

Law No.255/1998 – *No.255/1998 Law on the protection of new plant varieties*

Parliament of Romania

Law No.255/1998

from 30/12/1998

Law on the protection of new plant varieties, No.255/1998

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- Law [no.76/2012](#) published in the Official Gazette, Part I no.365 from 30/05/2012.
- Law [no.187/2012](#) published in the Official Gazette, Part I no.757 from 12/11/2012.
- Law [no.255/2013](#) published in the Official Gazette, Part I no.515 from 14/08/2013.

Implemented by:

- **Guidelines** published in the Official Gazette, Part I no.637 from 07/09/2012.

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 Institute for Testing and Registration of Varieties (I.S.T.I.S.), hereinafter referred to as ISTIS, according to the terms and conditions stipulated by this Law.

(2) The rights conferred by paragraph (1) may not breach 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 following definitions of terms and expressions shall apply:

a) variety - a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be:

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 paragraph (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, from the 2nd of December 1961, reviewed in Geneva on the 10th of November 1972, on the 23rd of October 1978 and on 19th of March 1991, to which Romania adhered to by the Law no. 186/2000, published in the Official Gazette of Romania, Part I, no. 547 of 6 November 2000;

i) 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.

l) National Register – National Register of Protected Varieties.

m) licensing the variety patent – renunciation of the rights, in part or completely, by the holder of an industrial patent in favor of another person who becomes entitled to exclusively use such rights in exchange to a premium or fee;

n) premium/fee – financial liability payable on fixed dates and as a rate in order to make use of the property rights of others for business purposes.

ARTICLE 3

National Treatment

Any foreign natural persons or legal entities residing or with a registered office located outside the territory of Romania shall also benefit from the provisions of this

Law according to the terms and conditions of the International Convention under Art. 2 **letter h)** and of other conventions to which Romania has adhered to.

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 held before ISTIS 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.

Implementing Regulations of ARTICLE 4 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012:

ARTICLE 6 Representation (1) The applicant or holder of a variety patent may be represented in the proceedings held before ISTIS by an authorized representative or agent, defined at Art.5 letter e).

(2) Moreover, the designation of the authorized representative is made through a power of attorney submitted at ISTIS, and which mentions the name, surname and signature of the applicant or holder of a variety patent, according to case.

(3) The power of attorney will refer to only one variety patent application or to a variety patent.

(4) Any document that is requested through the authorized representative regarding the withdrawal of the variety patent application, renunciation of the variety patent, together with any application regarding the transfer of variety rights shall be made using a special mandate or power of attorney that explicitly states the withdrawal, renunciation or transfer document.

(5) When the variety patent application is submitted at ISTIS by an authorized representative, this person may sign the variety patent application based on the power of attorney supplied by the applicant. The power of attorney is submitted together with the variety patent application.

(6) The applicant or holder of a variety patent may have only one authorized representative. In the case when, the application or other separate document mentions several representatives, only the first written document shall be taken into consideration.

CHAPTER II Patentability of New Plant Varieties

ARTICLE 5 Conditions of Granting Protection

- (1) ISTIS 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 conformity with the provisions of **Article 15**.

Implementing Regulations of ARTICLE 5 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012:

ARTICLE 2 Intellectual property protection is granted based on the distinctness, uniformity and stability test (DUS test), which involves the technical examination of varieties as field crops at the State Institute for Testing and Registration of Varieties (ISTIS) testing centres and certification of the novelty characteristics of the candidate variety.

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 made available or released to a third party as propagating or harvested material of the variety as a consequence of using it for the purposes specified in **Article 33** and that is not used for subsequent propagation, these acts not being deemed commercial exploitation of the new variety within the meaning of **Article 33** provisions;
- e) has been made available as a result of the breeder having displayed the new variety at an officially recognized exhibition;
- f) has been made available to an official entity, for statutory purposes or under a contract, with the purpose of 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 provision that no other previous release for commercial purposes has taken place; if the variety has been thus made available for the production of a hybrid which has been marketed, the provisions of paragraph (1) shall be applied;

g) has been made available 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 release has 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 at ISTIS, or, where applicable, on the date of the claimed priority.

(2) The distinctness of a variety is defined by characteristics that can be accurately recognized, described and identified.

(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 Convention contracting states;

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 a registered application for the variety protection already exists or for entering the same in a register of varieties from Romania, provided that the application leads to the grant of the protection or to the registration of the variety;

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

e) retailed or sold on the territory of Romania or of other States.

ARTICLE 8

Uniformity

A variety is uniform if, subjected to the predictable variations that occur during the propagation cycle, the plants retain sufficiently uniform expression of the relevant characteristics, including the ones used during the examination of variety distinctness, as well as any other characteristics used for variety description.

ARTICLE 9

Stability

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

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 paragraph (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 have agreed 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 a righteous remuneration.
- (6) Where entitlement to a variety patent is vested jointly in two or more persons pursuant to paragraphs (2) - (4), one or more of them may empower the others, by written statement 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 legal representative thereof:

- a) at ISTIS office directly;
- b) by mail;
- c) by electronic mail, if the applicant can use such feature.

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, comprising name, surname, domicile or place of residence for the natural person, or the company name, registered office, legal establishment document for a legal entity;
 - b) species denomination in Latin and common denomination in Romanian;
 - c) provisional denomination proposal for the new variety;
 - d) information relating to previous application or applications for a possible priority claiming;
 - e) 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) the UPOV type of technical questionnaire, CPVO or national guide completed by the breeder;
 - b) proof of payment of the fee for the filing of the application;
 - c) priority documents;
 - d) a power of attorney where the applicant is represented by a representative authorized by ISTIS, pursuant to Art. 46 paragraph (2) **letter g***).

*) Cross reference, from the amended text through Law **No.204/2011** for the amendment and completion of Law No.255/1998 on the protection of new plant varieties and Law **No.186/2000** regarding Romania's adherence to the International Convention for the protection of the new plant varieties from the 2nd of December 1961, reviewed in Geneva on the 10th of 1972, on the 23rd of October 1978 and on 19th of March 1991, was mentioned at Article 47, paragraph (2), **letter f)**, which corresponds, at present, to regulation from letter g).

(3) The variety patent application must mention one variety only.

