

LITHUANIA

LAW ON THE PROTECTION OF PLANT VARIETIES
(No. IX-618)
(as last amended by 19 October 2006 No. X-862)*

CHAPTER ONE
 GENERAL PROVISIONS

Article 1
 Purpose of the Law

1. The Law shall regulate relationships of natural and legal persons relating to the legal protection and use of plant varieties.
2. The Law shall apply to the varieties included in the list of plant genera and species approved by the Minister of Agriculture.
3. This Law shall implement the legal act of the European Union referred to in the Annex to the Law.

Article 2
 Definitions

For the purposes of this Law

1. Harvested material shall mean entire plants or parts of plants.
2. Plant genus shall mean a grouping of organisms constituting a systematic unit and uniting closely related plant species descended from a common ancestor.
3. Plant species shall mean a grouping of related organisms constituting a systematic unit, occupying a relatively constant place in nature and fulfilling its functions in the universal biological metabolism in the manner specific only for that grouping.
4. Plant variety (hereinafter – variety) shall mean a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be:

1) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

2) distinguished from any other plant grouping by the expression of at least one of the said characteristics;

3) considered as a unit with regard to its suitability for being propagated unchanged.

5. List of Plant Genera and Species shall mean the list approved by the Minister of Agriculture, which includes plant genera and species the varieties whereof are protected under this Law.

6. Plant taxon shall mean any taxonomic grouping of plants (class, rank, family, genus, species, subspecies, variety, form).

7. Propagating material shall mean a seed, an entire plant or a vegetative part of a plant (grafts, stocks, shoots, parts of rootstocks, tubers, etc.) intended for the propagation of plants of a certain variety.

8. Genotype shall mean the sum of hereditary factors of an organism.

9. Licensing agreement shall mean a written agreement concluded by the breeder with natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area whereby these persons are granted the right to propagate and market the propagating material of the protected variety under agreed conditions within the defined territory.

10. Licence fee shall mean the fee payable under a licensing agreement.

* Translation provided by the Lithuanian authorities.

11. Breeder shall mean:

1) one or several natural persons who bred or discovered and developed a new plant variety;

2) a legal person whose one or several employees, working under an employment contract or fulfilling an assigned task, bred or discovered and developed a new plant variety;

3) branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area, which bred or discovered and developed a new plant variety;

4) a successor in title who has acquired property rights to the variety from the persons indicated in subparagraphs 1-3 of this paragraph.

12. Breeder's remuneration shall mean the remuneration paid to the breeder by a farmer or another land user for the propagating material of the protected variety grown on one's own holding and used for further reproduction or multiplication purposes on one's own holding.

13. Protected variety of significance for the national economy shall mean a variety required for guaranteeing the supply of the propagating material possessing certain characteristics to the market.

14. Application for a plant variety right shall mean a written request for the granting of a plant variety right filed with the manager of the List of Protected Plant Varieties in the Republic of Lithuania.

15. Commonly known variety shall mean a variety which becomes a matter of common knowledge from the date of filing of the application in any country, leading to the granting of a plant variety right or to the entry of the said variety in an official list of varieties.

Article 3

Conditions for the Grant of Plant Variety Rights

Plant variety rights shall be granted to the breeder where the variety is established to comply with the requirements of novelty, distinctness, uniformity and stability and also designated by a denomination in

accordance with the requirements laid down in Article 18 of this Law.

Article 4

Novelty

1. The variety shall be deemed to be new if, prior to the date of filing of the application for a plant variety right (hereinafter – application), propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by the initiative or with the consent of the breeder, for purposes of exploitation of the variety:

1) in the Republic of Lithuania – earlier than one year before that date;

2) in the territory of another country – earlier than four years or, in the case of trees, vines or berry shrubs, earlier than six years before the said date.

2. The variety shall satisfy the condition of novelty in selling or otherwise transferring the right of disposal of the propagating or harvested material of the variety to other persons if:

1) damage has been caused to the breeder or his successor in title;

2) the breeder's right has been transferred on the basis of a contractual relationship;

3) this is provided in an agreement whereby natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area reproduce the propagating material of the relevant variety on behalf of the breeder, provided that the breeder preserves his property right to the propagating material, and the propagating material is not used in the production of propagating material of another variety;

4) this is provided in an agreement whereby natural or legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area conduct field trials or laboratory tests with a view to evaluating the variety;

5) this has been done for the purpose of implementing laws or administrative obligations, particularly in relation to biological safety or the entry of the variety in the National List of Plant Varieties; 6) the harvested material of the variety produced in the course of breeding the variety or carrying out the activities listed in subparagraphs 3-5 of this paragraph is sold or otherwise disposed of as a by-product or surplus product without making reference to the variety.

Article 5 Distinctness

1. The variety shall be deemed to be distinct if it is clearly distinguishable by reference to the expression of at least one of its characteristics from any other variety whose existence is a matter of common knowledge at the time of filing of the application.

