

**PARLIAMENT OF THE REPUBLIC OF MOLDOVA**

**LAW**  
**on the protection of geographical indications,**  
**appellations of origin and traditional specialties guaranteed**

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## **CHAPTER. I. GENERAL PROVISIONS**

### **Article 1. Field of regulation and legal framework**

(1) This Law shall govern the legal relations arising from the registration, legal protection and use of appellations of origin, geographical indications and traditional specialties guaranteed.

(2) The legal relations arising from registration, legal protection and use of appellations of origin, geographical indications and traditional specialties guaranteed shall be regulated by the Constitution of the Republic of Moldova, the Civil Code of the Republic of Moldova, Code on Science and Innovation of the Republic of Moldova, the Customs Code of the Republic of Moldova, international treaties to which the Republic of Moldova is a party, the present Law and other legal and normative acts.

(3) If the international treaties in the given field, to which the Republic of Moldova is one of the parties, establish rules other than those contained in this Law, the rules of the international treaties shall apply.

### **Article 2. Basic Concepts**

For the purposes of this Law, the following basic concepts shall apply:

**‘geographical designation’** means a geographical name which is used to describe an existing geographical place, region or country;

**‘geographical indication’** means the name of a region or a locality, a specific place or, in exceptional cases, a country, used to describe a product originating in that region, locality, specific place or country, which possesses a specific quality, reputation or other characteristics attributable to that geographical origin, and at least one of the production stages of which is carried out in the defined geographical area;

**‘appellation of origin’** means the geographical name of a region or locality, a specific place or, in exceptional cases, a country, used to designate a product originating in that region, locality, specific place or country, and the quality or characteristics of which are essentially or exclusively due to the particular geographical environment comprising inherent natural and human factors thereof, and the production stages of which are carried out all in the defined geographical area;

**“production stage”** – production, processing or preparation;

**“surrounding area”** – area in the immediate vicinity of the defined geographical area;

**‘specific character’** means a characteristic or a set of characteristics which clearly distinguishes an agricultural product or a foodstuff from the other similar products or foodstuffs of the same category;

**‘traditional’** means proven usage on the domestic market for a period that allows transmission between generations; this period is to be at least 30 years;

**‘traditional speciality guaranteed’** means a traditional agricultural product or foodstuff recognized for its specific character through its registration under this Law;

**“official control”** means any kind of control realized by a competent authority for verification of products conformity to the specification for products with a protected appellation of origin, with a protected geographical indication and for traditional specialties guaranteed.;

**‘Lisbon Agreement’** means the Lisbon Agreement of 31 October 1958 for the protection of the appellations of origin and their international registration;

**‘international registration’** means the international registration of an appellation of origin according to the Lisbon Agreement;

**‘international application’** means the application for international registration;

**‘International Bureau’** means the International Bureau of the World Intellectual Property Organization (WIPO);

**‘International Register’** means the official collection of data concerning international registrations, kept by the International Bureau, record of which is provided for by the Lisbon Agreement, irrespective of the format in which these data are stored

### **Article 3. National Office**

(1) The State Agency on Intellectual Property (hereinafter – AGEPI) shall be the National Office in the field of intellectual property protection and the only authority providing, in accordance with this Law, legal protection for geographical indications, appellations of origin and traditional specialties guaranteed on the territory of the Republic of Moldova.

(2) AGEPI shall:

a) elaborate draft legislative and other normative acts in the field of geographical indications, appellations of origin and traditional specialties guaranteed, instructions and other materials required for applying this Law;

b) receive and examine applications for registration of geographical indications, appellations of origin, and traditional specialties guaranteed, register protected geographical indications, protected appellations of origin, and traditional specialties guaranteed and issue - certificates for the right to use protected geographical indications and appellations of origin and publish official data in the Official Bulletin of Intellectual Property(hereinafter – BOPI);

c) keep the National Registers of Applications for Registration and the National Registers of the protected geographical indications, protected appellations of origin, and traditional specialties guaranteed;

d) ensure the acquisition and storage of the national collections of the protected geographical indications, protected appellations of origin, and traditional specialties guaranteed;

e) serve as the competent authority of the Republic of Moldova in the frame of the Special Union of the Lisbon Agreement member-states;

f) perform other functions, as provided for by the law

(3) AGEPI shall represent the Republic of Moldova in the World Intellectual Property Organization, and in other international and intergovernmental organizations for the protection of intellectual property, and shall maintain cooperative relations with them in this area.

