

REPUBLICATION

## **LAW ON THE PROTECTION OF THE NEW PLANT VARIETIES\*), no. 255/1998**

### **CHAPTER I General Provisions**

#### **ARTICLE 1 Object of protection**

(1) Breeder's rights in the new plant varieties of all genera and species of plants, including, among others, the hybrids between genera and species, are protected, recognized and defended on the territory of Romania, through the grant of a variety patent by the State Office for Inventions and Trademarks, hereinafter referred to as the Office, in the conditions specified in this Law.

(2) The rights conferred by paragraph (1) may not violate the legal provisions adopted on the grounds of the public morality, public order, protection of health and life of humans, animals and plants, the protection of the environment, the protection of industrial or commercial property, or the safeguarding of competition, of trade and of agricultural production.

#### **ARTICLE 2 Definitions**

For the purposes of this Law the terms and expressions below are defined as follows:

- a) variety - a plant grouping within a single botanical taxon of the lowest known rank, which grouping is:
  - 1) defined by the expression of the characteristics resulting from a given genotype or from a certain combination of genotypes;
  - 2) distinguished from any other plant grouping by the expression of at least one of the characteristics under para 1);
  - 3) considered as a unit with respect to its suitability for being propagated as such;
- b) protected variety - a cultivated variety for which a variety patent has been granted by the Office;
- c) propagating material - seeds, entire plants or various parts of plants which are capable of reproducing the entire plants;
- d) breeder means:
  - 1) the person who has bred or discovered and developed a new variety;
  - 2) the person who is the employer of the person referred to in para (1) or who has commissioned the work of creating new varieties in accordance with the Law or based on an agreement specifying that the breeder's right belongs to the former;
  - 3) the successor in title of the person under para (1) or (2), as the case may be;
- e) applicant - the person who has filed an application for the grant of a variety patent with the Office;
- f) variety patent holder - the person who holds the variety patent or the successor in title thereof;
- g) growing tests - experiments organized in the vegetation for determining distinctness, uniformity and stability;
- h) Convention - the international Convention for the protection of the new plant varieties, of 2 December 1961, reviewed in Geneva on 10 November 1972, on 23 October 1978 and on 19 March 1991, to which Romania adhered by the Law no. 186/2000, published in the Official Gazette of Romania, Part I, no. 547 of 6 November 2000;
- l) Community Office - the Community Office for the protection of plant varieties;
- j) Official Bulletin - the Official Industrial Property Bulletin - New plant variety section;
- k) national authority - the authority responsible to perform the growing tests.

#### **ARTICLE 3 National Treatment**

Any foreign natural persons or legal entities having his place of residence or registered office outside the territory of Romania shall also benefit by the provisions of this Law in terms of the international convention under Art. 2 letter h) and of other conventions to which Romania is a party.

#### **ARTICLE 4** **Representation**

1. The natural persons or legal entities applying for the protection of a new plant variety may be represented in the proceedings before the Office by an authorized representative, in the conditions and within the time limits stipulated by the Implementing Regulations of this law.
2. The representation is compulsory for the natural persons and legal entities not having the place of residence or the registered office within the territory of Romania.

#### **CHAPTER II**

Patentability of New Plant Varieties

#### **ARTICLE 5** **Conditions of Granting Protection**

(1) The Office shall grant protection for a new plant variety and issue a variety patent if the variety is:

- a) new;
- b) distinct;
- c) uniform;
- d) stable.

(2) The variety shall be designated by a denomination in conforming to the provisions of Article 15.

#### **ARTICLE 6** **Novelty**

(1) The variety is new if, on the date of filing the application for the grant of the variety patent, or on the priority date, propagating material or harvested material of the variety has not been sold or otherwise disposed of to the third parties, either by or with the consent of the breeder, for the purpose of commercial exploitation of the new variety:

- (a) on the territory of Romania, earlier than one year before the filing date of the application for a variety patent;
- (b) on the territory of other States, earlier than four years before the filing date of the application for a variety patent, and earlier than six years for trees or vines.

(2) Novelty shall likewise not be lost where the variety:

- (a) forms the object of an agreement on the transfer of rights, unless the commercial exploitation of the new variety took place prior to the filing of the application;
- (b) forms the object of an agreement between the breeder and another person, by virtue of which the breeder authorizes the multiplication of the propagating material under his control;
- (c) forms the object of an agreement between the breeder and a third party concerning the conduct of a study or of a field test or laboratory trials, or of small-scale processing trials for the evaluation of the new variety;
- (d) has been disposed of to a third party as propagating or harvested material of the variety as a consequence of using it for the purposes specified in Article 34 and that is not used for subsequent propagation, these acts not being deemed commercial exploitation of the new variety within the meaning of Article 34;
- (e) has been disposed of as a result of the breeder having displayed the new variety at an officially recognized exhibition;
- (f) has been disposed of to an official body, for statutory purposes or under a contract, with a view to producing, reproducing, multiplying, processing or storing, provided that the person applying for the protection retains the exclusive right of exploitation of the variety, with the proviso that no other previous disposal of for commercial purposes has taken place; if the variety has been thus disposed of for the production of a hybrid which has been marketed, the provisions of paragraph (1) shall be applied;
- (g) has been disposed of by a company or firm to another company or firm to which it is subordinated, or if both companies or firms are wholly owned by a third such company or firm, provided that no other such disposal of had taken place.

## **ARTICLE 7**

### **Distinctness**

(1) The variety is distinct if it is clearly distinguishable by the expression of one or more relevant characteristics that result from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge on the filing date of the plant variety application with the Office, or, where applicable, on the date of the claimed priority.

(2) The distinctness of a variety is defined by characteristics that are capable of precise recognition, description and identification.

(3) The varieties deemed to be a matter of common knowledge are the ones:

(a) protected in Romania and entered in the National Register of variety patents, or in other contracting States to the Convention;

(b) entered in the Official Catalogue of Varieties Marketed in Romania or in similar registers and catalogues from other contracting States to the Convention;

(c) for which there exists an application filed for the variety protection or for entering the same in a register for varieties in Romania, provided that the application leads to the grant of the protection or to the registration of the variety;

(d) for which there exists an application filed abroad for the grant of the protection or for the registration of the variety, provided that the application leads to the grant of the protection or to registration;

(e) offered for sale or sold on the territory of Romania or of other States.

