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EXAMEN DE LA CONFORMITÉ DU PROJET DE LOI SUR LA PROTECTION DES OBTENTIONS VÉGÉTALES DE L'ARMÉNIE AVEC L'ACTE DE 1991 DE LA CONVENTION UPOV

Document établi par le Bureau de l'Union

Avertissement : le présent document ne représente pas les principes ou les orientations de l'UPOV

RÉSUMÉ

1. Dans une lettre datée et reçue le 22 septembre 2022, adressée au Secrétaire général de l'UPOV, Son Excellence M. Vahan Kerobyan, ministre de l'économie, Ministère de l'économie de la République d'Arménie, a demandé l'examen de la conformité du projet de loi sur la protection des obtentions végétales de l'Arménie (ci-après dénommé "projet de loi"), avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). La lettre fait l'objet de l'annexe I du présent document. L'annexe II contient une copie du projet de loi en anglais.

2. Le Conseil est invité à :

- a) prendre note de l'analyse faite dans le présent document;
- b) rendre une décision positive quant à la conformité du projet de loi sur la protection des obtentions végétales de l'Arménie avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, qui permettra à l'Arménie, dès que le projet de loi aura été adopté sans modification et que la loi sera entrée en vigueur, de déposer son instrument d'adhésion à l'Acte de 1991; et
- c) autoriser le Secrétaire général à informer le Gouvernement de l'Arménie de cette décision.

GÉNÉRALITÉS

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

4. L'Arménie a entamé la procédure pour devenir membre de l'Union par une note datée du 15 octobre 2003, dans laquelle la Mission permanente de la République d'Arménie auprès de l'Office des Nations Unies et des autres organisations internationales à Genève a demandé l'avis du Conseil sur la conformité de la loi de la République d'Arménie sur la protection des obtentions végétales (la "loi") avec l'Acte de 1991. Le Conseil a examiné la loi à sa vingt et unième session extraordinaire tenue à Genève le 2 avril 2004 (voir le paragraphe 7 du document [C\(Extr.\)/21/6](#) "compte rendu") et décidé :

"a) d'aviser le Gouvernement arménien que la loi de la République d'Arménie sur la protection des obtentions (la loi) incorpore en substance, dans ses dispositions principales, l'Acte de 1991 et qu'il peut déposer un instrument d'adhésion à l'Acte de 1991;

"b) d'inviter en outre le Gouvernement arménien à modifier et compléter les textes de sa législation, comme cela est recommandé dans le document [C\(Extr.\)/21/2](#), de façon à éviter le recours au principe général énoncé dans l'article 2 de la loi."

5. Le 24 juin 2010, durant une réunion entre Mme Satenik Abgarian, représentante permanente adjointe auprès de l'Organisation mondiale du commerce, et le Bureau de l'Union, Mme Abgarian a rapporté que la loi ayant fondé la décision positive de 2004 du Conseil quant à l'adhésion à la Convention UPOV n'était plus pertinente. Le 22 juillet 2010, le Bureau de l'Union a formulé des observations sur le projet de loi de 2010 et informé les autorités concernées que ce projet de loi, une fois finalisé, devrait être soumis au Conseil pour examen de sa conformité avec la Convention UPOV.

6. De juillet 2010 à septembre 2022, le Bureau de l'Union a formulé des observations sur différentes versions du projet de loi.

7. Dans une lettre datée du 22 septembre 2022 et reçue ce même jour, adressée au Secrétaire général de l'UPOV, Son Excellence M. Vahan Kerobyan, ministre de l'économie, Ministère de l'économie de la République d'Arménie, a demandé l'examen de la conformité du projet de loi sur la protection des obtentions végétales de l'Arménie (ci-après dénommé "projet de loi"), avec l'Acte de 1991 de la Convention UPOV (ci-après dénommé "Acte de 1991"). La lettre fait l'objet de l'annexe I du présent document. L'annexe II contient une copie du projet de loi en anglais.

BASE POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES EN ARMÉNIE

8. En Arménie, la protection des obtentions végétales conformément à l'Acte de 1991 sera régie par le projet de loi lorsque celui-ci aura été adopté. On trouvera ci-après une analyse de ce projet dans l'ordre des dispositions de droit matériel de l'Acte de 1991.

Article premier de l'Acte de 1991 : Définitions

9. L'article 2.1)1) et 3) du projet de loi contient les définitions des termes "obtenteur" et "variété" qui correspondent aux définitions figurant aux alinéas iv) et vi), respectivement, de l'article premier de l'Acte de 1991.

