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THE PLANT VARIETY PROTECTION LAW

Podgorica, January 2006

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THE PLANT VARIETY PROTECTION LAW

I GENERAL PROVISIONS

Article 1

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

Article 2

When used in this law, the following terms shall have the meaning specified below:

“variety” shall mean a plant grouping within a single botanical taxon of the lowest known rank, which is 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 as a unit with regard to its suitability for being propagated unchanged;

“Initial variety” shall mean the variety from which new variety is derived;

“Essentially derived variety” shall mean the variety obtained by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

4) **“Protected variety”** shall mean variety protected in accordance with the provisions of this Law;

5) **“Person”** shall mean any natural or legal person;

6) **“Domestic person”** shall mean a person who has domicile and/or corporate domicile in Republic of Montenegro (hereinafter referred to as: Montenegro);

7) **“Foreign person”** shall mean a person who has domicile and/or corporate domicile outside the territory of Montenegro;

8) **“Breeder”** shall mean the person who bred, discovered or developed a new variety;

9) **“Breeder's right”** shall mean the right of the breeder granted by registering into the Protected varieties register, in accordance with the provisions of this Law;

- 10) **“Right holder”** shall mean a person who has been granted a breeder’s right in accordance with the provisions of this Law, or his successor in rights;
- 11) **“Priority day”** shall mean a filing date of the first application for the protection of a variety to a responsible body;
- 12) **“Representative”** shall mean a person recorded in the Registry of the competent body, as well as the person whose profession is to represent;
- 13) **“Competent authority”** shall mean authority competent for agriculture;
- 14) **“Authority at the State Union level”** is the authority receiving the applications, keeping the registries of registered and protected varieties and cooperating with **UPOV**;
- 15) **“Registry of applications for variety protection”** is the registry in which all appropriately sent applications for variety protection are entered;
- 16) **“Registry of protected varieties”** is the registry that the protected varieties are entered into;
- 17) **“UPOV”** shall mean International Union for Protection of New Varieties of Plants;
- 18) **“Competent court”** is the district court resolving cases in the area of copyright law, as well as the disputes relating to protection or use of invented samples, models and trade marks or the right to company use.

Article 3

Foreign persons shall, with respect to plant variety protection in Montenegro, enjoy the same rights as domestic persons.

Article 4

Foreign person shall be represented by the domestic representative in any proceedings before the competent authority.

II CONDITIONS OF PROTECTION

Article 5

A variety shall be protected in accordance with the provisions of this Law if it is new, distinct, uniform, and stable.

Article 6

(1) The term of protection for the protected variety shall be 20 years, and 25 years for the perennial varieties, as of the date of the grant of the breeder's right.

(2) The date of granting the breeder's right shall be considered the date of submitting the application to the competent body.

Article 7

The variety shall be considered to be new if, at the filing date of the application or on the day of priority, propagating or harvested material of that variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or its successor in rights, for purposes of exploitation of the variety in Montenegro for a period longer than one year, or in a foreign territory – for longer than four years and, in the case of perennial plant varieties, for longer than six years.

The variety referred to in paragraph 1 of this Article shall also be considered as new if it has been placed in market in one of the following manners:

- 1) by a contract on the transfer of a breeder's right;
- 2) by a contract which allows the propagation of the propagating material of the variety in the name of the breeder or his successor in rights, provided that the multiplied propagating material is returned to the breeder, or its successor in rights, and that the multiplied propagating material is not used for the production of another variety;
- 3) by a contract that allows investigations in the experimental field and laboratories for variety evaluation;
- 4) if use of variety is for the purposes of fulfilling an obligation prescribed by the law, particularly as regards biological safety or variety registration according to provisions of the laws regulating the variety approval.

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 filing an application or on the day of priority.

The variety shall, *inter alia*, be deemed as a matter of common knowledge if its exploitation has been already under way, if the application has been filed and has led to the entering in an official Registry of varieties or if the data on the variety have been published in scientific publications.