Implementing Regulations of ARTICLE 12 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012:

ARTICLE 9 Content of the Application for the Variety Patent (1) The variety patent application must be filed in Romanian language, in two copies, using type no. 1 forms, the model being provided at Annex no.1, and must comprise the following:

- a) name of the applicant (natural person or legal entity) and identification data;*
- b) authorized representative (power of attorney), whether this is the case;*
- c) denomination of species;*
- d) proposed denomination of species;*
- e) provisional denomination of species (denomination awarded by the breeder);*
- f) must mention if the variety has been genetically modified;*
- g) breeder/breeders (name and address);*
- h) if the breeders are not the same with the applicant, the type of applicant's variety assignation;*
- i) information on any applications submitted in any European Union member state or UPOV;*
- j) the right of priority;*
- k) commercial exploitation of the variety;*
- l) official technical examination.*

(2) The application must be filed together with the following documents:

- a) technical questionnaire issued by the Community Plant Variety Office (CPVO) or by the International Union for the Protection of New Varieties of Plants (UPOV) or by a national guide, filled out by the breeder;*
- b) technical questionnaire – the confidential part, only for parent lines of hybrid varieties (no.2 type form included in Annex no.2);*
- c) proof of payment of the filling fee;;*
- d) power of attorney for the representation of the applicant or holder, drawn up in Romanian or accompanied by a certified translation in Romanian, if necessary;*
- e) the form for assigning the legal representative (power of attorney) completed by the applicant, whether this is the case (type no.2 form included in Annex no.2);*
- f) name/denomination of the breeder and a declaration from the applicant, according to which, to the best of his knowledge, no other persons have been involved in breeding, discovery and development of the new variety;*
- g) the contract for assigning the patent variety rights, if the applicant is different from the breeder;*
- h) documents confirming the priority in another state;*
- i) other documents and information regarding the provenience and variety breeding conditions.*

(3) The patent variety application can be filed together with the technical examination report and variety registration certificate, if they were issued prior to the application date.

(4) Variety's denomination proposal is filed by the applicant using a separate form (no.4 type form included in Annex 4).

(5) The variety patent application can be accompanied by any other documents providing information about a first application filed in another country.

(6) At number 7 from the form, in the case when several breeders apply, their names and residencies will be completed at "Continuation of no...section" found at the bottom of the application form.

Implementing Regulations of ARTICLE 12 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012:

ANNEX No.1 of the Implementing Regulations

No.1 Form

VARIETY PATENT APPLICATION FORM

a

a

a

a

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Indications for completing the variety patent application form's sections

The variety patents application is completed in two copies using the no.1 form, in Romanian, in an electronic format or in handwriting.

The application can be submitted:

a) directly at ISTIS Office (State Institute for Testing and Registration of Varieties);

b) by mail with acknowledgement receipt card;

c) by email, if an electronic signature exists;

If a section from the patent application is not sufficient for writing down the information, the information shall be completed using the section "Continuation of section..." found at the bottom of the application form.

1. Name and surname or denomination, address (street, number, city, county, country) or registered office address of the applicant, including postal code, telephone and fax with area code, e-mail. In the case of several applicants, the same rule applies to all.

2. Is completed when the applicant is represented by an authorized agent and includes the name, surname or denomination, address or registered office address of the representative, including postal code, telephone and fax, together with the unique registration code from the Trade Register Office. The variety patent application is filed together with no.3 form for assigning the legal representative or agent.

The power of attorney will be filed together with the variety patent application.

3. In the case of several applicants and if they are represented before ISTIS by a legal representative, this section will include information about the applicant who will maintain correspondence with ISTIS. In the case such information is not provided, ISTIS will keep in touch with the first applicant mentioned on the form.

4. Will include the botanical taxon in Latin (genus, family, species, subspecies, variety) and common name of the variety.

5. Will include the applicant's proposed variety denomination, written in capital letters, which will also be included in no.4 form for the denomination. The provisional

variety denomination will be also completed (denomination awarded by the breeder) in capital letters.

6. The Yes or No box will be ticked in the case when the variety has been genetically modified. If Yes is completed, the application will be accompanied by the deliberate release into the environment of genetically modified organisms written authorization.

7. Name and addresses of the breeders. If the breeder/breeders is/are not the same with the applicant/applicants, information must be provided regarding the assignation of the variety rights (cession or assignment, inheritance or other way) and it is confirmed with the original document or legalized copy attached to the patent application form.

8. Is completed solely by applicants who also have applications previously submitted in other European Union or International Union for the Protection of New Varieties of Plants (UPOV) member states, who will provide information regarding the protection of the variety through a certificate, if it is included in an official catalogue or if it is granted protection through a patent. For each situation the country is indicated, number and date of the application, office, stage and denomination of the variety or denomination awarded by the breeder.

9. In the case when one or several priorities are claimed based on previously filed applications, the state, date and number of the first filing of the application shall be completed. Documents confirming priority claim can be filed together with the variety patent application or during a period of three (3) months from the filing date.

10.1 Date, country and denomination of the variety marketed or sold, in the case when, on the filing date of the variety patent application or priority claim, the propagating or harvested material was commercially used according to stipulations of Article 6, paragraph (1) from Law No.255/1998 on the protection of plant varieties, republished with its subsequent amendments.

10.2 In the case when the variety was repeatedly used in order to obtain hybrid varieties, the applicant will mention for each variety the date, country and name of the variety.

10.3 In the case when the variety was made available to third parties by the breeder and such situations are not included at 10.1 and 10.2 sections, such instances shall be also mentioned.

11. The applicant will provide exact information regarding the distinctness, uniformity and stability (DUS) test, according to rules and regulations of the Community Plant Variety Office (CPVO), the International Union for the Protection of New Varieties of Plants (UPOV) or the national guide. In the case when such examination already took place or is currently in development, the applicant must provide the name of the country (11.1-11.3 sections). At 11.4 section, if the candidate variety is part of a hybrid's parent line or is and was examined together with the hybrid, the name of the hybrid and country where the examination is or was performed will be completed.

12. The box associated with the type of novelty characteristic of the variety must be ticked and the declaration must be signed.

13. The form is signed by the applicant/legal representative or agent.

14. The boxes associated with the documents annexed with the application must be ticked, and the number of pages/copies must be filled out.

15. Is completed and signed by ISTIS representative.

ANNEX No.2 of the Implementing Regulations

No.2 Form

TECHNICAL QUESTIONNAIRE

Confidential part (only for parent lines of hybrid varieties)

a

ANNEX No.3 of the Implementing Regulations

No.3 Form

ASSIGNING THE LEGAL REPRESENTATIVE OR AGENT

a

ANNEX No.4 of the Implementing Regulations

No.4 Form

VARIETY DENOMINATION PROPOSAL

a

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 at ISTIS, provided that this application contains at least the requirements specified in Article 12 **para (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 (3) months of the date of submitting the variety patent application.

ARTICLE 14

Right of Priority

(1) The application for a variety patent lends a priority right, 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 receive a right of priority of 12 months from the filing date of the first application if, within that period, he applies to ISTIS 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 ISTIS, within three (3) 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 ISTIS 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, ISTIS shall request the applicant to submit another denomination for his variety.

(9) In order to establish a correct denomination, the applicant may ask ISTIS, prior to filing the application, subject to payment of the legal fee, to conduct a research 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, ISTIS 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.

Implementing Regulations of ARTICLE 15 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012:

ARTICLE 7 Denomination of varieties (1) Each variety for which the granting of protection is claimed bears a denomination proposed by the applicant in the variety patent application form.