2. Any other variety shall be deemed to be a matter of common knowledge from the date of filing of the application in any country, leading to the granting of a plant variety right or to the entry of the said variety in an official list of varieties.

Article 6 Uniformity

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is uniform in its relevant characteristics.

Article 7 Stability

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

Article 8 List of Protected Plant Varieties in the Republic of Lithuania

1. The List of Protected Plant Varieties in the Republic of Lithuania (hereinafter – the List of Protected Varieties) shall be a list of plant varieties covered by plant variety rights in the Republic of Lithuania.

2. The List of Protected Varieties shall be comprised and administered by the manager of the List of Protected Varieties – the institution authorised by the Ministry of Agriculture.

CHAPTER TWO APPLICATION FOR THE GRANT OF A PLANT VARIETY RIGHT

Article 9 Filing of the Application

1. The breeder or the person authorised by him (hereinafter – the applicant) wishing to be afforded protection for the variety bred or discovered and developed by him shall file an application for the grant of a plant variety right with the manager of the List of Protected Varieties.

2. The application shall contain a request for the grant of a plant variety right and other documents the list, form and procedure for filing whereof shall be established by the manager of the List of Protected Varieties.

3. A separate application shall be filed in respect of every variety. The request for the grant of a plant variety right and other related documents shall be filed in the Lithuanian or another language determined by the manager of the List of Protected Varieties. In this case, an official translation into the Lithuanian language shall be submitted.

4. Where several natural or legal persons bred or discovered and developed the variety jointly, one application shall be filed indicating the share of each owner. Foreign natural or legal persons shall file their applications through their authorised representative in the Republic of Lithuania.

5. The filing of an application in a Member of the International Union for the Protection of New Varieties of Plants or in a Member State of the European Union shall not restrict the applicant's right to file an application to the manager of the List of Protected Varieties without waiting for a reply concerning the grant of a plant variety right.

6. The date of filing of the application shall be the date on which the manager of the List of Protected

Varieties received and registered an application for the grant of a plant variety right which complies with the requirements laid down in paragraph 2 of this Article.

Article 10 Right of Priority of an Application

1. The right of priority of an application shall be determined by the date of filing of the application.

2. The applicant shall have the right to file his first application with the competent authority of any Member of the International Union for the Protection of New Varieties of Plants or any Member State of the European Union. If, prior to filing an application with the manager of the List of Protected Varieties in Lithuania, the applicant has already applied for the grant of a plant variety right for the same variety in any Member of the International Union for the Protection of New Varieties of Plants or in any Member State of the European Union, the right of priority of the application may, at the applicant's request, be determined by the date of filing of the first application. In this case the application must be filed with the manager of the List of Protected Varieties within 12 months from the date of filing of the first application. The day of filing of the application shall not be included in the latter period.

3. In order to benefit from the right of priority of the application in the case referred to in paragraph 2 of this Article, the applicant shall, within a period of three months from the date of filing of the subsequent application with the manager of the List of Protected Varieties, submit a copy of the first application certified by the foreign competent authority with which that application was filed. The manager of the List of Protected Varieties may request the applicant to furnish additional documents or other evidence that the variety which is the subject matter of both applications is the same.

4. The breeder shall be allowed a period of two years after the expiration of the period of priority specified in paragraph 2 of this Article or, where the first application is rejected or withdrawn, the period set by the manager of the List of Protected Varieties after such rejection or withdrawal, in which to furnish, in accordance with the procedure laid down in this Law, to the manager of the List of Protected Varieties with which he has filed the subsequent application, any

necessary documents or material required for the purpose of the examination under Articles 11, 12, and 13 of this Law.

5. Events, occurring within the period provided for in paragraph 2 of this Article, such as the filing of another application for protection for the same variety, the publication of the application or the use of the variety that is the subject of the first application, shall not give the manager of the List of Protected Varieties a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

6. Where the breeder lodges an appeal in accordance with the procedure established in Article 36 of this Law against the applicant who was not entitled to a plant variety right and the manager of the List of Protected Varieties takes a decision to refuse protection for the variety on these grounds, the breeder shall have the right to require that the date of the refused application be deemed to be the date of his application. In this case, the breeder must file an application with the manager of the List of Protected Varieties within one month of the date of the decision to refuse the grant of a plant variety right.

CHAPTER THREE EXAMINATION OF THE APPLICATION AND TECHNICAL EXAMINATION OF THE VARIETY

Article 11 Preliminary Examination of the Application

1. The manager of the List of Protected Varieties shall carry out the preliminary examination of the application within one month from the date of filing of the application. The examination shall determine the priority of the application, as well as verify whether the application complies with the requirements set by the manager of the List of Protected Varieties.

2. Having established within one month that the submitted documents do not comply with the set requirements, the manager of the List of Protected Varieties shall notify the applicant thereof in writing. If the applicant corrects the identified deficiencies within the time limit specified by the manager of the List of Protected Varieties, the date of filing of the application shall be the date on which the manager of the List of Protected Varieties received and

registered the application for the grant of a plant variety right. If the deficiencies are not corrected, the application shall be deemed not to have been filed and the applicant shall be notified thereof in writing.