If the application for the protection or registration of variety has been filed in Montenegro or in any other country, the variety shall be deemed as a matter of common knowledge from the day of filing of the application, provided that the application has led to the granting of a breeder's right or to the entering in the official Registry of varieties.

The competent authority shall prescribe the manner of evaluation of variety distinctiveness.

Article 9

- (1) 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.
- (2) The competent authority shall prescribe the manner of evaluation of variety uniformity.

Article 10

- (1) 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.
- (2) The competent authority shall prescribe the manner of evaluation of variety stability.

III VARIETY DENOMINATION

Article 11

- (1) The variety denomination may be a word, a combination of words, a combination of words and numbers or combination of letters and numbers, meaningful or meaningless, provided that the designation given enables the variety to be identified.
- (2) If the variety denomination had already been used in Montenegro or in other country, or proposed or registered in Montenegro or in other country, then only that denomination may be used in the procedure of variety protection before the competent authority. All synonyms shall be entered in the Registry of Applications and the Registry of Protected Varieties.
- (3) While the protected variety is in circulation, the identical or a similar denomination in Montenegro or in other country shall not be used for another variety of the same or of a closely related species. The denomination of the protected variety shall not be used even after termination of its use if the stated denomination has a particular significance with regard to the variety.
- (4) Any person, who places into circulation or advertises the propagating material of the protected variety, is obliged to use the variety denomination.
- (5) The obligation concerning the use of denomination shall not terminate with the expiry of the term of the variety protection referred to in Article 6 of this Law.

- (6) When a variety is placed in circulation or advertised, it shall be permitted to associate a trademark, trade name or other similar indication with a registered denomination. If such an indication is so associated, the denomination must nevertheless be easily distinguishable.

Article 12

The applicant shall propose the variety denomination in the Application.

The applicant may temporarily postpone the proposal of a denomination. In that case, the applicant shall propose the denomination for the variety within 30 days from the filing date of application. If the applicant does not submit the proposal in due time, the application shall be rejected.

Any interested person may, within 30 days as of the date of entry in the Registry of Applications, file an objection to the proposed denomination.

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

The applicant may propose a new denomination in the reply to the objection.

If the denomination proposed does not comply with the provisions of this Law, the competent authority shall order the applicant to submit a proposal for a new denomination within 30 days from the day of the receipt of notification.

If the applicant within the time prescribed does not submit a proposal for a new denomination, the application shall be rejected.

The competent authority shall grant the denomination in the decision on variety protection.

If, by reason of a prior right of the third person, the use of the denomination of a variety is forbidden to a person who is obliged to use it, the competent authority shall require the breeder to propose another denomination for the variety.

Article 13

The competent authority shall reject the proposal for the variety denomination if it determines that the proposed denomination is:

- 1) unsuitable for the variety identification;
- 2) composed exclusively of marks and indications which may serve for determination of variety, species, quality, quantity, desired aim, value of geographical origin or the production time;
- 3) composed in such a way that it might be misleading or cause confusion with regard to its properties, value or geographical origin of the variety;
- 4) identical or very similar to the denomination which has already marked the variety of the same or closely related species.

- 5) designates to the conditions which are common for other variety of the same species.
- 6) designates that the variety has been developed from some famous or closely-related species to famous one.

The competent authority shall determine which species are to be deemed closely related.

Article 14

The competent authority shall cancel the variety denomination upon the request of the right holder or on the basis of the court decision prohibiting use of denomination.

The competent authority shall notify the right holder that the denomination has been cancelled on the basis of the court decision and invite him to propose a new denomination within 30 days from the date of receipt of notification.

IV PROCEDURE OF PROTECTION

1. Application

Article 15

- (1) The procedure for protection of a variety shall be initiated on the basis of filing a application by the breeder or its representative to the State Union authority.
- (2) The form and content of the application referred to in paragraph 1 of this Article shall be prescribed by the competent authority.