(2) The requirements for the designation of a variety denomination are based on the following cases:

a) In the case of a trade mark as a prior right of a third party, the use of a variety denomination shall not be considered by ISTIS if the product or trade mark is identical or similar to the variety concerned.

b) In the case of a geographical indication or a designation of origin for agricultural products and food stuffs as a prior right of a third party, a variety denomination in the territory of the European Community and, implicitly, in the Romanian territory, shall be considered to be precluded where the variety denomination would breach Article 13 of Council Regulation (EEC) No.510/2016 of the Council from March 20, 2006 with respect to the geographical indication or the designation of origin protected of agricultural products and foods and with respect to the geographical indication or the designation of protected origin in a Member State or in the European Community;

c) Accepting the suitability of a variety denomination based on the prior right mentioned at letter b) can be achieved through the written consent of the holder of the prior right with respect to the use of the denomination in relation to the variety that has been obtained, with the condition that this written agreement shall not subject the public to confusion in relation to the true origin of the product.

(3) When filing the variety denomination proposal using the request form, the applicant must indicate if the proposed denomination is under the form of a "name" or a "code".

(4) A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:

a) it consists of a single letter;

b) it consists of, or contains as a separate element, a series of letters not forming a pronounceable word; except where this series is an established abbreviation, such an established abbreviation shall be limited to a maximum of 2 sets of up to 3 characters each, located at each end of the denomination;

c) it contains a number, except where this is an integral part of the name;

d) it consists of more than three words or elements;

e) it consists of or contains an excessively long word or element;

f) it contains a punctuation mark or other symbol.

(5) Where the denomination of the variety is in the form of a "code" it shall be considered unsuitable if:

a) it consists of a number or numbers only, except where this is an established practice

for designating varieties such as in the case of inbred lines or of similarly specific types of varieties;

b) it consists of a single letter;

c) it contains more than 10 characters, letters, or letters and numbers;

d) it contains more than four alternating groups of a letter or letters and a number or numbers;

e) it contains a punctuation mark or other symbol, a subscript, a superscript or a design.

(6) In evaluating the identity of, or confusion with, a variety denomination of another variety, the following shall apply:

a) "may be confused with" shall be considered to cover a variety denomination containing a difference of only one letter, or of accents on letters, in relation to the variety denomination of a variety of a closely related species, which has been officially registered to be marketed in the European Union, the European Economic Area or in a contracting party to International Union for the Protection of New Varieties of Plants (UPOV), or is the subject of a trademark variety used in the previously mentioned territories. However, the present conditions do not apply when a difference of one letter in an established abbreviation as a separate entity of the variety denomination is noted.

b) in the case of codes, a difference of only one character, letter or one digit shall enable two codes to be satisfactorily distinguished.

(7) For closely related species the following applies:

a) if there are more than one class within a genus, the list of classes from table 1 below shall apply;

b) if classes encompass more than one genus, the list of classes from table 2 below shall apply;

c) for genera and species not covered by the list of classes from table 1 and table 2, a genus is considered to be a class.

Table 1

Classes within a genus

| Classes | Botanical names |
|-----------|--|
| Class 1.1 | Brassica oleracea L. |
| Class 1.2 | Brassica, other than Brassica oleracea L. |
| Class 2.1 | Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima |
| Class 2.2 | Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: B. vulgaris L. var. rubra L.), B. vulgaris L. var. cicla L., B. vulgaris L. ssp. vulgaris var. vulgaris. |
| Class 2.3 | Beta, other than classes 2.1 and 2.2 |
| Class 3.1 | Cucumis sativus L. |
| Class 3.2 | Cucumis melo L. |
| Class 3.3 | Cucumis, other than classes 3.1 and 3.2 |
| Class 4.1 | Solanum tuberosum L. |
| Class 4.2 | Solanum, other than class 4.1 |

Table 2

Classes encompassing more than one genus

| Classes | Botanical names |
|-----------|-----------------------------|
| Class 201 | Secale, Triticale, Triticum |

| | |
|-------------|--|
| Class 203*) | Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum and Poa |
| Class 204*) | Lotus, Medicago, Ornithopus, Onobrychis, Trifolium |
| Class 205 | Cichorium, Lactuca |

**) Classes 203 and 204 are not solely established on the basis of closely related species*

(8) A variety denomination shall be considered to mislead or to cause confusion if:

- a) it conveys the false impression that the variety has particular characteristics or value;*
- b) it conveys the false impression that the variety is related to, or derived from, another specific variety;*
- c) it consists of, or contains comparatives or superlatives, or the botanical or common name of a species.*

ARTICLE 16

Formal Examination of the Variety Patent Application

(1) Within one month from the filing of an application for the protection of a new variety, ISTIS shall examine the documentation submitted by the applicant in respect to meeting the formal requirements for the application, respectively meeting the provisions of Art. 10 **paragraph (1) to (4)** and **Art. 12**.

(2) If the variety patent application meets the requirements referred to in paragraph (1), ISTIS 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 submitted at ISTIS 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**, ISTIS shall decide, following the assembly of an Examination Board, to reject the application.

Implementing Regulations of ARTICLE 16 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012:

ARTICLE 10 Formal examination of the variety patent application (1) A formal examination of the application shall be carried out within one month from the payment registration which accompanies the filing process of a variety patent application and it consists of the thorough analysis of requirements provided at Article 10 paragraphs (1)-(4) of the Law and Article 9 from the present Guidelines.

(2) The following criteria shall be reviewed:

- a) if the applicant is the person entitled to receive the variety patent;*
- b) if the variety patent rights belong to one or more breeders;*
- c) the names of the declared breeders must coincide with the names of the breeders enlisted in the technical evaluation report of the candidate variety, if the afore mentioned test has been performed prior to the application date.*
- d) the document certifying the assignation of rights, where necessary;*
- e) if the variety patent application and variety denomination forms are completed correctly.*

- (4) The section from the variety patent application where the applicant declares, on his own responsibility, that he did not market the new variety, according to Article 6 of the Law, must be completed with such information or, if he had marketed the variety, the date and countries must be mentioned.*
- (5) Where it has been ascertained that the variety patent application meets Articles (2)-(4) provisions, the application shall be given an official filing date in the National Register of Variety Plant Applications, and during a period of one month, the applicant shall be notified about the approval of the application.*
- (6) Variety patent applications are published in the next Official Industrial Property Bulletin, as the information to be published is edited during a three-month period since the filing registration date included in the National Register of Variety Plant Applications.*
- (7) For each candidate variety, the species and proposed denomination together with the provisional denomination are published and the filing date of the application, the claimed priority, whether this is the case, and the applicant's identification data.*
- (8) When the applicant is not entitled to receive the variety patent right and/or the process of granting a variety patent right is the subject of litigation or dispute, ISTIS suspends the examination procedure for granting of a variety patent until the court decision is definitive and irrevocable. The respective person shall notify ISTIS regarding such court decisions.*
- (9) When the application is incomplete, incorrect or contains irregularities, the applicant is notified and is given a thirty day period since receiving the notification to remedy the results.*
- (10) When the applicant fails to answer or request an extension for the time limit according to paragraph (9) or does not complete the technical questionnaire within the two-month time limit, according to paragraph (3), the application is rejected by the ISTIS Examination board.*
- (11) The ISTIS Examination board consists of three (3) members who are responsible for granting the variety patent rights at the institute.*

ARTICLE 17

Substantive Examination of the Application

- (1)** ISTIS shall, within six 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, according to **Article 6, 14 and 15**.
- (2)** ISTIS 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, request a two-month extension period from ISTIS in order to provide an appropriate reply.
- (4)** If ISTIS decides, following the substantive examination and within the Examination Board, that the application meets the requirements provided at **Articles 6 - 10, 12 and 15**, then the variety shall undergo the technical examination at ISTIS testing facilities or, for the varieties where ISTIS does not perform the DUS test, the technical examination shall be performed by another competent national authority with a bilateral UPOV type of contract signed with ISTIS. If the variety in question has been technically examined regarding its distinctness, stability and uniformity using the ISTIS testing network in order to be registered in the Official National Catalogue and a favorable technical examination report already exists, this document

can be used for the granting of the variety patent rights. When the DUS test was performed in a European Union member country, the technical examination report can be approved as is and used for the granting of the legal protection, based on the Convention's provisions. This report shall be requested by the national authority working with ISTIS and its total value shall be covered by the applicant.