3. If the application complies with the set requirements, the manager of the List of Protected Varieties shall notify the applicant thereof in writing.

Article 12

Substantive Examination of the Application

1. The manager of the List of Protected Varieties shall carry out the substantive examination of the application within the period set by the manager of the List of Protected Varieties, which is computed from the data of filing of the application.

2. The substantive examination shall verify whether the variety indicated in the application for the grant of a plant variety right is new, whether the applicant is entitled to file this application and whether the proposed variety denomination complies with the requirements laid down in Article 18 of this Law.

3. Having established that the variety does not comply with the requirements laid down in paragraph 2 of this Article, the manager of the List of Protected Varieties shall notify the applicant thereof in writing. Should the applicant fail to correct the deficiencies that may have been identified, the manager of the List of Protected Varieties shall take a decision to reject the application and shall notify the applicant thereof in writing.

Article 13

Technical Examination of the Variety

1. Following the preliminary and substantive examinations of the application, technical examination of the variety shall be carried out. It shall be verified through tests whether the variety complies with the conditions of distinctness, uniformity and stability.

2. By decision of the manager of the List of Protected Varieties, the technical examination of the variety shall also be deemed to have been carried out if the distinctness, uniformity and stability of the variety have been assessed and recognised by the competent authority of any other country and the applicant has furnished all the documents supporting this fact as

well as the consent of the relevant authority to use the findings of its technical examination of the variety.

Article 14

Arrangement of the Technical Examination of the Variety and Examination Results

1. Responsibility for the technical examination of a variety shall rest with the manager of the List of Protected Varieties. The manager of the List of Protected Varieties may conduct the technical examination of the variety itself or avail itself of the services of national or foreign competent bodies.

2. The applicant shall pay a fee for the technical examination of the variety to the manager of the List of Protected Varieties or the national or foreign competent body that has conducted this technical examination, in the amounts fixed by them.

3. If the results of the technical examination of the variety comply with the requirements of distinctness, uniformity and stability laid down by this Law and the applicant has paid the fee for the technical examination of the variety in accordance with the procedure laid down in paragraph 2 of this Article, the manager of the List of Protected Varieties shall compile an official description of the variety and take a reference sample of the propagating material of the variety for keeping.

4. Where it is established that the variety does not comply with the requirements referred to in paragraph 3 of this Article and/or the applicant has not paid the fee for the technical examination of the variety, the manager of the List of Protected Varieties shall take a decision to reject the application and shall notify the applicant thereof in writing.

5. The manager of the List of Protected Varieties shall keep the documents relating to the examination of the application and the technical examination of the variety for the entire duration of the plant variety right.

Article 15

Provisional Protection

The breeder's interests shall also be protected during the period from the date of filing of the application for the grant of a plant variety right to the grant of that right. During the period of such provisional protection, the breeder shall be entitled to claim

damages from any person who has infringed his rights specified in Article 26 of this Law.

Article 16 Publication of Information

The manager of the List of Protected Varieties shall publish information relating to:

- 1) received, withdrawn and rejected applications;
- 2) variety denominations proposed in the applications;
- 3) varieties covered by the plant variety right, their breeders and/or authorised representatives of the breeders;
- 4) varieties afforded provisional protection;
- 5) change of the breeders and/or their authorised representatives;
- 6) decisions on the nullification of the plant variety right, cancellation or extension of that right;
- 7) other information specified by the manager of the List of Protected Varieties.

CHAPTER FOUR DESIGNATION AND USE OF A VARIETY DENOMINATION

Article 17 Variety Denomination

1. A variety shall be designated by a denomination which will be its generic designation. The denomination shall be indicated in the application filed by the applicant.
2. Upon the entry of the variety in the List of Protected Varieties, it must in all cases be referred to by the designated denomination. The same variety denomination must be used even after the expiration of the plant variety right.

Article 18 Characteristics of the Denomination

1. The variety denomination must enable the variety to be identified. It may not consist solely of figures

except where this is an established practice for designating varieties. The denomination must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of breeders. It must be different from every denomination which designates, in the Republic of Lithuania or any other country, an existing variety of the same plant species or of a closely related species.

2. Prior rights of third persons shall not be affected. The new variety may not be designated by the denomination of the variety whose protection has expired.

3. The denomination must comply with the norms of the standard Lithuanian language.

Article 19 Change of the Variety Denomination

The variety denomination may be changed by a decision of the manager of the List of Protected Varieties or by a court decision.