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

10. L'article premier du projet de loi contient les dispositions relatives à l'obligation fondamentale prévue à l'article 2 de l'Acte de 1991.

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

11. L'article 3.2) du projet de loi est le suivant :

"2. La présente loi est applicable à la date de son entrée en vigueur à tous les genres et espèces végétaux."

12. L'article 3.2) du projet de loi correspond à l'obligation énoncée à l'article 3.2) de l'Acte de 1991.

Article 4 de l'Acte de 1991 : Traitement national

13. L'article 3.1) du projet de loi contient des dispositions sur le traitement national qui correspondent aux dispositions de l'article 4 de l'Acte de 1991.

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

14. Les articles 4 à 8 du projet de loi contiennent des dispositions sur les conditions de protection qui correspondent aux dispositions des articles 5 à 9 de l'Acte de 1991.

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

15. L'article 9 du projet de loi contient les dispositions relatives au dépôt des demandes. Le projet de loi ne semble pas contenir de dispositions contraires à l'article 10 de l'Acte de 1991.

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

16. L'article 10 du projet de loi contient les dispositions relatives au droit de priorité qui correspondent aux dispositions de l'article 11 de l'Acte de 1991.

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

17. L'article 11 du projet de loi contient des dispositions relatives à l'examen de la demande qui correspondent aux dispositions de l'article 12 de l'Acte de 1991.

Article 13 de l'Acte de 1991 : Protection provisoire

18. L'article 12 du projet de loi contient les dispositions relatives à la protection provisoire qui correspondent aux dispositions de l'article 13 de l'Acte de 1991.

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

19. L'article 13 du projet de loi contient des dispositions sur l'étendue du droit d'obtenteur qui correspondent aux dispositions de l'article 14 de l'Acte de 1991.

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

20. L'article 14.1) du projet de loi contient des dispositions relatives aux exceptions obligatoires au droit d'obtenteur qui correspondent à l'article 15.1) de l'Acte de 1991.

21. L'article 14.2) à 4) du projet de loi contient des dispositions concernant l'exception facultative prévue à l'article 15.2) de l'Acte de 1991, comme suit :

"2. Il n'est pas considéré qu'il y a atteinte au droit d'obtenteur si les agriculteurs, dans des limites raisonnables et sous réserve de la sauvegarde des intérêts légitimes des obtenteurs, utilisent, à des fins de reproduction ou de multiplication, sur leur propre exploitation, le produit de la récolte qu'ils ont obtenu par la mise en culture, sur leur propre exploitation, de variétés protégées ou de variétés couvertes par l'article 13.4.1) ou 2) de la présente loi, figurant sur la liste des plantes agricoles prescrites.

"3. Le service compétent du gouvernement établit la liste des plantes agricoles. Les variétés de plantes fruitières, ornementales, potagères et forestières sont exclues de l'exception prévue à l'alinéa 2.

"4. Les limites raisonnables et les mesures de sauvegarde des intérêts légitimes de l'obtenteur, visées à l'alinéa 2) seront précisées dans le règlement d'exécution."

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

22. L'article 15 du projet de loi contient les dispositions relatives à l'épuisement du droit d'obtenteur qui correspondent aux dispositions de l'article 16 de l'Acte de 1991.

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

23. L'article 16 du projet de loi contient des dispositions relatives à la limitation de l'exercice du droit d'obtenteur qui correspondent aux dispositions de l'article 17 de l'Acte de 1991.

Article 18 de l'Acte de 1991 : Réglementation économique

24. L'article 17 du projet de loi contient les dispositions relatives à la réglementation économique qui correspondent aux dispositions de l'article 18 de l'Acte de 1991. Le projet de loi ne semble pas contenir de dispositions contraires à l'article 18 de l'Acte de 1991.

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

25. L'article 18 du projet de loi contient les dispositions relatives à la durée du droit d'obtenteur qui correspondent aux dispositions de l'article 19 de l'Acte de 1991.

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

26. L'article 19 du projet de loi contient des dispositions sur la dénomination de la variété qui correspondent aux dispositions de l'article 20 de l'Acte de 1991.

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

27. L'article 20 du projet de loi contient des dispositions relatives à la nullité du droit d'obtenteur qui correspondent aux dispositions de l'article 21 de l'Acte de 1991.

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

28. L'article 21 du projet de loi contient des dispositions sur la déchéance de l'obtenteur qui correspondent aux dispositions de l'article 22 de l'Acte de 1991.