Article 16

- (1) With application referred to in Article 15, paragraph 1 of this Law, the documentation on developing of the variety and the samples of the propagating material of the variety for the purpose of evaluation and preservation and/or the certificate that mother trees of perennial plants of that variety are grown, stating the locality and the data on mother trees, shall be filed.
- (2) The sample of the propagating material of the variety which is not entered in register of varieties, may be imported for the purpose of evaluation and preservation for conducting the procedure of variety protection, on the base of approval by the competent authority.

Article 17

Upon receipt of the application, the State Union authority shall immediately direct the application to the competent body which determines whether the application is

complete i.e. whether it meets the conditions prescribed by the provisions of this Law.

If it determines that the application is not complete, the competent authority shall, stating the reasons, invite the applicant to eliminate the determined defects within 15 days from the date of receipt of notification.

If the applicant does not eliminate the defect within the prescribed period, the application shall be rejected.

Article 18

If the competent authority determines that the application is complete, it shall immediately inform the State Union authority, which enters the application into the Registry of Applications for the Variety Protection (hereinafter referred to as: the Registry of Applications).

The content of the Registry of Applications shall be prescribed by the competent authority.

2. Right of Priority

Article 19

- (1) Any breeder or its representative who has filed an application (the "first application") for the protection of a variety with the authority of other UPOV member country shall, for the purpose of filing a application for the grant of a breeder's right for the same variety with the State Union authority, enjoys a right of priority for a period of 12 months. The date of filing the first request shall not be included in this period. This period shall be computed from the date of filing the first request. If the right of priority is exercised, the breeder must, in request which is filed to the competent authority claim the priority of the first application.
- (2) If two or more breeders have, independently, bred, discovered or developed a new variety, the right of priority shall be enjoyed by the breeder who was the first to file an application for variety protection to the State Union authority.
- (3) In order to be granted the right of priority, the applicant has to submit a proof of the day of priority to the State Union authority within 90 days from the filing date of the application.
- (4) If the State Union authority accepts the proof of the day of priority, the application shall be considered as submitted on the day of priority.

3. Examination of the Variety

Article 20

The variety shall be examined in the experimental field and laboratory in order to determine whether it fulfills the requirements for the protection.

The applicant is obliged to submit the quantity of the variety propagating material to the competent authority necessary for the purposes of evaluation.

The competent authority shall reject the application, if the applicant does not submit the adequate quantity of the propagating material.

Article 21

The variety shall be examined in the experimental field or laboratory by the person, who meets the requirements for such research in terms of personnel, equipment and facilities (hereinafter referred to as: trial contractor).

The competent authority shall prescribe the requirements that need to be met by the trial contractor.

The competent authority shall determine and conduct the inspection procedure on the fulfillment of requirements referred to in paragraph 1 of this Article.

The list of the trial contractors shall be published in the official gazette of Republic of Montenegro.

Article 22

- (1) The competent authority shall conclude the contract with the trial contractor for evaluation of varieties.
- (2) The competent authority shall process the trial results obtained in the experimental field or laboratory.
- (3) The competent authority shall determine the methods of the processing of the results referred to in paragraph 2 of this Article.

4. Decision on plant variety protection and Granting the Right

Article 23

The competent authority shall, on the basis of the examination results, pass the decision on plant variety protection or refusal of application for the variety protection.

The competent authority shall immediately direct the decision to the State Body authority, after which the protected variety shall be entered into the Registry of protected varieties.

The content of the Registry of Protected Varieties shall be prescribed by the State Union authority.

The list of protected varieties with the data on variety denomination, the breeder, the right holder and their domicile and/or corporate domicile, shall be published in the Official Gazette of SCG within 30 days from the date of entry into the Registry of protected varieties.

Article 24

Any interested person may consult:

- 1) the Registry of applications for variety protection;
- 2) the results on variety examination during the protection procedure;
- 3) the Registry of protected varieties.

If a variety production requires repeated use of another variety (components), the applicant may request in application that the documents and the trial results of the components be treated confidential.