CHAPTER FIVE GRANT, DURATION AND TERMINATION OF THE PLANT VARIETY RIGHT

Article 20 Entry into Force of the Plant Variety Right

1. Having established that the plant variety satisfies the conditions for plant variety rights laid down in Article 3 of this Law, the manager of the List of Protected Varieties shall take a decision to enter the variety in the List of Protected Varieties under the proposed denomination and inform the applicant thereof in writing. The decision shall specify the denomination of the variety, its breeder, the variety description and the duration of the plant variety right.

2. Upon the entry of the variety in the List of Protected Varieties, the breeder shall be issued a certificate of the plant variety right. The manager of the List of Protected Varieties shall define the form of the certificate.

3. The plant variety right shall be granted for the variety from the date of its entry in the List of Protected Varieties.

Article 21
Refusal to Grant the Plant Variety Right

Where the variety does not comply with the requirements laid down by this Law, the manager of the List of Protected Varieties shall refuse to enter the variety in the List of Protected Varieties and shall notify the applicant thereof in writing.

Article 22
Duration of the Plant Variety Right

1. The term of the plant variety right shall run for a period of 25 years, or, in the case of potatoes, trees, berry shrubs and vines, for a period of 30 years from the date of their entry in the List of Protected Varieties.

2. The manager of the List of Protected Varieties shall be entitled, at the request of the breeder or his authorised representative, to extend the term of the plant variety right for up to further five years. The duration of the plant variety right shall be extended if the breeder or his authorised representative files with the manager of the List of Protected Varieties a written request for the extension of this term before the expiry thereof.

3. The plant variety right shall lapse before the expiry of the terms laid down in this Article if the breeder surrenders it by sending a written declaration to such effect to the manager of the List of Protected Varieties. The date of the expiration of the plant variety right may be indicated in the breeder's application. Where the date is not indicated, the surrender shall be effective from the day following the date of receipt of the application.

Article 23
Nullity of the Plant Variety Right

1. The plant variety right shall be declared null and void from the day of entry of the variety in the List of Protected Varieties if:

1) it is established that the variety did not comply with the requirements of novelty or distinctness at the time of the grant of the plant variety right;

2) the grant of the plant variety right has been based only upon information and documents furnished by the breeder, while the variety did not

comply with the requirements of uniformity or stability under Articles 6 and 7 of this Law at the time of the grant of the plant variety right;

3) it is established that the plant variety right has been granted to a person who is not entitled to it.

2. Having established the reasons referred to in paragraph 1 of this Article, the manager of the List of Protected Varieties shall take a decision to declare the plant variety right null and void and notify the breeder thereof in writing.

Article 24
Cancellation of the Plant Variety Right

1. The plant variety right shall be cancelled if:

1) the breeder or his authorised representative files a written request with the manager of the List of Protected Varieties to delete the variety from the List of Protected Varieties;

2) the manager of the List of Protected Varieties establishes that the variety does not comply with the requirements of uniformity and stability under Articles 6 and 7 of this Law;

3) the breeder has not provided the manager of the List of Protected Varieties at the latter's request with the information, documents or other material necessary for verifying the maintenance of the variety;

4) the manager of the List of Protected Varieties establishes that the variety denomination no longer complies with the requirements laid down by this Law, and the breeder does not propose another suitable denomination;

5) the breeder fails to pay the state fee for the plant variety right.

2. The manager of the List of Protected Varieties must notify the breeder in writing that his plant variety right may be cancelled for reasons referred to in paragraph 1 of this Article and set the time limit for eliminating these reasons.

3. If the breeder fails to eliminate the reasons for cancelling the plant variety right within the time limit specified in paragraph 2 of this Article, the manager of the List of Protected Varieties shall take a decision

to cancel the plant variety right and notify the breeder thereof in writing.

4. The breeder shall lose his rights referred to in Article 26 of this Law from the date of cancellation of the plant variety right.

Article 25 State Fees

State fees shall be established and paid for the services provided by the manager of the List of Protected Varieties in accordance with the procedure laid down by the Law on Fees and Charges and by the Government.

CHAPTER SIX RIGHTS AND OBLIGATIONS OF THE BREEDER

Article 26 Rights of the Breeder

1. Subject to the provisions of Articles 28 and 29 of this Law, the breeder shall be entitled to authorise the performance of the following acts in respect of the propagating material of the protected variety:

- 1) production and reproduction (multiplication);
- 2) conditioning for the purpose of propagation;
- 3) offering for sale;
- 4) selling or other marketing;
- 5) exporting;
- 6) importing;

7) stocking for any of the purposes mentioned in subparagraphs 1-6 of this paragraph.

2. A person who has not concluded a licensing agreement or has not obtained the written authorisation of the breeder for the use of the propagating material of the variety covered by the plant variety right shall be prohibited from performing any acts referred to in paragraph 1 of this Article in respect of the propagating material of the protected variety.

3. Persons using the variety under a licensing agreement must notify the breeder of the propagating material reproduced, sold or otherwise marketed, unless the licensing agreement provides otherwise.

4. The use of harvested material obtained through the use of the propagating material of the protected variety without a licensing agreement shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to this propagating material.