## **ARTICLE 8**

### **Uniformity**

A variety is uniform if, subject to the variation that might be expected of it, during its propagation cycle, its plants are sufficiently uniform in the expression of the relevant characteristics, including the ones used in the examination for variety distinctness, as well as any other characteristics used for variety description.

## **ARTICLE 9**

### **Stability**

The variety is stable if the characteristics relevant for establishing distinctness or any other characteristics for the variety description remain unchanged after repeated propagation, or in special cases, at the end of each propagation cycle.

## **CHAPTER III**

### **RIGHT TO PROTECTION**

## **ARTICLE 10**

### **Right to a Variety Patent**

(1) The right to a variety patent shall belong to the breeder and may be transferred by assignment.

(2) If more breeders have bred or discovered and developed a new variety jointly, the right to the variety patent shall belong to them jointly.

(3) The provisions of para (2) shall also apply when two or more persons discovered the variety and other person or other persons developed it.

(4) The right to the variety patent shall also belong jointly to the breeder and to any other person if the breeder and the other person have declared in writing that they agree to such joint entitlement.

(5) The breeder, who created a new variety during an employment relationship is entitled, unless otherwise provided for in his individual employment contract, to the variety patent and to an equitable remuneration.

(6) Where entitlement to a variety patent is vested jointly in two or more persons pursuant to para.(2) - (4), one or more of them may empower the others, by written declaration to such effect, to claim the right to variety patent.

## **CHAPTER IV**

Procedure for the Examination of Applications for Variety Patents

## **ARTICLE 11**

### **Filing of the Application for Variety Patent**

The application for the grant of a variety patent may be filed by any natural person or legal entity, or by the professional representative thereof:

- (a) at the Office directly;
- (b) by mail;
- (c) by electronic mail.

## **ARTICLE 12**

### **Content of the Application for the Variety Patent**

(1) The application for the grant of a variety patent shall be filed in Romanian on a standardized printed form, and it shall contain:

- (a) the applicant's identification data, containing surname, first name, domicile or place of residence for the natural person, or the company denomination, registered office, legal constitution forms for a legal entity;
- (b) species denomination in Latin and common denomination in Romanian;
- (c) provisional denomination proposal of the new variety;
- (d) the technical questionnaire describing the main characteristics of the variety in the standardized form;
- (e) information relating to previous application or applications for a possible priority claiming;
- (f) information about the previous exploitation of the variety.

(2) The application for the grant of a variety patent shall be accompanied by the following documents:

- (a) proof of payment of the fee for the filing of the application;
  - (b) priority documents;
  - © a power of attorney where the applicant is represented by a representative authorized by the Office, pursuant to Art. 47 (2) letter f).
- (3) The variety application shall relate to one variety only.

## **ARTICLE 13**

### **Filing Date of the Variety Patent Application**

(1) The filing date of the variety patent application shall be the date of filing the application with the Office, provided that this application contains at least the requirements specified in Article 12 (1) have been met, and that the application filing fee has been paid.

(2) The variety patent application filing date shall also be the date established in para (1) where the applicants, foreign natural persons or legal entities submitted the documentation in a foreign language, provided that the Romanian translation of the application is filed with the Office within three months of the date of submitting the variety patent application.

## **ARTICLE 14**

### **Right of Priority**

(1) The application for a variety patent confers a right of priority, starting on the filing date, as compared to any variety patent application submitted subsequently for the same variety or for a variety that is not clearly distinguishable from it as provided in Article 7.

(2) Any person who has previously filed a first application in a contracting State to the Convention or with the Community Office, shall enjoy a right of priority of 12 months of the filing date of the first application if, within that period, he applies to the Office for the grant of a variety patent, provided that the first application has been attributed a filing date.

(3) In order to prove the priority from another State, the applicant shall submit to the Office, within three months from the filing of the application, a certified copy of the documents of the first application, as well as the propagating material or other evidence proving that the varieties referred to in both applications are identical.

(4) Priority claimed under paragraph (3), above shall be recognized in so far as the priority fee prescribed by law has been paid.

(5) Failure to observe the time limit provided for in paragraph (2) above or failure to pay the priority fee shall result in non-recognition of the claimed priority.

(6) Acts performed within the period provided for in paragraph (2), such as the filing of another application, publication or use of the variety to which the first application relates, do not constitute grounds for refusal of the subsequent application and do not give rise to any third party rights.

(7) The applicant is entitled to a two-year grace period after the expiry of the priority period or if the first application was refused or withdrawn in order to transmit the documents, information or propagating material required for the examination of the subsequent application.

## **ARTICLE 15**

### **Variety Denomination**

- (1) The variety shall be designated by a generic denomination to permit its identification.
- (2) The same denomination for the same variety will be employed on the territory of Romania and in any State that is a contracting party to the Convention or based on bilateral agreements.
- (3) The provisions of paragraph (2) shall not apply if the denomination conflicts with paragraph (7).
- (4) The variety denomination shall differ from any other denomination that designates another existing variety belonging to the same or a closely related species, except where the other variety does no longer exist and the denomination thereof does not have a special significance.
- (5) The variety denomination shall not consist only of figures, except where this is an established practice for the designation of certain plant varieties.
- (6) The variety denomination shall not mislead or cause confusion concerning the characteristics, value or identity of the variety or of the breeder.
- (7) If an application for the grant of variety patent is filed in Romania and simultaneously in other countries, the variety shall be registered under the same denomination in all the other countries except where the Office considers the denomination unsuitable.
- (8) If, by virtue of a prior right, a denomination has already been used for another variety or may cause confusion in the use of the denomination of another variety, the Office shall request the applicant to submit another denomination for his variety.
- (9) In order to establish a correct denomination, the applicant may ask the Office, prior to filing the application, subject to payment of the legal fee, to conduct a search concerning the proposed variety denomination.
- (10) Any person who offers for sale or markets propagating material of a protected variety is obliged to use the denomination of that variety even after the expiry of the term of variety protection.
- (11) A proposed designation may not be used as a denomination of the protected variety if it is identical or similar to a mark, appellation of origin or geographical indication for protected products identical or similar to the ones the variety refers to, or if infringes other protected industrial property rights.
- (12) The variety denomination shall be entered in the National Register of Variety Patents at the same time as the variety patent is issued.
- (13) Where at least one of the conditions specified in paragraphs (1) to (11) is not fulfilled, the Office shall cancel the registered denomination and shall grant a 30-day time period to the applicant with a view to proposing another denomination.
- (14) The variety holder may not use a designation that is identical with the denomination of the protected variety, in order not to hamper the free use of the variety denomination, even after the termination or the variety patent validity.
- (15) A third party may use a right granted in respect of a designation that is identical with the denomination of the protected variety only if this right was previously acquired.