(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, ISTIS shall reject the application.

Implementing Regulations of ARTICLE 17 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012:

ARTICLE 11 Substantive examination of the application (1) According to Article 17, paragraph (1) of the Law, the documents forwarded by the applicant when filing the variety patent application for the granting of protection rights shall be examined regarding the novelty and denomination of the candidate variety.

(2) The variety patent application which meets the conditions provided at Article 16, paragraph (1) of the law, shall be examined in order to verify the following:

a) the application refers to a variety within the meaning of Article 2, letter a) of the Law;

b) the variety belongs to the declared botanical taxon;

c) the candidate variety is new, according to Article 6 of the Law;

d) the priority right of the variety is mentioned, according to Article 14 of the Law, where it is necessary;

e) the denomination proposed by the applicant is correct and meets the provisions of Article 15 of the Law and Article 7 of the present Guidelines.

(3) The variety denomination shall be examined by ISTIS experts using the databases of the Community Plant Variety Office, The International Union for the Protection of New Varieties of Plants and Organisation for Economic Co-operation and Development in order for it to comply with Article 7, paragraph (6), letters a) and b) and paragraph (7).

(4) If ISTIS decides to reject the variety patent application due to the lack of compliance regarding the novelty or denomination of the variety or whether the applicant exceeds the six-month time limit allowed for the substantive examination, and does not pay the examination fee, the applicant shall be notified regarding the decision, including the reasons behind the application refusal and he will have a maximum three-month period to reply..

(5) Upon applicant's express request, the reply time frame mentioned at paragraph (4) can be extended with an additional two months, according to provisions of Article 17, paragraph (3) of the Law, together with the payment of the legal fee.

(6) When the applicant does not reply within the allowed time frame, ISTIS rejects the variety patent application.

(7) When the variety patent application meets all the provisions of Article 6, 10, 12 and 16 of the Law, the ISTIS Examination Board commences the technical examination of the candidate variety.

(8) The conditions for performing the technical examination of the candidate variety at ISTIS or at another competent national authority which has a bilateral administrative agreement or contract signed with ISTIS, or when such examination was performed by ISTIS or by another authority from an European Union country and a favorable technical examination report already exists, are stipulated in Article 17, paragraph (4) of the Law;

(9) The technical examination report issued by ISTIS or by other entities from European Union member states, if they already exist upon filing of the variety patent application, can be submitted together with the variety patent application.

ARTICLE 18

Technical Examination of the New Variety

(1) Where growing tests for a new variety have not been performed regarding the distinctness, uniformity and stability (DUS test), the candidate variety shall undergo a technical examination at ISTIS testing facilities in order to establish the following:

(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) following the technical examination which implies tests performed on a variety in order to establish its distinctness, uniformity and stability, a technical examination report shall be issued.

(2) The technical examination shall be performed by ISTIS at its testing centers or by other similar competent international authorities from European Union countries that have signed a bilateral administrative agreement with ISTIS.

(3) ISTIS shall perform the necessary tests needed in order to establish the compliance with provisions of **Articles 7-9**. The applicant shall provide, free of charge, the variety propagating material in the amount and on the date specifically requested by the institute. When the tests are performed by another E.U. authority, the planting or propagating material shall be dispatched to the respective country.

(4) ISTIS or another competent authority, during a period of one year since the initiation of the variety testing, shall send a preliminary report to the applicant, and at the end of the examination, if the variety complies with the distinctness, uniformity and stability criteria, shall issue the technical examination report.

(5) The variety testing shall not interfere with the novelty condition and shall not be used against the process of granting of the breeder rights.

(6) For fruit trees and vines, where ISTIS does not perform the DUS test at its authorized examination facilities, the testing can be performed by ISTIS experts at fruit trees and vines specific planting basins.

(7) ISTIS shall reject the application for a variety patent if the validity of the tests is disputed by the national authority.

(8) The decisions of ISTIS may be brought to action by the applicant before ISTIS Board of Appeal, within a three-month period upon receiving an official notification.

Implementing Regulations of ARTICLE 18 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012:

ARTICLE 12 Technical examination of the new variety (1) The technical examination is organized by ISTIS according to the provisions of Article 34, paragraph (2), letter B) of No.266/2002 Law on the production, processing, quality control and certification, marketing of seeds and propagating material, as well as the registration of plant varieties, republished, together with the CPVO and UPOV guidelines and regulations in this field of activity.

(2) In keeping with the provisions of Article 18, paragraph (2) of the Law, the technical examination of the variety can be also performed by a similar international authority from a European Union member country which has a bilateral type of agreement signed with ISTIS.

- (3) Deadlines for the filing of the testing applications, for sending the seeds and seed amounts and propagating materials needed for testing and safekeeping in the reference collection are found in Annex 4 of the Order of the Minister of Agriculture, Forestry and Rural Development No.1.348/2005 for the approval of the Guidelines on testing and registration of crop varieties, with its subsequent corrections and amendments, and in Annex 3 of the Order of the Minister of Agriculture, Forestry and Rural Development no.1.349/2005 for the approval of the Guidelines on testing and registration of legume varieties, with its subsequent corrections and amendments.*
- (4) Following the technical examination performed through growing tests for the variety which meets the distinctness, uniformity and stability characteristics, a technical examination report is issued.*
- (5) In order to perform the growing tests correctly, the applicant shall supply documents relative to the cultivation of the candidate variety.*
- (6) After the first year of crop trials, the preliminary report shall be sent to the applicant and it shall comprise information regarding the cultivation type of the candidate variety.*
- (7) By way of exception, the testing period may be extended by ISTIS or upon request by the applicant, provided that the legal fee is paid.*
- (8) After concluding the crop tests, and if the variety has met the distinctness, uniformity and stability criteria, ISTIS issues the technical examination report which comprises the description of the variety according to UPOV, CPVO and national guide requirements.*
- (9) When the findings of the tests are not valid, the applicant is notified and allowed a three month period to reply to such findings. Upon expiry of the previously mentioned period, if the applicant fails to answer, ISTIS decides to reject the variety patent application and publishes the decision in the Official Bulletin.*

ARTICLE 19

Testing of the Variety

- (1)** For the testing of the new variety the national authority conducts and organizes growing tests using its subordinate testing centers and facilities.
- (2)** The growing tests shall be conducted according to the methodology approved ISTIS, based on the rules and regulations of UPOV and CPVO.
- (3)** After the documentation is received, and the substantive examination is completed, ISTIS sends the documentation to the national authority which establishes the place and amount of material necessary for organizing the trial tests and notifies the applicant accordingly inviting him to submit the requested propagating material.
- (4)** ISTIS and the national authority may request the applicant to submit all information, documents and necessary materials for an optimum technical examination.
- (5)** If, during the allowed period of time, the requested information, documents or materials are not submitted by the applicant, ISTIS shall reject the variety patent application.
- (6)** The applicant is entitled, anytime during the testing period of the new variety, to request a crop inspection.