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

29. En ce qui concerne l'obligation de "prévoir les recours légaux appropriés permettant de défendre efficacement les droits d'obtenteur" (article 30.1)i) de l'Acte de 1991), l'article 22 du projet de loi contient des dispositions relatives aux mesures prévues pour la défense des droits d'obtenteur.

30. L'article 2.1)4) du projet de loi prévoit que le service chargé d'octroyer des droits d'obtenteur est le Ministère de l'économie de l'Arménie, comme le requiert l'article 30.1)ii) de l'Acte de 1991.

31. L'article 23 du projet de loi reprend l'obligation de publier les renseignements sur les demandes de droits d'obtenteur, les droits d'obtenteur délivrés et les dénominations proposées et approuvées, telle qu'énoncée à l'article 30.1)iii) de l'Acte de 1991.

Conclusion générale

32. De l'avis du Bureau de l'Union, le projet de loi contient les dispositions de droit matériel de l'Acte de 1991. Ainsi, dès que le projet de loi aura été adopté sans modification et que la loi sera entrée en vigueur, l'Arménie sera en mesure de "donner effet" aux dispositions de l'Acte de 1991, comme le requiert l'article 30.2) de celui-ci.

33. *Le Conseil est invité à :*

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

b) rendre une décision positive quant à la conformité du projet de loi sur la protection des obtentions végétales de l'Arménie avec les dispositions de l'Acte de 1991 de la Convention internationale pour la protection des obtentions végétales, qui permettra à l'Arménie, dès que le projet de loi aura été adopté sans modification et que la loi sera entrée en vigueur, de déposer son instrument d'adhésion à l'Acte de 1991, et

c) autoriser le Secrétaire général à informer le Gouvernement de l'Arménie de cette décision.

[Les annexes suivent]

Traduction d'une lettre datée du 22 septembre 2022

adressée par : Son Excellence M. Vahan Kerobyan,
Ministre de l'économie, Ministère de l'économie de la République d'Arménie

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

Monsieur le Secrétaire général,

J'ai le plaisir de vous annoncer que l'Assemblée générale de l'Arménie a engagé le processus d'adoption du projet de loi sur la protection des obtentions végétales.

Le Ministère de l'économie de la République d'Arménie souhaite adhérer à la Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972, le 23 octobre 1978 et le 19 mars 1991 (Convention UPOV).

Conformément aux dispositions de l'article 34.3) de la Convention UPOV, je saurais gré au Conseil de l'UPOV d'examiner la conformité du projet de loi de la République d'Arménie avec les dispositions de la Convention UPOV.

Veuillez agréer, Monsieur le Secrétaire général, l'assurance de ma considération distinguée.

VAHAN KEROBYAN

(Signé :)

Pièce jointe : Traduction du projet de loi en anglais

[L'annexe II suit]

DRAFT LAW
OF THE REPUBLIC OF ARMENIA

ON THE PROTECTION OF VARIETIES OF PLANTS

CHAPTER 1.

GENERAL PROVISIONS

Article 1. Subject matter of the Law

1. This Law shall regulate the relations pertaining to the breeding, use, protection of varieties of plants, the breeder's right, the nullity thereof and the grant of a title, or cancellation of that right.

Article 2. Main concepts used in the Law

1. The following main concepts shall be used in this Law:

(1) **breeder** –

- a. the person, who bred, discovered and developed any variety;
- b. the person, who is the employer of the person who bred, discovered and developed, a variety or who has commissioned the latter's work, unless otherwise provided for by the employment or civil law contracts concluded between them;
- c. the person, who is the successor in title of persons referred to in sub-points "a" and "b" of point 1 of part 1 of this Article;

- (2) **breeder's right** – the right of the breeder prescribed by this Law, which is certified by a licence granted to the breeder;

- (3) **variety** – a plant grouping within a single botanical taxon of the lowest known rank, which irrespective of whether the conditions for the granting of a breeder’s right are fully met, can be:
- a. defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
 - b. distinguished from any other plant grouping by the expression of at least one of the said characteristics;
 - c. considered as a unit with regard to its suitability for being propagated unchanged;
- (4) **authority** – Ministry of Economy of the Republic of Armenia;
- (5) **UPOV** (hereinafter referred to as “UPOV”) – International Union for the Protection of New Varieties of Plants, founded by the International Convention for the Protection of New Varieties of Plants of 1961 and further revised by Acts of 1972, 1978 and 1991;
- (6) **member of UPOV** – a Member State to the Act of 1978, or a Contracting Party to the Act of 1991 of the UPOV Convention of 1961;
- (7) **propagating material** (planting material) – a plant or a part of a plant used for reproduction of a variety;
- (8) **harvested material** – a plant or a part of a plant used for the purpose other than reproduction of a variety;
- (9) **nationals** – nationals of an UPOV Member State or nationals of a Member State of an intergovernmental organisation which is a member to UPOV.