*[Art. 3(2), letter b) modified by the Law no.101 of 26.05.16]*

## **CHAPTER II. LEGAL PROTECTION, GRANTED RIGHTS AND EXEMPTIONS FROM THE PROTECTION**

### **Article 4. Legal protection: general provisions**

The legal protection of the geographical indications, appellations of origin, and traditional specialties guaranteed on the territory of the Republic of Moldova shall be provided based on their registration with AGEPI according to the procedures laid down in this Law or on the bases of international treaties, including bilateral agreements to which the Republic of Moldova is party.

### **Article 5. Protection of appellation of origin and geographical indication**

(1) A geographical name of a region or locality, a specific place or, in exceptional cases, a country shall be entitled to the protection as an appellation of origin where it is used to designate a product:

- a) originating in that region, locality, specific place or country, and
- b) the quality or characteristics of which are essentially or exclusively due to a particular geographical area with its inherent natural and human factors, and
- c) the production stages of which are carried out in the defined geographical area.

(2) A geographical name of a region or locality, a specific place or, in exceptional cases, a country shall be entitled to protection as a geographical indication where it is used to describe a product:

- a) originating in that region, locality, specific place or country; and
- b) which possesses a specific quality, reputation or other characteristics attributable to that geographical origin, and
- c) at least one of the production stages of which is carried out in the defined geographical area.

(3) Traditional geographical or non-geographical names designating a product which fulfil the conditions referred to in paragraph (1) or (2) shall also be considered as appellations of origin or geographical indications.

(4) Notwithstanding paragraph (1), certain geographical designations shall be treated as appellations of origin where the raw materials for the products concerned come from a geographical area larger than, or different from, the processing area, provided that:

- a) the production area of the raw materials is defined; and
- b) special conditions exist for the production of the raw materials, and
- c) there is an inspection regime to ensure that the conditions referred to in letter b) are adhered to.

The designations in question must have been recognized as appellations of origin in the country of origin before May 1, 2004.

5) In the sense of paragraph (4) shall be considered as raw material only live animals, meat and milk.

6) By way of derogation from paragraphs (1) and (2) and provided that this is stipulated in the product specification and is conducted under the supervision of the competent authorities designated in accordance with Article 33 paragraph (1), grapes intended for the production of

wines with protected appellation of origin or with protected geographical indication may be processed, turned into wine (made into wine) in the surrounding area.

7) By way of derogation from paragraph (2) and provided that this is stipulated in the product specification and is conducted under the supervision of the competent authorities designated in accordance with Article 33 paragraph (1), grapes intended for the production of wines with protected geographical indication may be processed, turned into wine (made into wine) beyond the surrounding area by December 31, 2020.

8) By way of derogation from paragraph (1) and provided that this is stipulated in the product specification and is conducted under the supervision of the competent authorities designated in accordance with Article 33 paragraph (1), a product may be made into sparkling wine or semi-sparkling wine with a protected appellation of origin beyond the surrounding area if this practice was in use prior to October 25, 2008.

## **Article 6. Protection of traditional specialty guaranteed**

(1) An agricultural product or a foodstuff shall be entitled to the protection as a traditional specialty guaranteed where such product or foodstuff:

- a) is produced using traditional raw materials, or
- b) is characterized by a traditional composition, or
- c) is characterized by a mode of production and/or processing reflecting a traditional type of production and/or processing.

(2) The characteristic or set of characteristics which determine the specific character of a product must relate to the product's intrinsic features such as its physical, chemical, microbiological or organoleptic features, or to the product's production method or to specific conditions that pertain during its production. The appearance of an agricultural product or a foodstuff shall not be regarded as a characteristic determining its specificity.

(3) The specific character of a product may not be restricted to a qualitative or a quantitative composition, or to a mode of production laid down in the legislation, in standards prescribed by standardization bodies or set arbitrarily. However, this provision shall not apply where the said legislation or standard has been established in order to define the specific character of a product.

(4) In order to be registered, the name of a traditional specialty guaranteed shall:

- a) have been traditionally used to refer to the specific product; or
- b) identify the traditional character or specific character of the product.

(5) If the name of a traditional specialty guaranteed for which registration is sought is also used in a different region of the Republic of Moldova or in a different country, in order to distinguish between comparable products and products bearing an identical or similar name, the name of the traditional specialty guaranteed shall be accompanied by the designation "Made According to Traditions", directly followed by the name of the region or country corresponding to the name for which registration is sought.

(6) The name of a traditional specialty guaranteed may contain a geographic term, without prejudice to the right to a protected appellation of origin or to a protected geographical indication, the right to a trademark, or any other intellectual property rights.