ARTICLE 20

Decisions of ISTIS

- (1) ISTIS decides if the new variety complies with the requirements provided by **Articles 6-8** and **Article 15**, based on the technical examination report, and, according to each case, grants the variety patent or rejects the variety patent application.
- (2) The decision to reject a variety patent application shall be taken by ISTIS only after the applicant has been notified regarding the grounds for rejection and allowed a period of at least three months within which to submit an appropriate answer.
- (3) Decisions shall be published in the first Official Industrial Property Bulletin issued after the decision is finalized.
- (4) In response to the developments registered in the agricultural and biological fields, the examination methodology and the types of characteristics targeted during the testing period, according to UPOV and CPVO norms, can be subjected to subsequent amends, during the validity period of the patent, without the protection period or characteristics of the new variety being thereby affected.
- (5) Resolutions or decisions issued by ISTIS can be challenged by applicants, on reasonable grounds, and such issues can be brought forward with the Board of Appeal, according to Article 41 **paragraph (1)** provisions.

Implementing Regulations of ARTICLE 20 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 13 Decisions of ISTIS (1) Following the preliminary and substantive examination of the variety patent application and the technical examination report, ISTIS grants the patent to the candidate variety or rejects the application according to Article 20 of the Law.

(2) If the conditions provided in Articles 6-9 and 15 of the Law are met and a positive technical examination report was issued, then ISTIS decides to grant the variety patent and publishes the decision in the first number of the Official Bulletin which is issued after the decision is final.

(3) Appeals shall be settled by the Board of Appeal during a ninety-day period from the submission of the appeal, according to Article 41, paragraph (2) of the Law.

(4) The decisions of the Board of Appeal can be settled in court at Bucharest Tribunal, and the decision of the Bucharest Court of Appeal can be subjected to appeal in a higher court or in trial court according to provisions of Article 41, paragraphs (3) and (4) of the Law.

ARTICLE 21

Oral Proceedings

- (1) Oral hearing proceedings shall be held either on the initiative of ISTIS or at the request of any of the parties involved in the appeal proceedings.
- (2) Oral hearing 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 involved in the appeal proceedings.

ARTICLE 22

Provisional Protection

(1) During the period between the publication of the variety patent application under Article 16 **paragraph (3)** and the grant of the variety patent, the applicant shall provisionally enjoy all rights conferred on the variety patent holder, under Article 30 **paragraph (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) Nullified through paragraph (1) from Law No.187/2012 starting with 01.02.2014.

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

Implementing Regulations of ARTICLE 22 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 14 Provisional protection (1) Provisional variety protection is granted based on provisions of Article 22, paragraph (1) of the Law.

(2) The applicant of the variety patent may request for the rights foreseen at Article 30 of the Law to be revoked only after the publishing of the variety patent application.

ARTICLE 23

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.

Implementing Regulations of ARTICLE 23 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 15 Extension of the Time Limit. In keeping with the provisions of Article 23 paragraph (1) of the Law, the extension of the time limit for the examination of the application may be requested by the applicant on based on reasonable grounds though a written statement of reason submitted at ISTIS, and shall be subject to the payment of the fee adequate to the procedure it refers to.

ARTICLE 24

Withdrawal of the Application

The application for a variety patent may be withdrawn based on a written notification submitted at ISTIS by the applicant, any time until the decision on the grant of the variety patent is taken.

Implementing Regulations of ARTICLE 24 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 16 Withdrawal of the Variety Patent Application. (1) In keeping with the provisions of Article 24 of the Law, the applicant or his legal representative, by power of attorney, may explicitly request the withdrawal of the variety patent application according to Article 4 of the Law.

(2) The variety patent application is considered to be withdrawn on the date the written notification is received by ISTIS.

ARTICLE 25

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 ISTIS 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 request ISTIS the 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 revocation request shall be examined by the ISTIS Board of Appeal within three months from the filing.
- (4) The Board of Appeal may ask ISTIS 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 41**.
- (7) The final and irrevocable decisions shall be published in the first Official Industrial Property Bulletin issued after the decision has been made.

Implementing Regulations of ARTICLE 25 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 17 Revocation of the Variety Patent
(1) By virtue of Article 25 provisions, paragraph (1) of the Law, any person may submit at ISTIS a written revocation request based on substantiated claims, during a three-month period since the publishing of the decision that grants a variety patent in the Official Bulletin, if the following criteria is met:

- a) the variety is not new, according to Article 6 of the Law;*
 - b) the variety is not distinct, according to Article 7 of the Law;*
 - c) the variety is not uniform, according to Article 8 of the Law;*
 - d) the variety is not stable, according to Article 9 of the Law;*
 - e) the applicant is not entitled to receive the variety patent, according to Article 10 of the Law;*
 - f) the denomination of the variety does not comply with or breaches some of the subsequently held property rights, according to Article 15 of the Law;*
- (2) The variety revocation request shall be submitted together with documents that substantiate claims together with proof of paying the revocation application fee, and the person who requested the revocation shall be offered access to documents which led to the granting of the variety patent.*
- (3) In order to reach a revocation decision, the assembled Board of Appeal may ask the person forwarding the revocation request to provide additional information regarding the variety in question.*
- (4) When the revocation request is formulated based on lack of compliance with the distinctness, uniformity and/or stability characteristics, the Board of Appeal may request the repetition of the trial tests conducted by ISTIS subject to payment of legal fees, or to request the participation of a variety crop expert during the trial tests of the variety in question.*

(5) ISTIS shall inform the applicant that a revocation request was submitted and shall provide a time limit for reply.

(6) In the case when growing tests are repeated, according to paragraph (4), the applicant can inspect the crop tests in order to support his variety.

ARTICLE 26

Priority of a New Application in the Case of a Revocation Request

Where a request for revocation on the grounds that **Article 10** provisions 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 27

Issue of the Variety Patent and Registration of the Variety Denomination

(1) The variety patent shall be issued by the Director General of ISTIS 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 Order of the Minister of Agriculture and Rural Development.

(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 28

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

(1) For the examination procedures held before ISTIS, the applicant shall pay fees according to the Order of the Minister of Agriculture and Rural Development.

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

- a)** filing the variety patent application according to Art. 12 **paragraph (2)**;
- b)** examination of the variety denomination, according to **Art. 15**;
- c)** examination in respect to the form of the variety application, according to **Art. 16**;
- d)** examination of the substantive conditions, according to **Art. 17**;
- e)** technical examination on groups of species, according to **Article 18**;
- f)** issue of the variety patent according to **Art. 27**;
- g)** appealing against the decisions according to Art. 20 **paragraph (5)** and revocation of the patent according to **Art. 25**;
- h)** maintenance in force of the variety patent on groups of species, for each year of protection, according to **Art. 37**.