Article 27 Application of Breeder's Rights to Essentially Derived Varieties and Certain Other Varieties

1. The provisions of Article 26 of this Law shall also apply in relation to:

- 1) varieties which are essentially derived from the protected variety, where this protected variety is not itself an essentially derived variety;
- 2) varieties which are not clearly distinguishable in accordance with the provisions of paragraph 1 of Article 5 of this Law from the protected variety;

3) varieties whose production requires the repeated use of the protected variety.

2. A variety shall be deemed to be essentially derived from another variety, hereinafter referred to as the initial variety, when:

1) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

2) it is clearly distinguishable from the initial variety but it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except for the differences which result from the act of derivation of this variety.

3. Essentially derived varieties may be obtained for example by the selection of a natural or induced

mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 28

Exceptions to the Breeder's Right

1. A variety may be used without the breeder's authorisation:

- 1) privately and for non-commercial purposes;
- 2) for scientific purposes;

3) for the purpose of breeding new varieties and carrying out acts referred to in Article 26 of this Law in respect of these varieties, except for the cases where the provisions of Article 27 of this Law apply.

2. Farmers and other land users may use the protected variety without the breeder's authorisation when:

1) they use the propagating material from the harvest of the protected variety obtained on their own holdings or on land plots used by them for their own agricultural purposes;

2) they pay remuneration to the breeder. The amount of such remuneration and the payment procedure shall be established by mutual agreement between the breeder or his authorised representative and the farmer or another land user. In the absence of such an agreement, the remuneration shall amount to at least 50 percent of the average licence fee charged in Lithuania for the propagating material of the lowest category of the same plant species, subject to certification.

3. The provisions of paragraph 2 of this Article shall apply to farmers and other land users only in the cases when they:

1) are growing on their own holdings or land plots used by them the following plant species: oats, barley, rye, spelt wheat and durum wheat, triticale, rape, linseed (with the exclusion of flax), peas, beans, vetch, lupine, lucerne, potatoes;

2) use for further propagating purposes on their own holdings the product of the harvest which they have obtained by planting, on their own holdings or

land plots used by them, propagating material of a variety of the species referred to in subparagraph 1 of this paragraph (other than a hybrid or synthetic variety) protected in Lithuania.

4. Farmers and other land users shall not be required to pay the remuneration specified in subparagraph 2 of paragraph 2 of this Article if their own holding or land plot used by them is not larger than the area defined by the Minister of Agriculture.

5. Farmers and other land users who are propagating the certified propagating material of protected varieties must, on the request of breeders, provide them with information relating to the use of the propagating material of the protected variety.

Article 29

Exhaustion of the Breeder's Right

The breeder's right shall not extend to acts concerning any propagating or harvested material of the protected variety, or of a variety referred to in Article 27, which has been sold or otherwise marketed by the breeder or with his consent in the territory of the country which is a member of the International Union for the Protection of New Varieties of Plants, or any material derived from the said material, unless such acts:

1) involve further production of the propagating material of the variety in question;

2) involve an export of the propagating or harvested material of the variety into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the harvested material is exported for final consumption purposes.

Article 30

Assignment of the Breeder's Rights

1. Natural and legal persons who have acquired the property right to the variety must submit to the manager of the List of Protected Varieties documents supporting this fact.

2. The manager of the List of Protected Varieties shall examine the received documents and register the new breeder within one month from the receipt of the application.

Article 31 Obligations of the Breeder

At the request of the manager of the List of Protected Varieties, the breeder must provide samples of the propagating material of the protected variety for the purpose of renewing the reference sample or verifying the identity and other characteristics of the propagated variety.

CHAPTER SEVEN LICENSING AGREEMENTS

Article 32 Conclusion of Licensing Agreements

1. The breeder of the protected variety (licensor) may authorise another person (licensee) to perform the acts referred to in Article 26 of this Law. A licensing agreement shall be concluded to this effect.

2. The licensee may not transfer the rights to perform the acts referred to in Article 26 to the third person, unless the licensing agreement provides otherwise.

3. Upon the conclusion of the licensing agreement, the breeder of the protected variety shall submit it to the manager of the List of Protected Varieties for registration.

Article 33 Types of Licensing Agreements

1. The breeder shall have the right to conclude:

- 1) an exclusive licensing agreement;
- 2) a non-exclusive licensing agreement.

2. The conclusion of an exclusive licensing agreement shall restrict the breeder's right to use the variety by rights transferred to the licensee.

3. The conclusion of a non-exclusive licensing agreement shall not restrict the breeder's rights established by this Law.

Article 34 Requirements of Licensing Agreements

A licensing agreement shall be concluded in writing. A licensing agreement shall set out the following:

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- 1) the requisites of the parties to the agreement;
- 2) the denomination of the plant species and variety;
- 3) purposes, ways or methods of exploitation of the variety;
- 4) the territory of exploitation of the variety;
- 5) the period of validity of the licensing agreement;
- 6) rights, obligations and liability of the parties to the agreement;
- 7) the amount of the licence fee, terms and procedure for payment thereof;
- 8) the procedure for settling disputes;
- 9) other conditions in conformity with laws and other legal acts.