5. Objections

Article 25

- (1) Any interested person who conceives that the applicant is not entitled to the breeder's right or that he does not have the right of priority may file an objection to the competent authority with respect to the entry of application in the Registry of Applications, and/or entry of variety in the Registry of Varieties within 30 days from the date of the entry through the State Union authority.
- (2) The objection shall be submitted in written form accompanied with the appropriate evidence.

Article 26

The competent authority shall forward the objection referred to in Article 25, paragraph 1 of this Law to the applicant and invite him to reply to the objection within 30 days from the date of the receipt of the objection.

If the applicant does not reply within the prescribed period of time, the application shall be deemed withdrawn. If the applicant replies and demands the application to be evaluated, with alterations or without them, and/or with or without additions, his reply shall be communicated to the person who objected, who shall submit his reply within 30 days.

The decision on the objection referred to in paragraph 1 of this Article shall be final under the administrative procedure.

Article 27

The objection to the entry in the Registry of the Protected Varieties may be filed by the person who conceives that the variety is not new, distinct, uniform or stable.

The competent authority may order additional testing of the variety in order to assess the statements from the objection.

At the request of the competent authority, the objector shall submit additional information and documents on which his objection is based or the propagating material needed for evaluation within the period of 30 days.

If the objector does not act in accordance with the request referred to in paragraph 3 of this Article, the objection shall be rejected.

The decision on the objection referred to in paragraph 1 of this Article shall be deemed final under the administrative procedure and shall be immediately submitted to the State Union authority.

V RIGHTS AND OBLIGATIONS OF THE RIGHT HOLDER

1. Rights

Article 28

- (1) The right holder shall have the right of to use, dispose of and enjoy other economic benefits of the protected variety.
- (2) The right holder shall have the right to have his name and/or title specified in the application, documentation, registers, public documents and publications.
- (3) If two or more persons have jointly bred, discovered or developed a variety, they shall have rights to protection. Rights and obligations of these persons may be regulated by the contract.
- (4) This law, by-laws and agreement between the employer and the employee, i.e. agreement between their representatives shall govern the rights of the employee who has bred, discovered or developed the variety and the employer's rights, if the variety has been bred, discovered or developed during the employment.

Article 29

Protected variety, and/or propagating material of the protected variety, may be used exclusively with the authorization of the right holder, who shall determine the conditions for authorization.

Use of protected variety and/or propagating material of the protected variety shall include:

- 1) production or reproduction (multiplication) of the protected variety;
- 2) conditioning for the purpose of propagation the protected variety;
- 3) offering for sale of the protected variety;
- 4) selling or placing into circulation of the protected variety in any other manner;
- 5) exporting and importing of the protected variety;
- 6) stocking for any of the purposes referred to in items 1) to 5) above;
- 7) using the denomination of the protected variety.

For the acts referred to in paragraph 2 of this Article, in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, the authorization of the right holder shall be required, except in the case where the right holder has had reasonable opportunity to exercise his right, but has failed to do so.

The right holder's authorization shall also be necessary for the use of:

- 1) the variety which is essentially derived variety from a protected variety which has not been originally derived variety;
- 2) the variety which cannot be clearly distinguished from the protected variety;
- 3) the variety whose production requires the repeated use of the protected variety.

A new variety shall be deemed derived from the initial variety if:

- 1) it has been mainly derived from the initial variety – as long as it retains relevant characteristics deriving from the genotype or from the combination of genotypes of the initial variety;
- 2) it is distinct from the initial variety and the initial variety was used in the procedure of breeding new variety;
- 3) it resembles the initial variety in the expression of the major properties which are the result of the genotype or the combination of genotypes of the initial variety, except for the differences caused by the very fact of deriving.

Article 30

The right holder's authorization shall not extend to the acts:

- 1) which are undertaken for personal and non-commercial purposes;
- 2) which are taken for experimental purposes;
- 3) which are carried out for breeding other varieties and, except if they are essentially derived varieties in respect of such other varieties.