(7) The name of a plant variety or animal breed may form part of the name of a traditional specialty guaranteed, provided that it is not misleading the consumer as regards the nature of the product.

## **Article 7. The grounds for refusal to register**

(1) Exempted from protection and not eligible for the registration shall be:

a) as appellations of origin – the designations which do not comply with the requirements of Article 5 Paragraph (1) or, if applicable, (3) or (4);

b) as geographical indications – the indications which do not comply with the requirements of Article 5 Paragraph (2) or, if applicable, (3);

c) as traditional specialties guaranteed – the agricultural products or foodstuffs which do not comply with the requirements of Article 6;

d) as appellations of origin, geographical indications and traditional specialties guaranteed – the names contrary to the public order or morality;

e) as appellations of origin and geographical indications – the names that have become generic.

(2) Furthermore, a name may not be registered as an appellation of origin or a geographical indication where:

a) it is identical with or similar to a prior trademark registered in respect of products identical or similar to those for which the registration of an appellation of origin or a geographical indication is requested where, in the light of a trademark's reputation and fame and its term of use, the registration is liable to mislead the consumer as to the true identity of the product;

b) it conflicts with the wholly homonymous name of a plant variety or an animal breed for comparable products if it is shown before the expiry of the opposition procedure referred to in art. 22, that the variety or breed is in such commercial production outside the defined area prior to the date of application for appellation of origin or geographical indication that consumers would be liable to confuse the products bearing the registered name and the variety or the breed.

(3) The registration of a name wholly or partially homonymous with that of a name already protected under this Law may be rejected where, with due regard for local and traditional usage and the actual risk of confusion, it might mislead the consumer into believing that products come from another territory, even if the name is accurate as far as the actual territory, region or place of origin of the agricultural products or foodstuffs in question is concerned.

(4) Registration as a traditional specialty guaranteed shall not be permitted in the case of an agricultural product or foodstuff the specific character of which is due to its provenance or geographic origin. However, the use of geographic terms shall be authorized in the name without prejudice to other prior intellectual property rights, in particular those referring to trademarks, protected appellations of origin and protected geographical indications.

(5) A name expressing specific character of an agricultural product or a foodstuff, as referred to in Article 6 Paragraph (4) letter b), may not be registered if:

a) it refers only to claims of a general nature used for a set of agricultural products or foodstuffs, or to those provided for by particular legislation acts in force;

b) it is misleading, such as a name that refers to an obvious characteristic of a product or one that does not correspond to the specification and is therefore likely to mislead the consumer as to the product's characteristics.

(6) For the purposes of this Law, a 'name that has become generic' shall mean the name of an agricultural product or a foodstuff which, although even if it relates to the place or the region where this product or foodstuff was originally produced or marketed, or constitutes a derivative of such indication, and has lost its original meaning and become a common name of an agricultural product or a foodstuff in the Republic of Moldova, or indicates its type, quality, category or any other feature or characteristic.

(7) To establish, whether or not a name has become generic, account shall be taken of all factors, in particular:

a) the existing situation in the area from which the name originates and in areas of consumption;

b) provisions of the relevant national legislation or, if applicable, the legislation of the country of origin of the name in question.

### **Article 8. Product Specification**

(1) To be eligible for a protected appellation of origin or a protected geographical indication or for recognition as a traditional specialty guaranteed, a product shall comply with a product specification approved by a decision of the competent authority designated in accordance with Article 34 paragraph (1);

(2) The product specification for an appellation of origin or a geographical indication shall include at least:

a) the name of the product comprising the appellation of origin or the geographical indication;

b) a description of the product, including the raw materials, if appropriate, and principal physical, chemical, microbiological and/or organoleptic characteristics of the product;

c) the definition of the geographical area and, where appropriate, details indicating compliance with the requirements of Article 5 Paragraph (4);

d) evidence that the product originates in the defined geographical area referred to in Article 5 Paragraph (1) or (2), as the case may be;

e) a description of the method of obtaining the product and, if appropriate, the authentic and unvarying local methods as well as information concerning packaging, if the applicant so determines and gives reasons why the packaging must take place in the defined geographical area to safeguard the quality, or ensure the origin, or ensure the control;

f) details justifying the following:

- the link between the quality or characteristics of the product and the geographical environment (area) referred to in Article 5 Paragraph (1) letter b), or, as the case may be,

- the link between a specific quality, the reputation or other characteristic of the product and the geographical origin referred to in Article 5 Paragraph (2) Letter b);

g) the name and address of the authorities or bodies verifying compliance with the provisions of the specification and their specific tasks;

h) any specific labelling rule for the product in question;

i) any other statutory requirements laid down by the applicable legislation.