Article 3. Scope of application of the Law

1. The provisions of this Law shall equally apply in relation to both nationals, natural or legal persons of the Republic of Armenia and nationals, natural or legal persons of UPOV Members, residing or operating in an UPOV Member.
2. This Law shall be applied on the date of its coming into force to all plant genera and species

CHAPTER 2.

***CONDITIONS AND CRITERIA FOR THE GRANT OF LEGAL PROTECTION
FOR VARIETIES OF PLANTS***

**Article 4. Conditions for the grant of legal protection
for varieties of plants**

1. The breeder's right shall be granted where the criteria for the grant of that right for the variety are satisfied.

The breeder's right shall be granted where the variety is:

- (1) new;
 - (2) distinct;
 - (3) uniform;
 - (4) stable.
2. The grant of the breeder's right may not be subject to any further conditions or differ from the criteria listed in part 1 of this Article, provided that the variety is designated by a denomination in accordance with the provisions of Article 19 of this Law, and the applicant complies with the formalities provided for by this Law, and that the applicant makes the payments of the required state duties prescribed by the Law of the Republic of Armenia "On state duty".

Article 5. Novelty

The variety shall be deemed to be new where, at the date of filing of the application for a breeder's rights, propagating or harvested material of the variety has not been sold or otherwise disposed of to other persons, by or with the consent of the breeder, for purposes of the exploitation of the variety:

- 1) in the territory of the Republic of Armenia, in which the application has been filed earlier than one year before the application date;
- 2) in a territory of another state, earlier than four years or, in the case of fruit trees and of vines, earlier than six years before the said date.

Article 6. Distinctness

The variety shall be deemed to be distinct where it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of breeder's rights or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of filling in the application, provided that the filling in the given application leads to the granting of a breeder's right or to the entering of the said variety in the official register of varieties.

Article 7. Uniformity

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.

Article 8. Stability

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.

CHAPTER 3.

APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT

Article 9. Filing of applications

1. The date of receipt of the application by the authority shall be deemed to be the date of filing of the application for a breeder's right.
2. The application must contain:
 - (1) the written request;
 - (2) the variety denomination;
 - (3) the variety description;
 - (4) the receipt for payment of the state duty in the prescribed amount.

3. The requirements for the forms of the documents of the application shall be prescribed by the authority.
4. A new application shall be filed in for each variety.

Article 10. Right of priority

1. Everyone who has filed an application for the protection of a new variety of a plant in one of the UPOV Members shall enjoy, for a period of 12 months, a right of priority for the purpose of filing an application for the granting of a breeder's right for the same variety with the authority of another UPOV member. This period shall be computed from the date of filing of the first application.

The date of filing in the application shall not be computed in the period referred to in part 1 of this Article.

2. In order to enjoy the right of priority, the breeder must, in the application filed with the authority, include information about the priority of the first application. The applicant shall be obliged to furnish, within a period of not less than three months from the date of filing in the application, copies of the documents of the first application, validated by the authority having issued the first application, as well as samples or other evidence that the variety which is the subject matter of both applications is the same.
3. Filing of a new application or the publication or use of the variety within the period prescribed by part 1 of this Article may not constitute a ground for rejecting the application, as well as may not give rise to any third-party right.
4. The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the authority, any necessary information, document or material required for the purpose of the examination under Article 11.

Article 11. Granting of the breeder's right

1. The decision on granting or rejecting the breeder's right shall be rendered within a period of one month following the examination for compliance with the requirements for legal protection of new varieties of plants, provided for by Articles 4 to 8 of this Law. In the course of the examination, the authority may grow the variety or carry out necessary tests, cause the growing of the variety or the carrying out of other tests, or take into account the results of tests which have already been carried out.
2. For the purposes of carrying out tests and examinations, the authority may require the breeder to furnish the necessary information, documents or materials deriving from this Law.

3. The granting of the breeder's right may not be rejected, or this right may not be terminated by the authority on the ground of not granting previously the protection of the variety, rejecting the protection or expiration of the time limit thereof in another state or intergovernmental organisation.