Article 35 Compulsory Licensing Agreement

1. A compulsory licensing agreement may be concluded if there is a lack in the country of the propagating material of the protected variety of significance for the national economy or if the breeder has not propagated the variety of significance for the national economy for a period of three years after its entry in the List of Protected Varieties. A natural or legal person who wishes to conclude a compulsory licensing agreement may apply to the manager of the List of Protected Varieties.

2. A compulsory licensing agreement shall be concluded and terminated by the decision of the manager of the List of Protected Varieties.

3. The licence fee payable for the exploitation of the variety under a compulsory licensing agreement shall be fixed by the decision of the manager of the List of Protected Varieties and shall be equal to the average licence fee charged for the propagating material of the same plant species in Lithuania.

4. The breeder must sell to the licensee the initial propagating material required for the reproduction (multiplication) of the variety for the price that is paid on the average for the propagating material of other varieties of the same plant species.

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5. A compulsory licensing agreement may be concluded for a maximum period of four years. The breeder may request the manager of the List of Protected Varieties to shorten the period of the compulsory licensing agreement or to terminate the agreement, if the reasons for concluding the licensing agreement cease to exist or the licensee violates the conditions laid down in the licensing agreement.

6. The conclusion of a compulsory licensing agreement shall not restrict the breeder's rights established by this Law.

7. Disputes arising in relation to the conclusion and termination of a compulsory licensing agreement shall be settled by court.

CHAPTER EIGHT DECISION MAKING, APPEALS AGAINST DECISIONS AND EXAMINATION OF APPEALS

Article 36 Appeals against the Application

1. After the publication of the registration of the application every interested person shall have access the application documents, the results of the technical examination of the variety and the variety description.

2. Prior to a decision to grant the plant variety right or to refuse granting that right, the interested persons may lodge an appeal with the manager of the List of Protected Varieties against the ineligible applicant, as well as on the contention that the variety does not comply with the conditions for the grant of plant variety rights referred to in Article 3 of this Law. Appeals against the variety denomination may be lodged within three months from the date of the publication of the application. The appeal shall be accompanied by the documents or other material justifying the appeal. The person who has lodged the appeal shall have the right to withdraw it at any time.

3. The manager of the List of Protected Varieties must notify the applicant in writing of the received appeal or the withdrawal thereof.

Article 37 Board of Appeal

1. For the purposes of deciding on appeals by applicants from the decisions of the manager of the List of Protected Varieties, also on appeals against unsatisfactory examinations of applications and technical examinations of varieties, as well as on other issues relating to plant variety rights, the Minister of Agriculture shall set up the Board of Appeal composed of five members and appoint the chairman of the Board. The Board of Appeal shall be appointed for a period of three years and comprised of representatives from the Ministry of Agriculture, agricultural, farmers' non-profit organisations, as well as scientific institutions.

2. The activities of the Board of Appeal shall be governed by the regulations approved by the Minister of Agriculture.

3. Decisions of the Board of Appeal shall be binding on the manager of the List of Protected Varieties.

Article 38 Procedure of Making Decisions, Appealing against Decisions and Examining Appeals

1. The time limits and procedure for appealing against the decisions of the manager of the List of Protected Varieties, as well as the time limits for correcting the identified deficiencies in the applications, taking decisions and notifying of such decisions, filing the received and withdrawn appeals shall be specified in the regulations of the List of Protected Varieties.

2. Decisions of the manager of the List of Protected Varieties shall be appealed against to the Board of Appeal, whereas decisions of the Board of Appeal shall be appealed against in court.

CHAPTER NINE INTERNATIONAL CO-OPERATION

Article 39 International Treaties

Where international treaties to which the Republic of Lithuania is a party establish other requirements

for plant variety rights than those laid down in this Law, the provisions of the international treaties of the Republic of Lithuania shall apply.

Article 40
International Co-operation

The manager of the List of Protected Varieties shall co-operate with institutions of other states, exchange information and documents relating to plant variety rights, as well as perform other acts for the fulfilment of international obligations.

CHAPTER TEN
ENFORCEMENT OF THE BREEDER'S RIGHTS AND
LIABILITY FOR VIOLATIONS OF THE LAW ON THE
PROTECTION OF PLANT VARIETIES

Article 41
Remedies for Infringement

1. Breeders or their authorised representatives, with the aim of defending their rights, as well as licensees, with the aim of defending the rights assigned to them, shall be entitled in accordance with the procedure established by law to apply to court and request to:

- 1) recognise the rights;
- 2) issue an injunction aimed at prohibiting the continuation of unlawful acts;
- 3) prohibit the performance of acts likely to cause an actual infringement of the rights or to inflict damage;
- 4) compensate for material damage, including lost profits and other expenses incurred;
- 5) apply other remedies provided for by this Law and other laws.