Implementing Regulations of ARTICLE 28 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 18 Fees for the Grant of Variety Patent and Registration of Variety Denomination (1) The fees for the filing of the

variety patent application and the examination of the variety denomination are paid simultaneously with the submission of the application at ISTIS.

(2) The fees for priority claim can be paid together with submitting the application or during a period of three months since the date of the application filing.

(3) The fees for the formal examination of the variety patent application can be paid up until the publishing of the application for the variety patent.

(4) When the applicant omits to pay the formal examination fee up until the publishing date of the application, ISTIS notifies the applicant and charges an additional 50% fee. Payment after the date of the formal examination can be made by the applicant during a time limit of six months since the filing date of the application.

(5) The fees for the distinctness, uniformity and stability test (DUS test) are paid at ISTIS, according to the Order of the Minister of Agriculture and Rural Development No.84/2011, on the approval of fees and procedures for the examination of plant varieties requesting registration in the Official Catalogue of Varieties Marketed in Romania and in the Recommended varieties list, together with the variety purity control and seed multiplication, in effect.

(6) In the case when the technical examinations are performed by a competent authority from a European Union member state up until the filing date of the variety patent application, the applicant does not pay any additional fees associated with the technical examination of the variety, but must purchase the technical report.

(7) The technical report purchase fee from another competent authority from a European Union member state is paid by the applicant at the authority which has performed the variety test and issued the technical examination report.

(8) The fees for issuing the variety patent can be paid during a three-month period since the date of the publication of the decision to grant the variety patent, provided that during the mentioned time limit an appeal against the decision to grant the variety patent or withdrawal decision is not submitted.

(9) In the case of a variety patent annulment request, the fee for the examination of the annulment application is paid together with the variety patent annulment request, according to the Law.

(10) The annual maintenance fee of the variety patent is payable on a yearly basis, the due date being the first date of each year of protection, which starts on the date of the granting of the variety patent.

(11) If the annual maintenance fee of the variety patent was not paid up until the start of the next year of protection, it can be paid during a period of six months but with an additional 50% of the annual fee.

CHAPTER V

Protection of the Variety

ARTICLE 29

Duration of Variety Protection

(1)The duration of variety protection is of 25 years and 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 trees, shrubs and ornamental trees, vines, potatoes and hop varieties the duration of the variety protection shall run from the date of granting the variety patent application until the end of the 30th calendar year following the year of grant.

Implementing Regulations of ARTICLE 29 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 19 Duration of Variety Protection. The duration of the variety protection spans a period of 25 or 30 years and is established according to each species, according to provisions of Article 29 of the Law.

CHAPTER VI

Rights of the Holder

ARTICLE 30

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 paragraphs 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.

Implementing Regulations of ARTICLE 30 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 20 Rights of the Variety Patent Holder (1) The rights of the variety patent holder are laid down in Article 30 paragraph (1) of the Law.

(2) Without infringing provisions laid down in Articles 31 and 32 of the Law, the owner grants an authorization for activities foreseen at Article 30 paragraph (1) of the Law regarding the new variety constituents or the harvested material of the protected plant variety.

(3) The rights conferred by the variety patent may not breach the legal provisions adopted on the grounds of the public morality, order and safety, 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 31

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 30 **paragraph (1)**, in respect of such other varieties referred to in (c) above, except where the provisions of Article 30 **paragraph (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 **paragraph (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. 30**.

ARTICLE 32

Farmer's Privilege

(1) For stimulating the agricultural production for the plant species provided for in the annex 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) For species not included in the annex, the paragraph (5) provisions shall apply.

(3) The farmers may use the seed obtained for sowing or through the seed processors.

(4) Where the seed is used through seed processors, it shall remain identical to the seed of the protected variety and to the harvested product.

(5) 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.

(6) The holder is entitled to request, in writing, the necessary information related to the seed of the protected variety produced by the farmer.

(7) Farmers and seed processors are obliged to supply, upon request, written information about their identification data to the holder.

(8) 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.

(9) 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.

(10) The holder has the obligation, upon request, to supply the breeder's 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.

(11) The holder may ask the farmers and seed processors to submit information. The information may be supplied by official entities involved in the control of the agricultural production, if such information were obtained during working hours, without further liabilities or costs. In what concerns personal data, such provisions may not breach the national laws in force on the protection of the individual and the processing and transmission of personal data.

Implementing Regulations of ARTICLE 32 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 21 Farmer's privilege (1) Small farmers who cultivate agricultural plant species, foreseen in annex to the law, have the right to use seeds and cultivate protected varieties according to provisions of paragraph 32 of the Law.

(2) The payable amounts, payment possibilities and dates shall be established through contract or agreement signed between parties, namely the holder and farmer or their legal representatives.

ARTICLE 33

Exhaustion of the Variety Patent Holder's Rights

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 30 **paragraph (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 made available 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 34

Invalidation of the Variety Patent

(1) ISTIS shall declare the variety patent as null and void, if one of the following situations is determined:

- a) the variety was not new in accordance with Art. 6, or distinct, in 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 the breeder, the variety was not uniform in accordance with [Art. 8](#), or stable, in accordance with Art. 9, on the date of granting the rights;
- c) the person receiving the variety patent was not entitled to such rights, except where a transfer of rights to the entitled person took place.

(2) ISTIS decisions shall be communicated to the concerned parties within 15 days from pronouncement and can be appealed against under the provisions of [Art. 41](#).

(3) The final and irrevocable variety patent invalidation decision shall be published in the Official Industrial Property Bulletin and the cancellation shall be entered in the National Register for Variety Patents.

Implementing Regulations of ARTICLE 34 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 22 Invalidation of the Variety Patent. ISTIS declares the variety patent as null and void in accordance with provisions of Article 34, paragraph (1) of the Law.

ARTICLE 35

Forfeiture of Variety Patent Holder's Rights

(1) ISTIS declares the variety patent holder's rights as forfeit where one of the following situations occurs:

- (a) the variety patent holder does not fulfill his obligation to maintain the protected variety, as provided in Article 37 [paragraph \(1\)](#);
- (b) the variety patent holder fails to comply with ISTIS or the national authority requests to 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 ISTIS requested a change of the denomination based on the fact that 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) ISTIS 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 ISTIS 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 41. Revalidation of the variety patent shall be published in the Official Industrial Property Bulletin.

Implementing Regulations of ARTICLE 35 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 23 Forfeiture of Variety Patent Holder's Rights. The variety patent holder rights are declared forfeit in accordance with the provisions of Article 35, paragraph (1) of the Law.

ARTICLE 36

Renunciation of the Variety Patent

- (1) The variety patent holder may renounce the variety patent rights at any time during the variety protection period on the basis of a written declaration submitted to ISTIS.
- (2) Renunciation of the variety patent shall be effective as of the date of transmitting the request to ISTIS.
- (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 license contract, renunciation is possible only with the consent of the licensee.