(3) The product specification for a traditional specialty guaranteed shall include the following:

a) the name proposed for registration, in the appropriate language versions;

b) a description of the product including its main physical, chemical, microbiological or organoleptic characteristics, showing the product's specific character;

c) a description of the production method that the producers must follow, including where appropriate the nature and characteristics of the raw materials or ingredients used and the method by which the product is prepared; and;

d) the key elements establishing the product's traditional character;

e) the key elements that prove the product's traditional character as laid down in Article 6 Paragraph (1);

f) the minimum requirements and procedures to check the product's specific character.

### **Article 9. Entitlement to the protection**

(1) An appellation of origin or a geographical indication, or a traditional specialty guaranteed shall be entitled for registration where:

a) it complies with the requirements of Articles 5 or 6, if applicable, as well as Article 8 and is not exempted from protection under Article 7;

b) the application for registration is in compliance with the requirements laid down in this Law.

(2) Only a group shall be entitled to apply for registration of an appellation of origin, a geographical indication, or a traditional specialty guaranteed. For the purposes of this Law, 'group' shall mean any association, irrespective of its legal form mainly composed of producers or processors working with the products specified in the application. The specific rules applied to the group shall be laid down in the Regulation on the procedure for filing, examination and registration of geographical indications, appellations of origin, and traditional specialties guaranteed, hereinafter referred to as *Regulation*, approved by the Government.

Other interested parties may join the group that file an application for registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed.

A natural or legal person, or a competent authority designated in accordance with Article 34 paragraph (1) may be treated as a group submitting an application for registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed under the conditions set out in the Regulation.

(3) A group may file an application for registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed only for the products which it produces or obtains, or, in the case of a competent authority designated in accordance with Article 34 paragraph (1) – only for the products related to the fields covered by that authority.

(4) The right to use a protected appellation of origin shall belong commonly to any person producing, processing and preparing in the respective geographical area the respective products in compliance with the corresponding specification.

(5) The right to use a protected geographical indication shall belong commonly to any person producing and/or processing and/or preparing in the respective geographical area the respective products in compliance with the corresponding specification.

(6) Any natural person or legal entity, irrespective of the type of ownership or legal form in the corresponding defined geographical area that produces products in compliance with the product specification for a protected appellation of origin or for a protected geographical indication, acquires the right to use it under the conditions of this Law and the Regulation.

(7) A name registered as a traditional specialty guaranteed may be used by any natural or legal person marketing a product that complies with the corresponding product specification.

### **Article 10. The term of protection**

(1) The term of protection granted to an appellation of origin, or a geographical indication, or a traditional specialty guaranteed shall start on the day of filing the application for registration and shall be unlimited in time.

(2) The right to use a protected appellation of origin or a protected geographical indication shall be acquired and maintained only for the period in which the conditions laid down in the specification for that product are satisfied.

(5) The competent authorities designated in accordance with Article 34 paragraph (1) shall, within 5 working days, communicate to the AGEPI the data on the natural or legal persons having acquired the right to use a protected appellation of origin or a protected geographical indication, and on any amendment to that right for entry of these data in the National Register of protected appellations of origin or in the National Register of protected geographical indications, as appropriate, and for publication thereof in BOPI.

### **Article 11. Effects of the registration of appellations of origin and geographical indications**

(1) Registered appellations of origin and geographical indications shall be protected against:

a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration:

i) in so far as those products are comparable to the products registered under that name, or

ii) in so far as using the name permit to exploit the reputation of the protected name;

b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’ or similar;

c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, being on the product or on the packing thereof, advertising material or documents relating to the product concerned, as well as against utilization as a packaging a container liable to convey a false impression as to its origin;

d) any other practice liable to mislead the consumer as to the true origin of the product. Where a registered name contains within it the generic name of a product, the use of that generic name on the appropriate product shall not be considered to be contrary to letter a) or b) in this paragraph.

(2) Protected names may not become generic.

(3) A registered appellation of origin or a geographical indication may not be assigned or licensed and it may not form a subject matter of any real rights.

(4) Any misuse or misleading use of the term “Protected appellation of origin” or “Protected geographical indication” and of the associated national symbols shall be prohibited.