2. In order to ensure the enforcement of an injunction prohibiting the continuation of unlawful acts, as well as a prohibition to perform acts likely to cause an actual infringement of the rights or to inflict damage, the court may, at the request of persons referred to in paragraph 1 of this Article, apply provisional protection measures.

3. Where the person, against whom an injunction aimed at prohibiting the continuation of unlawful acts

is issued or who is liable to be subject to the corrective measures provided for in Article 41⁽⁴⁾, acted without fault as regards the infringement of the rights established by this Law, the court may, at the request of that person, order pecuniary compensation to be paid to the injured party, if execution of the measures provided for in paragraph 1 of this Article would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 41⁽¹⁾
Right of Information

When adjudicating a dispute concerning an infringement of the rights established by this Law and in response to a justified request of the claimant, the court may, in the course of proceedings, order persons to provide immediate information on the infringement of the claimant's rights provided for in this Law, as well as the origin and distribution networks of protected plant varieties, also the quantities and prices of the used propagating material of those varieties.

Article 41⁽²⁾
Evidence

1. The court may, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, order in accordance with the procedure laid down in the Code of Civil Procedure that such evidence be presented by the opposing party, subject to the protection of confidential information. A reasonable sample of the propagating material of the protected plant variety shall be considered by the court to constitute reasonable evidence of an infringement of the rights established by this Law.

2. Under the conditions specified in paragraph 1 of this Article, in the case of an infringement of the rights established by this Law committed for commercial purposes, the court may, in accordance with the procedure laid down in the Code of Civil Procedure, order the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information. In the event of failure to communicate such evidence without valid reasons within the time limit set by the court or refusal of

access to such evidence, the court shall be entitled to take a decision on the basis of the evidence submitted to it.

Article 41⁽³⁾
Provisional Measures and Measures for
Preserving Evidence

1. The application of provisional measures and measures for preserving evidence shall be governed by the Code of Civil Procedure and this Law.

2. Where there are sufficient grounds to suspect that an infringement of the rights established by this Law has been committed, the court may, in accordance with the procedure laid down in the Code of Civil Procedure, apply provisional measures necessary to prevent any imminent unlawful acts, to forbid the continuation of the unlawful acts and to enforce the final decision of the court, that is to:

1) forbid persons to commit any imminent infringement of the rights established by this Law;

2) order persons to discontinue, on a provisional basis, any infringement of the rights established by this Law;

3) seize, forbid the entry into or remove from the channels of commerce the propagating material of the protected variety suspected of possible or actual infringement of the rights established by this Law;

4) seize the property of the persons allegedly infringing the rights established by this Law, which is possessed by the said persons or third persons, including bank accounts and accounts at other credit institutions; as well as require to communicate banking, financial or commercial documents or to grant access to these documents, if an infringement has been committed for commercial purposes;

5) apply other measures provided for by the Code of Civil Procedure.

3. If the applied provisional measures referred to in subparagraphs 1 and 2 of paragraph 2 of this Article are infringed and such infringement continues, the court may order the alleged infringers to ensure adequate compensation for damages to the person who requested the application of provisional measures.

4. The court shall be entitled to require the person, who requests the application of provisional measures, to provide any reasonably available evidence in order to satisfy itself with a sufficient degree of certainty that he or the person, in respect of whose interests the application of provisional measures is requested, is the holder or user of the rights established by this Law and that the applicant's rights are being infringed, or that such infringement is imminent.

5. The court may, on application by a person who has presented reasonably available evidence sufficient to support its claims that his rights established by this Law have been infringed or are about to be infringed, order provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information, that is:

1) the detailed description of the propagating material of the protected variety infringing the rights established by this Law, with or without the detention thereof;

2) the arrest and seizure of the propagating material of the protected variety infringing the rights established by this Law and the documents relating thereto;

3) the application of other prompt and effective provisional measures provided for by the Code of Civil Procedure.

6. Provisional measures and measures for preserving evidence may be applied without the defendant having been informed and heard, in particular where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. Where provisional measures are applied without the defendant having been informed and heard, the defendant must be notified thereof without delay after the execution of those measures at the latest. At the request of the parties, including the right to be heard, provisional measures and measures for preserving evidence may be reviewed with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

7. Where the applied provisional measures or measures to preserve evidence are revoked by the

court, or where they lapse due to any act or omission by the person who has applied for those measures, or where a court decision becomes effective stating that there has been no infringement or threat of infringement of the rights established by this Law, or the person, who has requested the application of provisional measures or measures for preserving evidence, does not institute, within the period determined by the court, proceedings, the defendant shall be entitled to claim compensation for any injury caused by those measures.

Article 41⁽⁴⁾ Corrective Measures

1. The persons referred to in paragraph 1 of Article 41 of this Law shall be entitled to apply to court and request to recall, to remove from the channels of commerce the propagating material of protected plant varieties in such a way that they would not incur any injury and the protection of their rights would be safeguarded, or to destroy the propagating material of plant varieties which the court found to be infringing the rights established by this Law.