Article 31

The breeder's right shall not extend to the material of the protected variety, which has been placed in circulation by the right holder or with his approval in the territory of Montenegro, except in the case of further propagation of the variety or export of material of the variety into a country which has no protection for varieties of a plant, genus or species to which this variety belongs, if the material is not exported for final consumption purposes.

The term "material" referred to in paragraph 1 of this Article does not relate to:

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

Article 32

During the period from submitting an application for variety protection until taking of a decision on variety protection, the right holder shall be entitled to an appropriate remuneration from any person who exploited the variety, without the right holder's authorization, during such period.

2. Obligations

Article 33

The right holder shall maintain the protected variety or its hereditary components unchanged during the period of protection.

Article 34

- (1) The competent authority shall determine whether the right holder maintains the protected variety or its hereditary components unchanged during the protection period.
- (2) If the competent authority determines that the right holder has failed to maintain the variety, it will issue a decision on cancellation of the breeder's right.

Article 35

At the request of the competent authority, the holder shall provide an appropriate sample of propagating material or its hereditary components for assessing or renewing the samples or comparative trials of other varieties for the purpose of the protection.

At the request of the competent authority, the holder of the right shall maintain or keep the official sample.

VI LICENSE

Article 36

The right holder may transfer his rights with respect to the protected variety, wholly or partially to another person (hereinafter referred to as: license).

The licence shall be transferred by the license contract, which shall be in written form and shall contain: the scope of the rights, the term of the licence and remuneration for use of the right, if agreed upon.

The right holder shall submit the license contract to the State Union authority for entry into the Registry of the Protected Varieties.

Article 37

(1) If the right holder refuses to transfer his right of economic exploitation of the protected variety, or sets unjustified conditions for such transfer, the competent authority may, after evaluating each individual case, grant the compulsory license, at the request of an interested person, provided that:

- 1) the right holder alone or by means of other person, does not use or inadequately uses the protected variety in Montenegro and
- 2) there is public interest to grant the compulsory license.

(2) Interested person shall have to prove that, before filing a request referred to in paragraph 1 of this Article, he has tried to obtain authorization from the right holder for use of the protected variety under the reasonable economic conditions and terms, and that such authorization was not given to him within the reasonable period of time.

(3) Interested person referred to in paragraph 1 of this Article, may only be the person that proves that he has the capabilities and capacities necessary for the economic exploitation of the protected plant variety.

Article 38

Request for compulsory license may not be filed before the expiry of 4 years from the date of filing of application, and/or 3 years from the date of granting the breeder's right, whichever expires later.

The compulsory license shall not be granted if the right holder proves that there are reasons that justify his non-use or inadequate use of the protected variety.

Article 39

The holder of the compulsory license shall pay remuneration to the right holder which shall be mutually agreed by both parties. If there is no agreement on the remuneration and the manner of payment, the remuneration shall be set by the competent court, taking into account circumstances of each individual case and the economic value of the compulsory license.

Article 40

The scope and the length of the compulsory license shall be limited to the purposes for which it was given.

The compulsory license shall not be exclusive.

The compulsory license shall be transferred only together with the company and/or part of the company in which it is used.

The compulsory license shall be approved primarily for the purposes of supply of the domestic market.

The compulsory license may be canceled if the circumstances which 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 canceled when the competent authority determines that the person to whom it was given does not fulfill the conditions under which it was granted.

Article 41

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

VII TERMINATION OF THE BREEDER'S RIGHT

Article 42

Breeder's right shall be terminated before the expiry of the term referred to in Article 6 of this Law if:

- 1) the right holder states in the written form to the competent authority that he wants to terminate the breeder's right, effective as of the date stated or as of the filing date;
- 2) the right holder dies or ceases to exist, and does not have heirs and/or successor in rights, as of the date of death, or termination;
- 3) the annual costs of variety protection were not paid on the due date;
- 4) Decision on cancellation of breeder's right shall be passed by competent body and immediately inform the State Union authority, for the purpose of entry into the Registry of protected varieties.