Article 12. Provisional protection

1. With a view to protecting the interests of the breeder, the breeder shall be provided provisional protection of breeder's rights during the period between the filing of the application for the grant of a breeder's right and the grant of the breeder's right.
2. Provisional protection covers all those rights, which are granted in case of being granted the breeder's right.
3. The applicant is considered to be the holder of a breeder's right in relation to any person who, during the period provided in paragraph (1) has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 13. The applicant shall have the same rights to enter into license agreements and to initiate legal proceedings as if on the *filing* date the breeder's right had been granted to the applicant in respect of the variety concerned. The rights conferred under this paragraph shall be deemed never to have been conferred if the right is not granted.
4. Provisional protection shall only take effect in relation to persons whom the breeder has notified of the filing of the application.

CHAPTER 4.

THE RIGHTS OF THE BREEDER

Article 13. Exclusive rights of the breeder

1. Subject to Articles 14 and 15 of this Law, the following acts – referred to in this Article – in respect of propagating material of the protected variety shall require the authorisation of the breeder:
 - (1) production or reproduction (multiplication);
 - (2) conditioning for the purpose of propagation;

- (3) offering for sale;
 - (4) selling or other marketing;
 - (5) exporting;
 - (6) importing;
 - (7) stocking for the purposes mentioned in points 1 to 6 of part 1 of this Article.
2. The breeder may make his authorisation subject to conditions and limitations.
 3. Subject to Articles 14 and 15, the acts referred to in points 1 to 7 of part 1 of this Article, in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety shall require the authorisation of the breeder, unless the breeder has had a reasonable opportunity to exercise his right in relation to the said harvested material.
 4. Provisions of parts 1 to 3 of this Article shall also extend in relation to:
 - (1) variety, which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
 - (2) varieties which are not clearly distinguishable in accordance with the provisions of Article 6 of this Law from the protected variety;
 - (3) varieties whose production requires the repeated use of the protected variety.
 5. A variety shall be deemed to be essentially derived from another variety where:
 - (1) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
 - (2) it is clearly distinguishable from the initial variety;
 - (3) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
 6. Essentially derived varieties may be obtained by the selection of a natural or induced mutant, or of a somaclonal variant, or the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 14. Exceptions to the breeder's right

1. The breeder's right shall not extend to
 - (1) acts done privately and for non-commercial purposes;
 - (2) acts done for experimental purposes;
 - (3) acts done for the purpose of breeding other varieties, and, except where the provisions of part 4 of Article 13 apply, acts provided for by parts 1 to 3 of Article 13 in respect of such other varieties.
2. It is not considered as infringing the breeders' rights, if within reasonable limits and subject to safeguarding the legitimate interests of the breeders, farmers use, for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected varieties or varieties covered by part 4 (1) or (2) of Article 13 of this Law included in the list of prescribed agricultural crops.
3. The authority body of the Government shall prescribe the list of agricultural crops. The varieties of fruits, ornamentals, vegetables and forest plants are excluded from the exception referred to in part 2.
4. The reasonable limits and the means of safeguarding the legitimate interests of the breeders, referred to in part 2, shall be specified in the Regulations.

Article 15. Exhaustion of the breeder's right

1. The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by part 4 of Article 13 of this Law, which has been sold or otherwise marketed by the breeder or with the latter's consent in the territory of the Republic of Armenia, or any material derived from the said material, unless such acts:
 - (1) involve further propagation of the variety in question; or
 - (2) involve an export of material of the variety, which enables the propagation of the variety, into a countrywhich does not protect varieties of the said plant genus or species, to which the variety belongs, except where the exported material is for final consumption purposes.

2. In this Article, the term “material” in relation to a variety means:

- (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 16. Restrictions on the exercise of the breeder’s right

1. Except for the cases prescribed by this Law, the free exercise of the breeder’s right may be restricted only for reasons of public interest.
2. When any such restriction has the effect of the authority authorizing a third party to perform any act for which the breeder’s authorization is required, the breeder shall receive equitable remuneration.

Article 17. Measures regulating commerce

The breeder’s right shall be independent of any measure taken to regulate the production, certification and marketing of material of varieties, or the importing or exporting of such materials. In any case, such measures shall not affect the application of the provisions of this Law.

Article 18. Duration of the breeder’s right

The breeder’s right shall be granted for a period of 20 years from the date of the grant of the breeder’s right. For fruit trees and vines, the said period shall be 25 years from the said date.