### **Article 12. Effects of the registration of traditional specialties guaranteed**

(1) The names of traditional specialties guaranteed registered under this Law shall be protected against any misuse, imitation or evocation and against any other practice liable to mislead the consumer.

(2) Any use in commerce of product names which may be confused with the names of traditional specialties guaranteed registered in accordance with this Law shall be prohibited.

(3) Any abusive or misleading use of the term ‘Traditional specialty guaranteed’ and of the associated national symbols shall be prohibited.

### **Article 13. Termination of protection and revocation of rights**

(1) The rights obtained as result of the registration shall be terminated:

a) with retroactive effect from the date of filing the application where the registration is cancelled;

b) with retroactive effect from the beginning of the revocation procedure, where protection is revoked.

(2) The registration of an appellation of origin, or a geographical indication, or a traditional specialty guaranteed shall be cancelled where it has been found to be contrary to the provisions of this Law.

(3) Protection granted to an appellation of origin or a geographical indication shall be revoked where:

a) it becomes impossible to ensure compliance with the conditions of the specification for the product due to changes or disappearance of its inherent natural and/or human factors specific for the defined geographical area, as per Article 5;

b) it is no longer protected in its country of origin - in case it is located geographically in a third country;

c) it is no longer protected under the international treaties to which the Republic of Moldova is a part.

(4) The protection granted to an appellation of origin, or a geographical indication, or a traditional speciality guaranteed shall be revoked where the competent authority designated in accordance with Article 34 paragraph (1) identifies non-compliance between the real product characteristics and the respective requirements of the product specification where such non-compliance cannot be remedied in any way.

(5) The right to use an appellation of origin, or a geographical indication shall terminate:

a) in the situation referred to in Paragraph (1);

b) in case of liquidation of the legal person or death of the natural person – possessor of the respective right;

c) if the holder of the right to use waives such right in a written declaration, submitted to the competent authority designated in accordance with Article 34 paragraph (1) – from the date the waiver declaration was submitted.

d) based on the decision of the competent authority designated in accordance with Article 34 paragraph (1) where the authority finds non-compliance with the conditions of the specification.

### **CHAPTER III. REGISTRATION OF GEOGRAPHICAL INDICATIONS, APPELLATIONS OF ORIGIN AND TRADITIONAL SPECIALTIES GUARANTEED**

#### **Article 14. Filing an application for registration**

(1) The application for registration of an appellation of origin, or a geographical indication, or a traditional specialty guaranteed shall be filed with AGEPI by a group which is in compliance with the requirements of Article 9 Paragraph (2) of this Law.

(2) The application shall be filed on a standard form approved by AGEPI, in the Moldavian. The documents annexed to the application shall be filed in Moldavian. In case the documents annexed to the application are filed in a different language, their translations into Moldavian shall be filed within 2 months from the filing date of the application.

(3) The application may be filed in any way acceptable for AGEPI, in conformity with the provisions of the Regulations approved by the Government.

#### **Article 15. Representation**

(1) Natural and/or legal persons, which have residence, head office or a real and effective industrial or commercial establishment in the Republic of Moldova, may deal with AGEPI directly or via an agent/representative acting under a power of attorney.

(2) Natural and/or legal persons, which have no residence, no head office or no real and effective industrial or commercial establishment in the Republic of Moldova, shall be represented in their dealings with AGEPI in respect of any procedure provided for in this Law by a patent attorney acting under a power of attorney.

(3) The patent attorney shall operate in conformity with the Regulation approved by the Government.

#### **Article 16. The conditions which the application for registration must satisfy**

(1) The application for registration of an appellation of origin or a geographical indication shall include at least the following elements:

a) the name and the address of the applicant;

b) the product specification provided for in Article 8 Paragraph (2) of this Law, approved by the competent authority;

c) a single document setting out the following:

- the main points of the specification: the name the registration of which is requested for, a description of the product, including, where appropriate, specific rules concerning packaging and labelling, and a concise definition of the geographical area;

- a description of the link between the product and the geographical environment or geographical origin referred to in Article 5 Paragraph (1) or (2), as the case may be, including, where appropriate, the specific elements of the product description or production method justifying the link.

(2) The application for registration of a traditional specialty guaranteed shall include at least the following elements:

a) the name and address of the applicant;

b) the product specification provided for in Article 8 paragraph (3), approved by the competent authority;

c) the names and addresses of the authorities or bodies verifying compliance with the provisions of the specification, and their specific tasks;

d) the documents proving the product's specific and traditional character.