2. The measures referred to in paragraph 1 of this Article shall be applied regardless of other claims by a person, requesting the application of these measures, for compensation for any injury suffered by him as a result of the infringement of his rights. Moreover, these measures shall be carried out without compensation, at the expense of the infringer, taking into account the proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third persons.

Article 41⁽⁵⁾ Compensation for Material Damage

1. The procedure for compensation for material damage shall be regulated by the Civil Code and this Law.

2. When assessing the amount of the damage (losses) actually incurred as a result of the infringement of the rights established by this Law, the court shall take into account the substance of the infringement, the amount of the inflicted damage, lost profits, expenses incurred and other important circumstances. The profits made by the infringer may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, be recognised as losses. The propagating

material of the protected variety infringing the rights established by this Law may be handed over to the holders of those rights, at their request.

3. The amount of lost profits of persons referred to in paragraph 1 of Article 41 of this Law shall be assessed taking into account the income that would have been received through authorised use of the propagating material of protected plant varieties.

4. Instead of claiming compensation for the damage (losses) actually incurred as a result of the infringement of the rights established by this Law, persons referred to in paragraph 1 of Article 41 of this Law may claim remuneration or fees which would have been due if the infringer had requested authorisation to use the propagating material of the protected variety (i.e. concluded a licensing agreement or obtained authorisation), and where the infringer acted intentionally or with negligence – up to double remuneration or fees.

5. Where the infringer did not knowingly, or with reasonable grounds to know, engage in activities infringing the rights established by this Law (i.e. acted without fault), the court may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, order the recovery of profits. The profits of the infringer shall include all that the infringer has saved and/or received by infringing the rights established by this Law. The profits of the infringer shall be determined and recovered regardless of the fact whether or not the holder of the rights would have gained similar profits himself. When determining the profits of the infringer, the holder of the rights must present only the evidence which would support the gross earnings received by the infringer; the amount of the net profits (profits after the deduction of expenses) must be proved by the infringer himself.

Article 41⁽⁶⁾ Publication of Judicial Decisions

The court taking a decision on the infringement of the rights established by this Law may, at the request of persons referred to in paragraph 1 of Article 41 of this Law, order the infringer to disseminate, at his own expense, the information concerning the decision, including publishing the decision in full or in part in the mass media, or in any other way. The court decision may be published or the information concerning the court decision disseminated after the

court decision becomes effective, unless otherwise established by the court. The court decision shall define the manner and extent of its publication. Persons referred to in paragraph 1 of Article 41 of this Law may request that the infringer makes to the account indicated by the court an advance payment of the amount necessary to disseminate the information concerning the court decision or to publish the court decision itself.

Article 41⁽⁷⁾
Establishment of Non-infringement of
Plant Variety Rights

The person concerned shall be entitled to bring an action to court requesting to establish that his activities do not infringe plant variety rights.

Where the persons concerned proves that his activities do not infringe the provisions of plant variety rights, the court shall take a decision establishing non-infringement of plant variety rights.

Breeders or their authorised representatives must inform all licensees about the proceedings initiated for establishing non-infringement of plant variety rights. Unless the licensing agreement provides otherwise, licensees shall be entitled to participate in these proceedings.

Article 41⁽⁸⁾
Liability for Violations of this Law

Natural and legal persons or branches set up in the Republic of Lithuania by enterprises established in Member States of the European Union and other countries of the European Economic Area shall be held liable for violating the provisions of this Law in accordance with the procedure laid down by laws of the Republic of Lithuania.

Article 41⁽⁹⁾
Application of Border Measures

The propagating material of the protected plant varieties the import whereof from third countries into the Republic of Lithuania or the export whereof from the Republic of Lithuania to third countries is considered an infringement of the rights of persons referred to in paragraph 1 of Article 41 shall be subject to border measures defined by legal acts of the European Union and the Republic of Lithuania.

CHAPTER ELEVEN
FINAL PROVISIONS

Article 42
Entry into Force of the Law

The Law shall enter into force on 1 April 2002.

Article 43
Repeal of Laws

The following laws shall be repealed as of 1 April 2002:

1) Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation;

2) Law Amending Articles 3, 6, 17, 18, 19, 20, 24, 25 and 27 of the Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation;

3) Law Amending Article 23 of the Republic of Lithuania Law on the Protection of Plant Varieties and Seed Cultivation.

I promulgate this Law passed by the Seimas of the Republic of Lithuania.

PRESIDENT OF THE REPUBLIC
VALDAS ADAMKUS

Annex to the Republic of Lithuania Law on the Protection of Plant Varieties

EU LEGAL ACTS IMPLEMENTED BY THE LAW ON THE
PROTECTION OF PLANT VARIETIES

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 Special edition, Chapter 17, Volume 02, p. 32).