## **ARTICLE 16**

### **Examination in respect of the Form of the Variety Application**

- (1) Within two months from the filing date of an application for the protection of a new variety, the Office shall examine the documentation filed by the applicant in respect of satisfying the formal requirements for the application, set forth in Art. 10 (1) to (4) and Art. 12.
- (2) If the variety patent application meets the requirements referred to in paragraph (1), the Office shall enter the application into the National Register of the Variety Patent Applications. The entering in the National Register of Variety Patent Applications shall be notified to the applicant.
- (3) The new variety patent applications for the protection of the new varieties filed with the Office shall be published, within three months from the date of filing, in the Official Industrial Property Bulletin.
- (4) Where the application for the grant of a variety patent does not meet one of the provisions of Article 10, and 12, the Office shall decide, within an Examination Board, to reject the application.

## **ARTICLE 17**

### **Substantive Examination of the Application**

- (1) The Office shall, within nine months from the date of filing the application, carry out a substantive examination of the variety patent application documentation with respect to its novelty and variety denomination, as provided for in Article 6, 14 and 15.
- (2) The Office shall notify the applicant or his successor in title of the result of the substantive examination of the application; where the result is negative, a period not exceeding three months shall be accorded for reply.
- (3) The applicant may, for legitimate reasons, ask the Office for a two -month extension of the period for reply.
- (4) If after the substantive examination the Office decides, within the Examination Board, that the application meets the requirements laid down in Articles 6 - 10, 12 and 15, the variety shall undergo a technical examination by a competent national authority or by another internationally recognized authority to which the Office shall send the documentation within one month from the decision.
- (5) Where the application has not met the requirements of Article 6 - 10, 12 and 15 and the applicant neither responds to the notification within the prescribed period, nor applies for an extension, the Office shall reject the application.

#### **ARTICLE 18**

##### **Technical Examination of the New Variety**

- (1)The variety shall undergo a technical examination carried out by the national authority competent in the field in order:
  - (a) to verify that the variety belongs to the botanical taxon stated by the applicant;
  - (b) to establish that the variety is distinct, uniform and stable within the meaning of Article 7 - 9.
  - (c) to establish the official description of the variety.
- (2) The technical examination shall be performed by a competent national authority. (3) Where growing tests for a new variety have not been performed by the competent national authority or by an internationally recognized authority, the Office may take into account the technical report drawn up by another competent authority, with the applicants consent, and provided that the prescribed fee is paid and in complying with the procedure laid down in the Convention.
- (4) The competent national authority or a company designated on behalf thereof shall perform the necessary tests to determine whether the provisions of Articles 7 - 9 have been satisfied. The applicant shall make the propagating material belonging to the variety available free of charge, in the amount and on the date requested by the authority conducting the growing tests and shall notify this to the Office.
- (5) The competent authority shall send the Office and the applicant a preliminary report within one year from the initiation of variety testing and shall draw up, the technical report comprising the test findings, and the table of characteristics of the new variety within a two-year period.
- (6) The variety testing shall not affect the novelty condition and cannot be used against the grant of the breeder's rights.
- (7) Where the growing tests have been conducted by the breeder, they may be subjected to an analysis by the national authority that may confirm their validity.
- (8) The competent authority shall confirm the validity of the growing tests through a notification to the Office, accompanied by the table of variety characteristics within six months at the most from transmitting the documentation.
- (9) Where the tested variety also satisfies the conditions relating to the agronomic value and of use, with a view to marketing the variety, the applicant may ask the entering of the variety into the Official Catalogue of Cultivated Varieties and Hybrids in Romania, pursuant to the provisions of the Law no. 266/2002 on the production, processing, control and quality certification, marketing of seeds and planting material as well as the registration of the plant varieties.
- (10) The Office shall reject the application for a variety patent if the validity of the tests is disputed by the national authority.
- (11) The invalidation of the tests performed by the breeder shall be made on justified grounds by the national authority.
- (12) The decisions of the Office may be appealed against by the applicant before the Board of Appeal of the Office, within three months from the communication.

#### **ARTICLE 19**

##### **Testing of the Variety**

- (1) For the testing of the new variety the national authority may conduct its own growing tests or accept the findings of the tests performed by the applicant to make the observations.
- (2) The growing tests shall be conducted according to the methodology approved by the Ministry of

Agriculture, Forests and Rural Development and by Office on the basis of the European and international guidelines for the testing of the new plant varieties.

(3) After having received the documentation and conducted the examination as to the form, the Office shall transmit the documentation to the national authority that shall establish the site for the trials and the amount of material necessary for organizing them and notify the applicant accordingly, inviting him to submit the propagating material requested.

(4) The Office and the national authority may request the applicant to submit all information, documents and materials necessary for the satisfactory conduct of the technical examination.

(5) If, within the period allowed, the information, documents or materials requested are not submitted by the applicant, the Office shall reject the variety patent application.

(6) The applicant has the right, anytime during the testing of the new variety, to ask to inspect the crops.

## **ARTICLE 20**

### **Examination of the Facts by the Office of Its Own Initiative**

In the proceedings, the Office shall make investigations in respect of the fulfilment of the provisions provided for in Art. 18 and 19.

## **ARTICLE 21**

### **Decisions of the Office**

(1) The Office shall decide, on the basis of the technical report of the national authority or of an internationally recognized authority, whether the new variety meets the requirements laid down in Article 6 -8 and 15 and shall grant the variety patent, or reject the variety patent application, as appropriate.

(2) A decision to reject shall be taken by the Office only after the applicant has been notified of the grounds for rejection and allowed a period of at least three months within which to submit comments.

(3) Decisions shall be published in the first Official Industrial Property Bulletin issued after making the decision.