Implementing Regulations of ARTICLE 36 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 24 Renunciation of the Variety Patent. Renunciation of the variety patent is achieved according to provisions of Article 36, paragraph (1) of the Law, based on a written declaration submitted at ISTIS by the breeder together with the proof of sending through mail the decision to renounce the variety patent rights.

CHAPTER VIII

Exploitation of the Protected Variety

ARTICLE 37

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) ISTIS may, throughout the duration of the variety patent rights, 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, ISTIS shall declare his rights under the variety patent forfeiture in accordance with Article 35 paragraph (1) letter (a).

Implementing Regulations of ARTICLE 37 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 25 Maintenance of the protected variety (1) In order to verify the maintenance of the protected variety, the holder is

obliged to supply upon ISTIS request, at pre-established intervals, according to species, samples of the protected variety and components, during the validity period of the variety patent.

(2) When the holder does not comply with the request to supply information and propagating material, in accordance with paragraph (1), and does not pay the maintenance fees in force, his rights under the variety patent shall be declared as forfeit.

ARTICLE 38

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 succession.

(3) Where another person than the one mentioned on the variety patent is entitled to be granted the variety patent, ISTIS 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 to respond within one month.

(5) The transfer of rights shall become effective on the date of the expiry of the 30 day period.

(6) The transfer of rights shall not affect rights acquired by the third parties prior to 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 who acquired rights after the date of transfer, provided that they knew about the transfer on the date of acquiring these rights.

Implementing Regulations of ARTICLE 38 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 26 Transfer of variety rights. The transfer of variety rights is performed in accordance with Article 38 provisions of the Law.

ARTICLE 39

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) Production, processing and marketing of certified seeds can be transferred only through a license contract signed by the variety patent holder, which must also include the payment of royalties and duration of the contract.

- (3) 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.
- (4) The variety patent holder may request ISTIS to publish his offer to grant the license in the Official Industrial Property Bulletin.
- (5) ISTIS shall enter the license contract in the National Register of Variety Patents and publish it in the Official Industrial Property Bulletin.
- (6) Upon request by the person concerned, ISTIS may register other transfers of rights of the protected variety, subject to payment of the legal fee.

Implementing Regulations of ARTICLE 39 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 27 License contract. Exclusive and non-exclusive licenses are granted in accordance with provisions of Article 39 of the Law.

ARTICLE 40 Compulsory License

- (1) The Ministry of Agriculture 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 court decision.
- (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 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 Bucharest Tribunal (Court of Law), pursuant to the provisions of the Patent Law [no. 64/1991](#), as

republished *), may grant a non-exclusive compulsory license, subject to payment of an appropriate royalty to the holder.

----- *) Law **no.64/1991** was republished in the Official Gazette of Romania, Part I, No.541 from August 8, 2007.

(10) Upon justified request by the interested person, the Ministry of Agriculture and Rural Development, or the Bucharest Tribunal (Court of Law), 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 Bucharest Tribunal (Court of Law), within 30 days from communication. The decisions of the Tribunal may be appealed against only at the Bucharest Court of Appeal.

Paragraph (11) provisions were amended by point 1 of Law **no.76/2012** starting with 15.02.2013.

(12) The final and irrevocable court decisions on the grant or withdrawal, as appropriate, of the compulsory license shall be communicated by the interested person to ISTIS, and ISTIS 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.

Paragraph (12) provisions were amended by the corresponding paragraph provisions of Law **no.76/2012** starting with 15.02.2013.

Implementing Regulations of ARTICLE 40 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 28 Compulsory license The non-exclusive compulsory license is granted based on public interest grounds by the Ministry of Agriculture and Rural Development, in accordance with the provisions of Article 40 of the Law.

CHAPTER IX

Protection of Rights of New Plant Varieties

ARTICLE 41

Appeals against Decisions of ISTIS

(1) Decisions of ISTIS 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 ninety (90) days from lodging, provided that the proofs allow the case to be settled within this time period. The members of the Board shall be different from the members of the Examination Board, and it shall include representatives of the Ministry of Agriculture and Rural

Development and ISTIS representatives. The ministry shall approve the members of the reexamination board which will include crop experts.

(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 Bucharest Tribunal (Court of Law) within a 30 days period of being communicated.

Paragraph (3) provisions were amended through point 2 of Law **no.76/2012** starting with 15.02.2013.

(4) The decision of the Bucharest Tribunal may be appealed against before the Court of Appeal of Bucharest.

Paragraph (4) provisions were amended through point 2 of Law **no.76/2012** starting with 15.02.103

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

Implementing Regulations of ARTICLE 41 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 29 Appeals against decisions of ISTIS (1) Appeals or requests for revocation, cancellation or revalidation of the variety patent shall be made in writing and submitted at ISTIS and accompanied by substantiating documents and the proof of payment of the in effect.

(2) For justified special cases, which require the repetition of the distinctness, uniformity and stability growing tests, the time limit for the examination can be extended.

ARTICLE 42

Competence of the Courts of Law

Litigations seeking to deprive the breeder of his rights, or the 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 37 paragraph (1) and Article 38, shall be within the competence of the courts of law.

Implementing Regulations of ARTICLE 42 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 30 Competence of the Courts of Law (1) Litigations within the competence of the courts of law are mentioned at Article 42 of the Law.

(2) Following the solving of litigations concerning the protection of the new variety by the competent court of law, the concerned persons shall communicate ISTIS during a thirty day period the definitive and irrevocable decision of the court of law for it to be entered, according to case, in the National Register of Variety Patent Applications or the National Register of Variety Patents and published in the Official Bulletin.

CHAPTER X

Offences and Penalties

SECTION 1

ARTICLE 43

Infringement and Disclosure

- (1) Any of the acts mentioned in Article 30 **paragraph (1)** performed without the variety patent holder's authorization shall be deemed as a violation and infringement felony punishable by 3 months to 2 year prison term and civil penalty.
- (2) Performing the following acts deliberately also constitutes an infringement sanctioned in accordance with provisions of paragraph (1):
- (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 the propagating material with false indication that it belongs to a variety for which a variety patent has been granted, thereby misleading purchasers;

ARTICLE 43 provisions were amended through point 2 of Law **No.187/2012** starting with 01.02.2014

SECTION 2

ARTICLE 44

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.