CHAPTER 5.

VARIETY DENOMINATION

Article 19. Variety denomination and use of denomination

1. Every variety must be designated by a denomination which will be its generic designation and must enable the variety to be identified. Subject to part 4 of this Article, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination, even after the expiration of the breeder's right.
2. The denomination may not consist of solely of figures, except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular it must be different from every denomination which designates, in the territory of any UPOV Member, an existing variety of the same plant species or of a closely related species.
3. The variety denomination shall be submitted by the breeder to the authority. Where it is found that this denomination does not satisfy the requirements of part 2 of this Article, the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The variety denomination shall be registered by the authority at the same time as the breeder's right is granted.
4. Prior rights of third persons shall not be affected. If by reason of a prior right, the use of the variety denomination is forbidden to a person who, in accordance with the provisions of part 8 of this Article, is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.
5. A variety must be submitted to all UPOV Members under the same denomination. The authority shall register the denomination submitted in accordance with the provisions of this Article, unless it considers the denomination unsuitable. Where the denomination is considered unsuitable, the authority shall require the breeder to submit another denomination.
6. The authority shall ensure that all competent authorities of the members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations.
7. Every competent authority of a member of UPOV may address its observations on the submission, registration or cancellation of a variety denomination to the authority.

8. Any person who, in the territory of the Republic of the Armenia, offers for sale or markets propagating material of a protected variety shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right for that variety, except where, in accordance with the provisions of part 4 of this Article, prior rights prevent such use.
9. When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the variety denomination must be easily recognisable.

CHAPTER 6.

NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT

Article 20. Nullity of the breeder's right

1. The breeder's right shall be declared null and void through judicial procedure when it is established that:
 - (1) the conditions laid down in Articles 5 or 6 were not complied with at the time of the grant of the breeder's right;
 - (2) where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 7 or 8 were not complied with at the time of the grant of the breeder's right;
 - (3) the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.
2. No breeder's right shall be declared null and void, except for the cases provided for by point 1 of this Article.

Article 21. Cancellation of the breeder's right

1. The breeder's right may be cancelled, where:
 - (1) it is established that the conditions prescribed by Articles 7 or 8 of this Law are no longer fulfilled;
 - (2) after being requested to do so and within a prescribed period:
 - a. the breeder is not able to provide the authority with the information, documents or materials deemed necessary for verifying and maintaining the variety;
 - b. the breeder does not propose another denomination, where the variety denomination is cancelled after the grant of the breeder's right.
 - c. the breeder fails to pay such fees as may be payable to keep his right in force.
2. No breeder's right shall be cancelled except for the cases provided for by part 1 of this Article.

CHAPTER 7.

APPLICATION OF THE LAW AND FINAL PROVISIONS

Article 22. Liability in case of violation of this Law

1. Violation of the requirements of this Law shall entail civil liability prescribed by the law of the Republic of Armenia.

Article 23. Publication of official information

1. Public awareness shall be ensured by the authority:
 - (1) through publication of information regarding the applications submitted for the grants of the breeder's right and the grant of the right.
 - (2) through publication of proposed and approved variety denominations.

**Article 24. Powers of the Government of the Republic of Armenia
in the sector of protection of varieties of plants**

1. The Government of the Republic of Armenia shall approve:
 - (1) the procedure for the grant of the breeder's right, examination of denomination proposed for the new variety, the list of the necessary information, documents or materials submitted for tests;
 - (2) the procedure for publication of information on application submitted for the grant of the breeder's right and the grant of the right, of proposed and approved variety denominations;
 - (3) the procedure for appeals;
 - (4) the procedure for keeping a register of persons having the breeder's right;
 - (5) the procedure for cancellation of the breeder's right.

CHAPTER 8.

TRANSITIONAL PROVISIONS AND ENTRY INTO FORCE

Article 25. Previous titles

1. Before entry into force of this Law, according to the Law of the Republic of Armenia "On the protection of selection achievements", the rights of the persons having received patents on selection achievements in cultivation of plants shall, following the entry into force of this Law, continue to be exercised, as prescribed by this Law.

Article 26. *Entry into force*

1. This Law shall enter into force on the tenth day following the day of its official promulgation.
2. The Law "On the Protection of Plant Varieties" shall be repealed from the moment of entry into force of this law.

Article 27. Transitional provisions

The legal acts provided for by Article 9, part 3, Article 14, part 3 and 4, and Article 24 of this law shall be adopted within six months after the official publication of the law.

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