(4) During the validity term of the variety patent the official description of the protected variety may be amended by the Office or the applicant, subject to mutual consultation, in response to developments in agrobiological knowledge and variety description methods without the scope of protection and the characteristics of the new variety being thereby affected. Amendments made to the official description shall be published in the Official Industrial Property Bulletin.

(5) Decisions of the Office may be challenged by applicants' appeals on just grounds, they being lodged with the Board of Appeal of the Office in accordance with Article 42 (1).

## **ARTICLE 22**

### **Oral Proceedings**

(1) Oral proceedings shall be held either on the initiative of the Office itself or at the request of any of the parties involved in the appeal proceedings.

(2) Oral proceedings before the Board of Appeal including delivery of the decisions, shall be public in so far as the Board of Appeal does not decide otherwise in circumstances where disadvantages could arise from admitting the public, particularly for any of the parties to the appeal proceedings.

## **ARTICLE 23**

### **Provisional Protection**

(1) During the period between the publication of the variety patent application under Article 16 (3) and the grant of the variety patent, the applicant shall provisionally enjoy all rights conferred on the variety patent holder, under Article 31 (1).

(2) The infringement by third parties of rights provided for in paragraph (1) above shall make the infringers liable for damages under civil law, payment of the damages being enforceable once the variety patent has been granted.

(3) The persons who commit the acts provided for in Article 31 (1) without the holder's authorization during the period of provisional protection shall be liable under Article 44 (1) and (2).

(4) When the variety patent application has been rejected, the applicant shall not enjoy the rights provided for in paragraph (1) above.

## **ARTICLE 24**

### **Extension of the Time Limit**

- (1) The time limits for the examination of the application for a variety patent, as well as for repeating the growing tests may be extended by up to one year subject to payment of the legal fees.
- (2) Before the expiry of the time limits under Art. 17, the applicant may request, but not more than 2 times, for the extension of the time limits by 3 months, subject to payment of the legal fee.

## **ARTICLE 25**

### **Withdrawal of the Application**

The application for a variety patent may be withdrawn, on a request submitted to the Office by the applicant, any time until the decision on the grant of the variety patent is taken.

## **ARTICLE 26**

### **Revocation of the Variety Patent**

- (1) Within three months from publication in the Official Bulletin of the grant of variety patent any person concerned may apply to the Office for the revocation of the variety patent, where at least one of the conditions set forth in Articles 6 - 10 or 15 has not been met. The request shall be made in writing and substantiated.
- (2) The persons who apply to the Office for revocation of the variety patent shall have access to the documents, including the results of the technical examination and the official variety description.
- (3) The request for revocation shall be examined by the Board of Appeal within three months from the filing thereof with the Office.
- (4) The Board of Appeal may ask the national authority or other authorized institution to repeat the growing tests on the variety or to use the services of a crop expert who shall take part in the reexamination of the new variety.
- (5) The decision of the Board of Appeal shall be communicated to the parties within 15 days of being pronounced.
- (6) The decision of the Board of Appeal may be appealed against as provided in Article 42.
- (7) The final and irrevocable decisions shall be published in the first Official Industrial Property Bulletin issued after the decision has been made.

## **ARTICLE 27**

### **Priority of a New Application in the Case of a Request for Revocation**

Where a request for revocation on the grounds that the conditions laid down in Article 10 are not met leads to the withdrawal or refusal of the application for a variety patent, and if the objector files an application for a variety patent within one month following the withdrawal or refusal of the application for the same variety, he may require that the date of the withdrawn or refused application be deemed to be the filing date of his application.

## **ARTICLE 28**

### **Issue of the Variety Patent and Registration of the Variety Denomination**

- (1) The variety patent shall be issued by the Director General of the Office in pursuance of the decision to grant the variety patent.
- (2) The variety patent and the variety denomination shall be entered in the National Register of Variety Patents, which is open to the public and may be consulted by third parties on payment of the inspection fee prescribed by the law.
- (3) Where the application is filed by more applicants, the variety patent shall be issued to the first applicant mentioned in the application and the others shall be issued duplicates thereof.
- (4) Where the breeder is not the holder of the patent, he shall be entitled to receive a duplicate of the granted variety patent on request.

## **Article 29**

### **Fees for the Grant of Variety Patent and Registration of Variety Denomination**



(1) For the examination procedures before the Office, the applicant shall pay fees according to the Government Ordinance no. 41/1998 on the fees in the industrial property protection field and the conditions for using the same, as republished.

(2) The fees shall be paid for the following procedures:

- a) filing the variety patent application according to Art. 12 (2);
- b) examination of the variety denomination, according to Art. 15;
- c) examination of the conditions of form, according to Art. 16;
- d) examination of the substantive conditions, according to Art. 17;
- e) technical examination on groups of species;
- f) issue of the variety patent according to Art. 28;
- g) appealing against the decisions according to Art. 21 (5) and revocation of the patent according to Art. 26;
- h) maintenance in force of the variety patent on groups of species, for each year of protection, according to Art. 28.

(3) Fees for the procedures provided for in paragraph (2) shall be paid in the account of OSIM.

## **CHAPTER V**

### **PROTECTION OF THE VARIETY**

#### **ARTICLE 30**

##### **Duration of Variety Protection**

(1) The term of protection of the variety shall run from the date of granting the variety patent until the end of the 25th calendar year following the year of grant.

(2) For species of trees, vines and potatoes the term of the variety patent shall run from the date of granting the variety patent application until the end of the 30th calendar year following the year of grant.

## **CHAPTER VI**

### **RIGHTS OF THE HOLDER**

#### **ARTICLE 31**

##### **Rights of the Variety Patent Holder**

(1) The variety patent holder shall enjoy the exclusive right of exploitation of the new variety and the right to prevent any person, without his authorization, from performing the following acts in relation to the propagating material and harvested material of the protected variety:

- (a) production or reproduction;
- (b) processing for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) importing;
- (f) exporting;
- (g) stocking for one of the purposes mentioned in subparagraphs (a) to (f).

(2) In respect to harvested material, the provisions of paragraph (1) are applied under the following cumulative conditions:

(a) the harvested material was obtained by an unauthorized use of propagating material of the protected variety;

(b) the holder missed an opportunity to exercise his rights related to the new variety constituents.