Paragraph (4) provisions were amended by the corresponding paragraph provisions of Law **No.255/2013** starting with 01.02.2014

CHAPTER XI

Provisional Measures and Evidence

ARTICLE 45

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 43 **paragraph (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 43 **paragraph (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 of costs and the court shall specify the amount of damages to be covered.
- (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 46

Competence

- (1)** Competence for the enforcement of the present Law belongs to ISTIS.
- (2)** ISTIS, as a specialized body subordinated to the Ministry of Agriculture and Rural Development, is the sole official entity within the territory of Romania authorized to offer industrial property protection and which grants patents for the new plant varieties under this Law and in accordance with the international conventions to which Romania is a party, and has the following obligations:
 - 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)** developing the technical examination procedures in order to establish the distinctness, uniformity and stability of varieties for which variety protection is to be granted in accordance with the international guidelines of CPVO, UPOV, and national ones in the field of protecting the new plant varieties;

- e) establishing the technical examination procedures, for the species not featured in the UPOV or CPVO guides, in accordance with international and national provisions in effect;
 - f) performing the technical growing tests of candidate varieties in order to establish the distinctness, uniformity and stability (DUS) characteristics throughout its testing centers.
 - g) certifying authorized agents for the procedures before ISTIS relating to the protection of the new varieties;
 - h) ensuring the exchange of publications with similar foreign national administrations and specialized international entities and organizations;
 - i) developing the international cooperation framework with Convention member states, UPOV Office and the Community Office.
- (3)** The Ministry of Agriculture and Rural Development, in exercising its prerogatives:
- a) monitors the activity associated with the intellectual rights protection of varieties, together with all the rights and obligations set forth by the present Law;
 - b) collaborates with ISTIS, with the associations of breeders, with associations of variety patent holders, of producers of seed and propagating materials, with specialized research institutes and testing stations, in order to protect and promote the new varieties and established the development strategy in the field of breeding new varieties;
 - c) grants the compulsory license according to the provisions of Article 40 **paragraph (1)**;
 - d) grants the non-exclusive compulsory license according to the provisions of Article 40 **paragraph (8)**;
 - e) in the case of protected varieties, through its quality of seeds and propagating material examination boards and inspectorates it can request to the licensees to present the authorization obtained from the variety patent holder;

Implementing Regulations of ARTICLE 46 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 32 National periodical publications At least once every three months ISTIS publishes the Official Bulletin of Industrial Property which comprises the following information:

- a) variety patent applications, which include the botanical taxon, the provisional denomination, official filing date together with the name and address of the applicant, of the breeder or of any other authorized representative concerned thereof;*
- b) all the cases associated with ceasing the procedure of granting the variety patent, including the information from letter a) above.*
- c) variety denomination proposals;*
- d) any modifications of the holder's or agent's personal information;*
- e) official date of the variety protection granting and official date of lapse of variety patent rights and reasons for termination thereof;*
- f) courts of law decisions, when necessary.*

ARTICLE 47

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 48

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.

Implementing Regulations of ARTICLE 48 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 31 National Registers Maintenance (1) National Register of Variety Patent Applications and National Register of Variety Patents are entered into and kept at ISTIS.

(2) Registers mentioned at paragraph (1) shall comprise the sections set forth in Article 48 and 49 of the Law.

ARTICLE 49

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.

Implementing Regulations of ARTICLE 49 of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 31 National Registers (1) National Register of Variety Patent Applications and National Register of Variety Patents are entered into and kept at ISTIS.

(2) Registers mentioned at paragraph (1) shall comprise the sections set forth in Article 48 and 49 of the Law.

ARTICLE 50

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 ISTIS, that will act as 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 Council Regulations (EU) 2100/1994 of 27 July 1994, instituting a Community protection of the new plant varieties, and filed with ISTIS, 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.

Implementing Regulations of ARTICLE of Law No.255/1998 on the protection of new plant varieties from 17/07/2012: ARTICLE 4 Any variety making the object of community property rights granted by the Community Plant Variety Office can no longer receive national property protection or any patent, as the community protection of intellectual property rights is valid on Romanian territory.

(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 51

Final and Transitional Provisions

(1) Applications for variety patents filed with the State Office for Inventions and Trademarks under Patent Law no. 64/199, republished, and of the 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 the 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) On the date of entry into force of this Law, the provisions on the protection of plant varieties and plant hybrids laid down in Articles 7 **paragraph 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** *) together with any contrary provisions shall be revoked.

*) Government Decision **no. 152/1992** approving the Implementing **Regulations** of the Patent Law no. **64** from October 11, 1991, published in the Official Gazette of

Romania, Part I, no. 79 from April 30, 1992, with its subsequent amendments, was revoked through Government Decision **no. 499/2003** approving the Implementing **Regulations** of Patent Law no.64/1991, published in the Official Gazette of Romania, Part I, no.348 from May 22, 2003.

) Patent Law **no. 64/1991 was republished in the Official Gazette of Romania, Part I, no. 541, from August 8, 2007.

ANNEX

SPECIES OF AGRICULTURAL PLANTS

to which the provisions relating to farmer's privilege shall apply:

a) Fodder plants

Cicer arietinum L. - Chickpea milkvetch
Lupinus luteus L. - Yellow lupin
Medicago sativa 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 Triticosecale 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. - Potatoe

d) Fibre and oil plants

Brassica napus L. - Swede rape
Brassica rapa L. - Turnip rape
Linum usitatissimum L. - linseed (with the exclusion of flax).

NOTE:

We reproduce hereinafter Art. II, Art. III and IV of the Law no.**204/2011**, that are not incorporated in the republished text o Law **no. 255/1998** and that apply further on as provisions specific to Law no. 204/2011:

“Art. II - (1) The transfer protocol of documents between the State Office for Inventions and Trademarks and ISTIS is performed during a 15 day time period since entering into force of the present Law.

(2)The transfer protocol comprises the following documents:

a) National Registry of Variety Patents Applications (RNCBS);

- b) National Registry of Variety Patents (RNBS);
 - c) database of granted variety patents, revoked variety patents, rejected variety patents, etc.
 - d) pending variety patents applications;
 - e) variety patent application form;
 - f) the Official Industrial Property Bulletin;
 - g) all the other documents related to the new plant varieties protection activity.
- (3) The variety patent applications filed with the State Office for Inventions and Trademarks in accordance with Law no.255/1998 provisions on the protection of new plant varieties, republished, for which no granting or rejection decision was made up to the entering into force of the present law, shall be settled according to the provisions of the present Law.
- (4) After the present law comes into force, ISTIS shall elaborate, during a 90 day period, the implementing regulations of Law no.255/1998 on the protection of new plant varieties, republished, which will be approved through order of the Ministry of Agriculture and Rural Development.

Art. III – **Article 3** of Law. no.186/2000 on Romania’s adhesion to the International **Convention** for the protection of the new plant varieties, from the 2nd of December 1961, reviewed in Geneva on the 10th of November 1972, on the 23rd of October 1978 and on 19th of March 1991, published in the Official Gazette of Romania, Part I, no. 547 from 6 November 2000, is amended as follows:

« Art.3 – Ministry of Agriculture and Rural Development is charged to pay to the International Union for the Protection of New Varieties of Plants Romania’s annual contribution in an amount determined in accordance with **Art. 29** from the International Convention for the protection of the new plant varieties. »

Art. IV – On the date of entering into force of the present Law, the following are revoked:

- a) Section 3 of Chapter II, comprising articles 18-21, and annex **no. 3** from Government Decision No.41/1998 on taxes and their applicability in the field of industrial property rights, republished in the Official Gazette of Romania, Part I, no. 959 from 29 November 2006, with its subsequent amendments;
- b) Government Decision **no. 984/2007** approving the Implementing **Regulations** of Law **no.255/1998** on the protection of new plant varieties, published in the Official Gazette of Romania, Part I, no. 638 from 18 September 2007. “