

Excerpt from: **150/2012 Regulation – Implementing Regulations of the Law on the protection of the new plant varieties No.255/1998**

*Ministry of Agriculture and Rural Development*

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## **CHAPTER I**

### **General Provisions**

#### **ARTICLE 1**

The Implementing Regulations of [Law No.255/1998](#) on the protection of the new plant varieties, republished, with its subsequent amendments, hereinafter referred to as Regulations, provides the organizational and methodological framework needed for the development of procedures associated with protection granted through new variety patents.

#### **ARTICLE 2**

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 3**

The provisions of the present Regulations refer to the property rights of breeders of new plant varieties, natural persons or legal entities, of Romanian or foreign nationality, residents of Romania or of another country.

## 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.

## ARTICLE 5

For the purpose of the present Regulations, the following terms read as follows:

- a)** law – Law No.255/1998, republished, with its subsequent amendments;
- b)** candidate variety – the variety for which a variety patent application was filed with ISTIS;
- c)** essentially derived variety – it is predominantly derived from the initial variety, while retaining the expression of essential characteristics that result from the genotype or combination of genotypes of the initial variety. The essentially derived variety must be clearly distinguishable from the initial variety though one or more characteristics which can be described precisely.
- d)** similar variety – the variety declared by the applicant using the variety patent application as being the closest to the candidate variety;
- e)** authorized agent – variety patent counselor, certified by ISTIS and empowered to represent the applicant or the holder in the proceedings before ISTIS;
- f)** Official Bulletin – Official Bulletin of Industrial Property – the section for varieties protected by variety patents.

## 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**  
Conditions of Granting National Variety Protection

**ARTICLE 7**  
Denominations 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.510/2006 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 in 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.

### **CHAPTER III**

#### Procedure for the granting of a variety patent

#### **ARTICLE 8**

The variety examination process for the granting of a variety patent includes the following steps:

- a) filing of the variety patent application;
- b) formal examination of the variety patent application;
- c) substantive examination of the variety patent application;
- d) technical examination of the new variety;
- e) ISTIS decisions;
- f) provisional protection;
- g) issue of the variety patent and registration of the variety denomination;
- h) revocation of the variety patent.

#### **ARTICLE 9**

#### Content of the Application for 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 filing 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.

## **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 Regulations.
- (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 aforementioned 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 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 Regulations.

**(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 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 Regulations 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 Regulations 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 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 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 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 based on reasonable grounds through 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 16**

### Withdrawal of the variety patent application

- (1)** Pursuant to 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 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.

## **CHAPTER IV**

### Fees for the grant of the variety patent

## **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 plant varieties**

#### **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.

#### **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 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.

#### **CHAPTER VI**

##### Lapse of variety patent rights

#### **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 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 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 VII**

##### Exploitation of the protected variety

## **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 26**

### Transfer of variety rights

The transfer of variety rights is performed in accordance with Article 38 provisions of the Law.

## **ARTICLE 27**

### License contract

Exclusive and non-exclusive licenses are granted in accordance with provisions of Article 39 of the Law.

## **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 VIII**

### Protection of rights of new plant varieties

## **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 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.

### **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 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, as the case may be.

### **ARTICLE 33**

Information on the variety patents published in the official bulletins, during the entire period of protection, provisional or definitive, is also sent at CPVO.

### **ARTICLE 34**

- (1) The provisions of the Regulations concern ISTIS, breeders who are natural or legal entities, together with variety patent holders, who shall implement and enforce the provisions of the present Regulations.
- (2) Annexes no.1 – 4 are an integrating part of the present Implementing Regulations.

## ***ANNEX No.1 of the Implementing Regulations***

### **No.1 Form**

#### VARIETY PATENT APPLICATION FORM

a  
a  
a  
a

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)

### ***ANNEX No.3 of the Implementing Regulations***

#### **No.3 Form**

ASSIGNING THE LEGAL REPRESENTATIVE OR AGENT

### ***ANNEX No.4 of the Implementing Regulations***

#### **No.4 Form**

VARIETY DENOMINATION PROPOSAL