(3) The provisions of paragraph (1) shall also apply to varieties:

(a) that are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

(b) that are not clearly distinguishable from the protected variety within the meaning of Article 7;

(c) the production of which requires repeated use of the protected variety.

(4) For the purpose of paragraph 3 letter a) a variety shall be deemed "essentially derived" from an initial variety when:

(a) it is predominantly derived from the initial variety or from a variety that is itself predominantly derived from the initial variety;

(b) it is distinguishable, in terms of Article 7, from the initial variety from which it is derived;

(c) it conforms to the initial variety in the expression of the essential characteristics resulting from a genotype or combination of genotypes thereof, except for the differences resulting from the derivation.

(5) The variety patent holder is entitled to royalties or an equitable remuneration for the exploitation of the protected variety in case of granting licenses based on contracts and the licensee is obliged to pay the sums of money agreed upon.

(6) Litigations are to be settled by the law courts according to the civil law.

## **ARTICLE 32**

### **Exceptions to the Rights of the Variety Patent Holder**

- (1) The rights conferred to a variety patent holder shall not extend to:
- (a) use of the variety privately and for non-commercial purposes;
  - (b) use of the variety for experimental purposes, including the process of breeding new varieties from the initial material;
  - (c) use of the variety for the purpose of breeding, discovering and developing other varieties;
  - (d) acts referred to in Article 31 (1), in respect of such other varieties referred to in (c) above, except where the provisions of Article 31 (3) apply, or where the other variety or the material of this variety comes under the protection of an equivalent industrial property right;
  - (e) acts whose prohibition would violate the provisions laid down in Article 1 (2).
- (2) The persons who use the protected variety for one of the purposes provided for in paragraph (1) are obliged to inform the holder accordingly.
- (3) The variety exploitation by third parties within the time period between the lapse of holder's rights and patent revalidation does not constitute an infringement of rights laid down in Art. 31.

## **ARTICLE 33**

### **Farmer's Privilege**

- (1) For stimulating the agricultural production for the plant species provided for in the annexe that is an integral part of the present law, the farmers may exploit, propagate the variety on their own land, cultivate it to obtain crops for their own benefit without having a license from the holder, except for the protected varieties that are hybrids or synthetic varieties.
- (2) The farmers may use the seed obtained for sowing or through the seed processors.
- (3) Where the seed is used through seed processors, it shall remain identical to the seed of the protected variety and to the harvested product
- (4) Farmers are obliged to pay an equitable remuneration to the holder for the use of the seed of the protected variety, that is less than the price paid for a license for propagating the material of the lowest quality eligible for official certification of the protected variety.
- (5) The holder is entitled to request, in writing, the necessary information related to the seed of the protected variety produced by the farmer.
- (6) Farmers and seed processors are obliged to supply, upon request, written information about their identification data to the holder.
- (7) Seed processors are obliged, upon request, to supply the holder written information about the amount of seed of the protected variety delivered for processing as well as about the amount of seed obtained after processing, the date and place of processing and the identity of person for whom processing was performed.
- (8) Farmers have the obligation, upon request, to supply information, in writing, to the holder about the amount of seed employed and, as the case may be, the identity of seed processors.
- (9) The holder has the obligation, upon request, to supply the breeders information in writing relating to the price cashed for the license of producing the lowest quality eligible for official certification, of seed of the variety protected in the same region.
- (10) The holder, with a view to monitoring and complying with the provisions of paragraphs (1) - (5) may ask the farmers and seed processors to submit proofs in upholding the information provided for in paragraph (6) - (8).

## **ARTICLE 34**

### **Exhaustion of the Variety Patent Holder's Rights**

- (1) The variety patent holder's right shall not extend to acts in relation to any propagating or harvested material of the protected variety or of a variety covered by the provisions of Article 31 (2), and to those in relation to any parts of the plant of the protected variety or to any material derived from that variety that has been sold or marketed by the holder or with his consent, unless such acts involve:
- (a) propagation of the protected variety, except where such propagation was intended when the material was disposed of to third parties for propagation;
  - (b) exporting the material of the protected variety to a third country that does not protect varieties of the genus or species to which the new variety belongs, except where the exported material is used for consumption.

## **CHAPTER VII**

### **Lapse of the Variety Patent**

## **ARTICLE 35**

### **Invalidation of the Variety Patent**

- (1) The Office shall declare the variety patent null and void if one of the following situations are ascertained:
- a) the variety was not new within the meaning of Art. 6, or distinct, within the meaning of Art. 7, on the date of filing or on the date of claiming the priority, as appropriate;
  - b) the variety patent granting was essentially based on information and documents supplied by breeder, the variety was not uniform within the meaning of Art. 8, or stable, within the meaning of Art. 9, on the date of granting the rights;
  - c) the person that was granted the variety patent was not the entitled person, except where a transfer of rights to the entitled person took place.
- (2) The Office decisions shall be communicated to the parties within 15 days from pronouncement and can be appealed against under the provisions of Art. 42.
- (3) The variety patent invalidation decision remained final and irrevocable shall be published in the Official Industrial Property Bulletin and the cancellation shall be entered in the National Register for Variety Patents.

## **ARTICLE 36**

### **Forfeiture of Variety Patent Holder's Rights**

- (1) The Office shall declare the variety patent holder's rights forfeit where one of the following situations occurs:
- (a) the variety patent holder does not fulfil his obligation to maintain the protected variety, as provided in Article 38 (1);
  - (b) the variety patent holder does not act on a request of the Office or the national authority that he should supply information or material for the purpose of verifying the protected variety during the term of the variety patent validity;
  - (c) the variety patent holder does not, within the time allowed, propose a suitable denomination for the plant variety where the Office has asked for a change in the denomination because it no longer fulfils the conditions set forth in Article 15;
  - (d) the variety patent holder fails to pay the fees for keeping the variety patent in force.
- (2) The Office shall not declare the holder's rights forfeit before having notified him of his failure to comply with one of the obligations under paragraph (1). Forfeiture of holder's rights shall be published in the Official Industrial Property Bulletin and shall be effective as of the date of entry in the National Register of Variety Patents.
- (3) The variety patent holder may, within 6 months from the date of publication of the forfeiture, request the Office to revalidate the variety patent on just grounds.
- (4) The decision of the Board of Appeal on the request for revalidation of the variety patent shall be communicated to the parties within 15 days of its pronouncement and may be challenged under Article 42. Revalidation of the variety patent shall be published in the Official Industrial Property Bulletin.

