the legal person for the offence referred to in paragraph 1 of this Article.

A fine ranging from 15 to 20 minimal wages in Montenegro shall be imposed on the natural person for the offence referred in paragraph 1 of this Article.

For the offence referred to in paragraph 1 of this Article, in addition to the fine, a measure of prohibition of activity ranging from one to six months, may be imposed on the company, other legal person or entrepreneur.

### Article 56

A fine ranging from 150 to 200 minimum wages in Montenegro shall be imposed on an authority, company or other legal person or entrepreneur, who, at the request of the competent authority, fails to supply to the person to whom the compulsory license was granted the appropriate quantity of propagating material necessary for use of the compulsory license (Article 41).

For the offence referred to in paragraph 1 of this Article a fine ranging from 15 to 20 minimum wages in Montenegro shall be imposed on the natural person and the responsible person of the legal person.

## XI. TRANSITIONAL AND FINAL PROVISIONS

### Protection of Known Varieties Article 57

Notwithstanding Article 7 of this Law, the competent authority may grant the breeder's right for the variety that is not new on the day this Law enters into force when:

- 1) The application has been filed no later than 12 months from the day this Law entered into force; and
- 2) The variety is:
  - Registered in the appropriate variety register recognized by the competent authority;
  - The subject of the breeder's right in a UPOV member state, or the subject of the application in a UPOV member state, where the application leads to grant of the breeder's right; or
  - The subject of the evidence on the date when the variety ceased to be new in accordance with Article 7 of this Law, which the competent authority finds acceptable.

Duration of the breeder's right granted under paragraph 1 of this Article shall start from the date of:

- Registration referred to under the paragraph 1, item 2, indent 1 of this Article;
- Grant of the breeder's right referred to under the paragraph 1, item 2, indent 2 of this Article; or
- When the variety ceased to be new in accordance with paragraph 1, item 2, indent 3 of this Article.

When relevant to the decision of the competent authority, the earliest of the dates referred to in paragraph 2 of this Article shall apply.

When the breeder's right is granted under paragraph 1 of this Article, the holder of the right shall grant a license under reasonable terms in order to provide for the use of the variety that the third party began in good faith prior to filing of the application for the grant of the right under paragraph 1 of this Article.

### Article 57a

Provisions of the Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights ("Official Gazette of the Republic of Montenegro", No. 45/2005) and the Regulation on Actions of the Customs Authority Applicable To Goods Suspected Of Infringement Of Intellectual Property Rights ("Official Gazette of the Republic of Montenegro", No. 25/2005) shall apply *mutatis mutandis* to breeders' rights established by this Law.

### Article 58

Bylaws for implementation of this Law shall be adopted within the period of one year from the day this Law enters into force.

Pending the adoption of the regulations based on this Law the regulations adopted under the Law on Protection of Varieties of Agricultural and Forest Plants (Official Journal of FRY, No. 12/98, 28/ 2000, 37/02) provided that they not in the contravention of this Law.

Article 59

On the day this Law enters into force, the Law on Protection of Varieties of Agricultural and Forest Plants (Official Journal of FRY, No. 12/98, 28/ 2000, 37/02) shall cease to be effective.

Entering into force

Article 60

This Law shall enter into force on the eighth day after its publishing in the Official Journal of the Republic of Montenegro.

[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]