Article 43

The competent authority may nullify the decision on the variety protection throughout the duration of the protection, *ex officio* or at the proposal of the interested person if:

- 1) it assesses that the variety was not new or distinct;
- 2) it determines that the decision to grant the breeder's right has been essentially based upon information and documents furnished by the breeder, and that uniformity and stability were not complied with at the time of the right was granted.
- 3) the breeder's right has been granted to a person who was not entitled to it, except in the case where, in the meantime, it has been transferred to the person who is so entitled.

After the decision referred to in paragraph 1 of this Article becomes final and enforceable, the competent authority shall immediately inform the State Union authority for the purpose of deleting the variety from the Registry of the Protected Varieties.

Article 44

The competent authority shall cancel the decision on variety protection and immediately inform the State Union authority which enters the data thereupon into the Registry of the Protected Varieties if:

- it is established that the variety is no longer uniform or stable;
- the right holder does not provide the competent authority with the information, documents or materials which are deemed necessary for verifying the maintenance of the variety;
- the right holder does not propose another denomination within the prescribed period of time, if the denomination of the variety has been cancelled after the right was granted.

VIII COSTS

Article 45

The costs of variety trials in the field and laboratory, and annual cost for variety protection shall be borne by the applicant, and/or the right holder.

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

IX CIVIL LAW PROTECTION OF BREEDER I.E. RIGHT HOLDER

Article 46

The person that violates breeder's i.e. right holder's right shall be responsible for damage according to the general provisions on damage compensation.

Breeder i.e. right holder whose right was violated may, beside the damage compensation, request that the violator be prohibited to further perform the activity that induces the violation, as well as that the judgment establishing such violation be passed at the cost of the accused person.

Violation of breeder's right is any unauthorized use of breeder's right.

Article 47

Appeal for violation of breeder's right may be submitted within three years after the day that the appellant learned of violation.

After the expiration of five years from the day the violation was perpetrated, the appeal may not be submitted.

Acting according to the appeal for violation of breeder's right shall be urgent and the appeal shall be submitted to the competent court.

X TRANSITIONAL AND FINAL PROVISIONS

Article 48

The regulations necessary for the application of this Law shall be issued within 12 months as of the date on which this Law comes into force.

Article 49

On the day this Law comes into force, the Law on Protection of the Agricultural and Forest Plant Varieties (Official Gazette of the FRY, No. 28/2000) shall cease to be effective.

Article 50

The varieties which are protected in accordance with the provisions of the Law on Registration of New Varieties, Permission to Introduce into Production Foreign Varieties and the Protection of the Varieties of Agricultural and Forest Plants must start with the testing of distinctness, uniformity and stability within a year from the date on which this Law comes into force in order to assess whether the variety meets the requirements for protection under this Law.

Article 51

The variety for which the application for variety protection has been filed before the date on which this Law comes into force, and for which the procedure has not been completed, shall be protected in accordance with the provisions of this Law.

Article 52

Notwithstanding Article 7, paragraph 1 of this law, the varieties entered into the Registry of agricultural plant varieties starting from 1 January 2000 in line with the provisions valid until this law has entered into force, the breeder or representative may within one year after this law has entered into force, submit the application for variety protection.

Article 53

This Law shall come into force on 01.07.2006.

EXPLANATION

Having in mind that UPOV requires one body that will be responsible for enforcement of two laws in the entire SCG territory, this law envisages the existence of «competent authority for keeping the central registry of registered and protected varieties» at the State Union level. This body is responsible for all communication with the UPOV Office and keeping of the central registry on basis of data received from the competent republican bodies. Please note that all deadlines relating to plant variety protection will be counted from the date of filing the application to the competent authority.

The legal basis for the abovementioned model is Article 17 of the Constitutional Charter which envisages that the Republics may transfer certain activities from their competence to the State Union and the competence of the Ministry of Agriculture Republic of Montenegro for performing the plant variety protection.