## **ARTICLE 37**

### **Renunciation to the Variety Patent**

- (1) The variety patent holder may renounce the variety patent at any time during the variety protection period on the basis of a written declaration submitted to the Office.
- (2) Renunciation to the variety patent shall be effective as of the date of transmitting the request to the Office.
- (3) Renunciation shall be recorded in the National Register of Variety Patents and shall be effective for third parties from the date of publication in the Official Industrial Property Bulletin.
- (4) Where the variety patent has been the subject of a licence contract, renunciation is possible only with the consent of the licensee.

## **CHAPTER VIII**

### **Exploitation of the Protected Variety**

## **ARTICLE 38**

### **Maintenance of the Protected Variety**

- (1) The variety patent holder is obliged to maintain the protected variety throughout the term of the variety patent so that the variety retains all the characteristics presented in the official description on the date of grant of the variety patent.
- (2) In order to verify the distinctness, uniformity and stability of the new variety, the national authority may ask the variety patent holder to supply seed, propagating material, documents, or any other information required for performing the verification.
- (3) The Office may, throughout during the validity term of the variety patent, request the holder to provide information and documents attesting the existence of the variety and the maintenance of its characteristics.
- (4) Where the variety patent holder does not comply with the request, the Office shall declare his rights under the variety patent forfeiture in accordance with Article 36 (1)(a).

#### **ARTICLE 39**

##### **Transfer of Variety Rights**

- (1) The right to be granted a variety patent, the right in the variety patent as well as the rights deriving from the variety patent may be transferred to other natural persons or legal entities.
- (2) The transfer of rights may be performed by assignment, by an exclusive or non-exclusive license contract or by legal or testamentary provision.
- (3) Where another person than the one mentioned on the variety patent is entitled to be granted the variety patent, the Office shall issue the variety patent to the entitled person and shall publish the change in the Official Industrial Property Bulletin.
- (4) Where the variety patent jointly belongs to more persons, the part belonging to one of them may be transferred to third parties, if they have been notified in writing and they fail respond within one month.
- (5) The transfer of rights shall become effective on the date of concluding the contract.
- (6) The transfer of rights shall not affect rights acquired by the third parties before the date of transfer.
- (7) The transfer of rights shall be entered in the National Register for Variety Patent Applications or in the National Register of Variety Patents, as appropriate, shall be published in the Official Industrial Property Bulletin and become opposable to third parties starting on this date.
- (8) Transfer not yet entered in the Register may still be invoked against third parties which acquired rights after the date of transfer, provided that they knew about the transfer on the date of acquiring these rights.

#### **ARTICLE 40**

##### **License Contract**

- (1) Where an exclusive license is granted, the licensee shall enjoy the exclusive right of exploitation of the new variety, within the limits specified in the license contract.
- (2) Where a non-exclusive license is granted, the holder shall retain the right to grant licenses to third parties and the licensee does not have the right to transfer the right of exploitation of the variety to third parties.
- (3) The variety patent holder may request the Office to publish his offer to grant the license in the Official Industrial Property Bulletin.
- (4) The Office shall enter the license contract in the National Register of Variety Patents and publish it in the Official Industrial Property Bulletin.
- (5) Upon request by the person concerned, the Office may register other transfers of rights in the protected variety, subject to payment of the legal fee.

#### **ARTICLE 41**

##### **Compulsory License**

- (1) The Ministry of Agriculture, Forests and Rural Development may grant a non-exclusive compulsory license at the request of any interested party, but only on grounds of public interest.
- (2) Where the compulsory license is granted the types of acts covered and the reasonable conditions pertaining thereto shall be specified.
- (3) The reasonable conditions shall take into account the interests of the variety patent holder that could be affected by the grant of the compulsory license.
- (4) The compulsory license shall be granted for a limited period of time, subject to payment of an appropriate royalty to the holder, who, in his turn, shall accomplish certain obligations required for the exploitation of the compulsory license.
- (5) The grant of the compulsory license does not prevent the holder from exploiting the variety or from granting other non-exclusive licenses to third parties.

(6) On the expiry of each calendar year after the grant of the compulsory license any time within the aforementioned granted period of exploitation, the parties to proceedings may request the modification of the conditions of exploitation of the compulsory license.

(7) In case of an essentially derived variety, if the holder of the initial variety refuses to grant an exploitation license for the derived variety, a non-exclusive compulsory license may be granted based on a final judgement.

(8) Where the holder of a patent for a biotechnological invention applies for a compulsory license for a non-exclusive use of a protected plant variety, the Ministry of Agriculture, Forests and Rural Development may grant a non-exclusive compulsory license, subject to payment of an appropriate royalty to the protected variety holder, in the following conditions:

a) the holder of the invention has unsuccessfully applied to the holder of the variety patent to obtain a contractual license; or

b) the invention constitutes significant technical progress of considerable economic interest.

(9) Where the variety patent holder applies for the grant of a license for the exploitation of a patent protected biotechnological invention, the Law Court of Bucharest, pursuant to the provisions of the Patent Law no. 64/1991, as republished with subsequent modifications, may grant a non-exclusive compulsory license, subject to payment of an appropriate royalty to the holder.

(10) Upon justified request by the interested person, the Ministry of Agriculture, Forests and Rural Development, or the Law Court of Bucharest, as appropriate, may withdraw the compulsory license, when the circumstances leading to the grant thereof ceased, provided that the legitimate interests of the person who acquired it are suitably protected. The license shall not be withdrawn if the circumstances determining the grant thereof are liable to occur again.

(11) The decisions on the grant of a compulsory license as well as the ones on the royalty stipulated depending on the degree of use thereof may be appealed against in the Court of Appeal of Bucharest, within 15 days from communication.

(12) The final and irrevocable judgements on the grant or withdrawal, as appropriate, of the compulsory license shall be communicated by the interested person to the Office, that shall enter them in the National Register of Variety Patents and publish the mention of these decisions in the Official Industrial Property Bulletin, within one month from their communication.

## **CHAPTER IX**

### **Protection of Rights in New Plant Varieties**

#### **ARTICLE 42**

##### **Appeals against Decisions of the Office**

(1) Decisions of the Office may be appealed against by interested parties. The request shall be filed with the Office within two months from the communication of the decision and the reasons for the appeal shall be submitted within a four-month period of time.

(2) The appeal or the request for revocation or cancellation of the variety patent, as appropriate, shall be examined by the Board of Appeal within 3 months from lodging, provided that the proofs allow the case to be settled within this time period. The composition of the Board shall be different from the composition of the Examination Board, and it shall be composed of representatives of the Ministry of Agriculture, Forests and Rural Development and of the Office.

(3) The decisions of the Board of Appeal shall be communicated to the parties within 15 days of being pronounced, and may be appealed against in the Law Court of Bucharest within 30 days of being communicated.

(4) The decision of the Law Court of Bucharest may be appealed against before the Court of Appeal of Bucharest within 15 days of being communicated.

(5) The Office is obliged to submit to the court, at its request, the necessary documents and information for judging the case referred to it.

#### **ARTICLE 43**

##### **Competence of the Courts**

Litigations seeking to deprive of his status the breeder, variety patent holder or holder of other rights derived from the variety patent, including patrimony rights of the breeder, or under an assignment or license contract, or litigation relating to failure to comply with provisions of Article 38 (1) and 39, shall be within the competence of the courts of law.

**CHAPTER X**  
**Offences and Penalties**  
**Section 1**

**ARTICLE 44**  
**Infringement and Disclosure**

- (1) Any of the acts mentioned in Article 31 (1) performed without the variety patent holder's authorization shall be deemed to constitute an infringement.
- (2) Performing the following acts deliberately also constitutes an infringement:
- (a) using a denomination, other than the registered denomination of the new variety, for propagating material produced and sold;
  - (b) using the registered denomination of a new variety for propagating material produced and sold, that does not belong to that variety;
  - (c) giving a denomination to propagating material produced and sold that is so close to the denomination of the protected variety, that it may cause confusion;
  - (d) selling propagating material with false indication that it belongs to a variety for which a variety patent has been granted, thereby misleading purchasers;
  - (e) falsehood in the registration of a variety in the National Register of Protected Varieties;
  - (f) drawing up false reports, and falsification of documentation required by this Law;
  - (g) submitting documents containing false information.

- (3) The acts specified in paragraphs (1) and (2) shall be punishable with imprisonment for a term of three months to two years or with a fine from 10,000 to 30,000 lei. The attempted act shall likewise be punished.
- (4) Disclosure of data or information constituting a trade secret concerning a new variety for which a variety patent has been applied for shall be punished with imprisonment from 6 months to two years or fine from 10,000 to 30,000 lei. The attempted act shall likewise be punished.
- (5) Where the offences provided for in paragraphs (1), (2) and (4) are committed by a public official, in the course of his duties, the public official shall be punished with imprisonment for a term of six months to five years. Criminal proceedings shall be initiated on a complaint by the injured party.
- (6) The variety patent holder is entitled to claim damages under the provisions of civil law for prejudice caused to him, and may ask the courts to dispose the seizing or destroying, as appropriate, of the infringing goods.

**Section 2**

**ARTICLE 45**  
**Actions for Infringement**

- (1) A legal action for infringement may only be initiated after publication of the grant of the variety patent.
- (2) Where a license has been granted and there is not otherwise provided in the contract, the licensee may only sue for infringement with the consent of the variety patent holder.
- (3) The holder of an exclusive license may initiate a legal action for infringement, if the variety patent holder has been informed of the alleged infringement and has not taken any action within a time limit requested by the licensee.
- (4) Where a legal action for infringement has been brought by the variety patent holder, the licensee may institute a civil action for recovery of the damage.

**CHAPTER XI**  
**Provisional Measures, Evidence, Fees**

**Article 46**  
**Provisional Measures, Evidence**

- (1) The variety patent holder may request the court:
- a) to order provisional measures where there is a risk of infringement of the rights deriving from the variety patent and where such infringement is liable to cause irreparable prejudice, and also where there is a risk of evidence being destroyed;
  - b) to order, immediately on application, measures to put an end to the infringement of rights derived from the variety patent, committed by a third party in connection with the introduction into commercial channels of

imported merchandise that would infringe those rights;

c) to order the seizure or destruction of propagating material referred to in Article 44 (2).

(2) The court shall order the infringer of the rights under the variety patent to inform the holder of the identity of third parties who have taken part in production and distribution of the propagating material specified in Article 44 (2).

(3) The provisions of the Code of Civil Procedure shall be applicable to the ordering of the measures referred to in paragraph (1).

(4) When provisional measures are ordered, the court may oblige the plaintiff to provide security, in an amount that it shall specify.

(5) The court may ask the plaintiff to supply any evidence available to prove that he is the holder of the rights infringed or the infringement of which is unavoidable.

(6) Where the evidence supporting the claims of the plaintiff is in the defendant's possession, the court may order the defendant to produce the evidence, provided that confidentiality of information is guaranteed, as provided by law.

(7) The court shall order the plaintiff to pay the defendant all damages arising from improper exercise of the procedural rights concerning the new variety.

## **ARTICLE 47**

### **Competence**

(1) Competence for the enforcement of this Law belong to the Office and the Ministry of Agriculture, Forests and Rural Development.

(2) The Office, as a specialized body subordinated to the Government and sole authority within the territory of Romania for the grant of industrial property protection, shall grant patents for the new plant varieties under this Law and in accordance with the international conventions to which Romania is a party, and shall have the following duties:

a) filing, publishing and examining applications for the grant of patents for the new varieties;

b) organizing and keeping the National Register of Variety Patent Applications and the National Register of Variety Patents

c) regularly issuing the Official Industrial Property Bulletin which contains information on variety patent applications, denominations of new varieties and proposals for denominations, and also on new varieties for which variety patents have been granted;

d) ensuring the exchange of publications with similar foreign national administrations and specialized international organizations;

e) establishing, in consultation with the Ministry of Agriculture, Forests and Rural Development, the characteristics contained in the technical questionnaire, in accordance with community guidelines for the protection of the new varieties;

f) certifying authorized agents for the procedures before the Office relating to the protection of the new varieties.

(3) The Ministry of Agriculture, Forests and Rural Development, in exercising its prerogatives:

a) shall decide on the methodology for testing the new varieties from a technical point of view, through the national authority designated to perform the technical examination;

b) shall cooperate with the Office, with breeders' associations, with the association of variety patent holders, with the association of producers of seed and propagating material, with specialized research institutes and testing stations in order to protect and promote the new varieties and shall establish the developing strategy in the field of breeding new varieties;

c) shall designate the crop experts as representatives of the Board of Appeal;

d) shall grant compulsory licenses according to the provisions of Art. 41 (2).

(4) The Office and the Ministry of Agriculture, Forests and Rural Development, through their representatives, shall entertain cooperation relations with contracting States to the Convention, the Office of the International Union for New Plant Varieties and with the Community Office in the field of protecting the new plant varieties.

## **ARTICLE 48**

### **Protection of the New Varieties Abroad**

Romanian natural persons and legal entities shall have the right to choose the State or intergovernmental organization in which they file their first application for the grant of a variety patent or a similar title of protection.

## **Article 49**

### **National Register of Variety Patent Applications**

In the National Register of Variety Plant Applications (RNCBS) the following indications shall be published:

- (a) number of the variety patent application;
- (b) species, botanical taxon and the variety denomination;
- (c) filing date;
- (d) name and address of the applicant;
- (e) name and address of the breeder;
- (f) name and address of the professional representative;
- (g) modifications in the legal status of the variety patent application.

## **ARTICLE 50**

### **National Register of Variety Patents**

In the National Register of Variety Patents (RNBS) at least the following indications shall be entered:

- (a) date and number of the variety patent application filed with OSIM;
- (b) priority date;
- (c) filing date;
- (d) name and the address of the applicant;
- (e) State on whose territory the applicant has the place of residence;
- (f) name and the address of the professional representative;
- (g) name and address of the breeder;
- (h) botanical taxon;
- (i) denomination of the variety;
- (j) holder's name/denomination and address / headquarters;
- (k) changing of the address and of the holder's name;
- (l) any modifications or transfer or rights;
- (m) payment of the fees for issuing and maintaining the variety patent;
- (n) variety patent holder;
- (o) declaration of renunciation to the variety patent;
- (p) decision of annulment or invalidation of the variety patent, as the case may be.

## **ARTICLE 51**

### **Variety Protection with Community Office**

(1) If a Romanian applicant wants to file an application for protection with the Community Office, this may be filed:

- a) directly with the Community Office, through a professional representative having the registered office or place of residence in the European Community; or
- b) with the State Office for Inventions and Trademarks, that will be the receiving office for the protection application.

(2) The application for the protection of the new plant variety containing the documents provided for in the Community Regulations 2.100/1994, filed with OSIM, will be transmitted to the Community Office within two weeks of filing, subject to payment of the application filing fee.

(3) The date of filing the application with the Community Office shall be the date of receiving a complete application and subject to payment of the legal fees.

(4) Any variety protected by the community law shall no longer constitute the subject-matter of a national variety patent.

(5) Where the holder of a national right for a variety acquires a community right subsequently, the national title shall be suspended.

## **CHAPTER XII**

### **Final and Transitional Provisions**

#### **ARTICLE 52**

##### **Final and Transitional Provisions**

(1) Applications for variety patents filed with the State Office for Inventions and Trademarks under Patent Law no. 64/1991 and Government Decision no. 152/1992 approving the Implementing Regulations of the Patent Law no. 64/1991\*), for which no decision has been taken to grant or refuse grant, shall be settled in accordance with the provisions of this Law.

(2) This Law shall enter into force 90 days following the date of its publication in the Official Gazette of Romania, Part I.

(3) Within 90 days following the publication of this Law in the Official Gazette of Romania, Part I, the



Government shall, on a proposal by the State Office for Inventions and Trademarks, approve the Implementing Regulations of this Law.

(4) On the entry into force of this Law, the provisions on the protection of plant varieties and plant hybrids laid down in Articles 7 (3) and 11 of the Patent Law no. 64/1991, the provisions on plant varieties and hybrids in Chapter III of Government Decision no. 152/1992 and any other contrary provisions shall be repealed.

**NOTE:**

We reproduce hereinafter Art. II and Art. III of the Law no. 119/2006, that are not incorporated in the republished text of Law no. 255/1998 and that apply further on as provisions specific to Law no. 119/2006:  
"Art. II - (1) The variety patent applications filed with the Office according to the Law on the protection of New Plant Varieties, no. 255/1998, with subsequent modifications, for which no decision was made to grant or to refuse, up to the coming into force of the present law, shall be settled according to the provisions of the present law.

(2) The protection period of the variety patent issued before the coming into force of the present law, for the species of potato and hop, is of 30 years of the date of granting.

Art.III - (1) The present law comes into force within 90 days of the publication thereof in the Official Gazette of Romania, Part I.

(2) Within 3 months from the date of coming into force of the present law, the Government Decision no. 200/2000 for approving the Implementing Regulations of the Law on the Protection of New Plant Varieties, no. 255/1998, published in the Official Gazette of Romania, Part I, no. 134 of 30 March 2000, shall be modified accordingly.

Species of Agricultural Plants

to which the application of the provisions relating on breeder's privilege is requested:

a) Fodder plants

Cicer arietinum L. - Chickpea milkvetch

Lupinus luteus L. - Yellow lupin

Medicago luteus L. - Lucerne

Pisum sativum L. - Garden pea

Trifolium alexandrinum L. - Egyptian clover

Trifolium resupinatum L. - Persian clover

Vicia faba L. - Field bean

Vicia sativa L. - Common vetch

Lolium multiflorum Lam - Italian rye-grass

b) Cereals

Avena sativa L. - Oats

Hordeum vulgare L. - Barley

Oryza sativa L. - Rice

Phalaris canariensis L - Canary Grass

Secale cereale L. - Rye

X Triticum secale Wittm. - Triticale

Triticum aestivum L. Emend, Fiori et Paol - Common wheat

Triticum durum Desf. - Durum wheat

Triticum spelta L. - Spelt wheat

c) Potato

Solanum tuberosum L. - Potatoes

d) Fibre and oil plants

Brassica napus L. - Swede rape

Brassica rapa L. - Turnip rape

Linum usitatissimum L. - linseed with the exclusion of flax..