(3) Where the registration application relates to a geographical area outside the Republic of Moldova, in addition to the elements provided for in Paragraph (1) letter a) and c) or, where appropriate, in Paragraph (2), the application shall be accompanied with the proof of the registration of the respective appellation of origin, geographical indication or traditional specialty guaranteed in the country of origin.

(4) The application mentioned in Paragraph (1) or (2) shall be accompanied with the proof of payment of the fees prescribed for filing the application.

(5) To the application filed through an attorney or another representative the power of attorney shall be annexed.

(6) The terms and conditions for completing and filing an application for registration and the annexed documents in respect of an appellation of origin, or a geographical indication, or a traditional specialty guaranteed, shall be laid down in the Regulation.

#### **Article 17. The filing date**

(1) The filing date of an application for registration of an appellation of origin, or a geographical indication, or a traditional specialty guaranteed shall be the date on which the applicant submits to the AGEPI an application complied with Article 16 Paragraph (1) or, where appropriate, Paragraph (2) or (3) and Paragraph (4).

### **Article 18. The application withdrawal and modification**

(1) The applicant may request at any time prior to the decision to register an appellation of origin, or a geographical indication, or a traditional specialty guaranteed:

a) to withdraw the application;

b) to modify, amend, detail or correct the application documents, provided these actions do not involve amendments to the product specification.

(2) Amendments and/or refinements which result in a substantial modification of the name of the registration subject matter shall not be allowed or taken into consideration; they may form the subject matter of a new registration application.

(3) If an application has been already published, the information regarding its withdrawal or amendment(s) shall be also subject to publication in BOPI.

(4) The procedures referred to in Paragraph (1) shall involve payment of the prescribed fees – except where they were requested within 1 month from the filing date.

(5) The requirements for completing, filing and examination of the application to perform actions specified in paragraph (1) shall be laid down in the Regulation.

### **Article 19. The procedure for the examination of an application**

(1) AGEPI shall examine the application received pursuant to Article 16 of this Law to check that it is justified and meets the conditions of protection laid down in this Law. The examination should not exceed a period of 12 months.

(2) The examination procedure pursuant to Paragraph (1) shall include examination to check compliance with the application filing conditions and substantive examination.

(3) During the examination procedure AGEPI may request from the applicant presentation of supplementary information, without which the examination cannot be completed. In the case of notifications the term between the date of notification and the date of receiving the answer is not taken into account when the term mentioned in Paragraph 1 of this article is calculated.

(4) The information requested pursuant to Paragraph (3) must be presented within 2 months.

(5) If the applicant fails to present the requested information within the period of time referred to in Paragraph (4) or does not file an application requesting the prolongation of the above term, the application shall be considered withdrawn, the applicant shall be informed accordingly. The application for the prolongation of terms shall be accompanied by a document providing proof of the payment of the established fees. The conditions for the prolongation of terms shall be laid down in the Regulation.

### **Article 20. Examination for compliance with the filing requirements**

(1) Within 1 month after the date on which the application is filed, AGEPI shall examine it for compliance with the requirements of Article 17 of this Law to allocate a filing date.

(2) Following the examination performed pursuant Paragraph (1), the AGEPI shall:

a) award a filing date according to Article 17, if it reveals that the application complies with the requirements for the award of the filing date;

b) notify the applicant on the identified irregularities and grant a two-month period, from the date on which the application was filed, for remedying them, if it reveals that the application does not comply with the requirements for the award of a filing date.

(3) Following the notification pursuant to Paragraph (2) letter b), AGEPI shall:

- a) award a filing date on the date on which all the irregularities have been removed, if the applicant removes the detected irregularities within the prescribed period;
- b) consider the application not have been filed, if the applicant fails to remove the detected irregularities within the prescribed period, and the applicant shall be informed accordingly.

(4) AGEPI shall enter the data on the application to which the filing date has been awarded, as appropriate, in the National Register of the Applications on Registration of the Appellations of origin, National Register of the Applications on Registration of the Geographical Indications or in the National Register of the Applications on Registration of the Traditional Specialties Guaranteed.

(5) Within one month of the date of entry of information on an application in the register, AGEPI shall examine:

- a) whether the applicant complies with the requirements provided for in Article 9 Paragraph (2) and the Regulation;
- b) whether the specifications complies with the requirements of the Article 8 and the Regulation;
- c) whether the documents annexed to the application are in conformity with this Law and the Regulation;
- d) whether the fees for the procedures provided for by the Law are paid in due amounts and within the prescribed period of time.

(6) Following the examination performed in conformity with Paragraph (5), AGEPI shall:

- a) accept an application for publication, if it establishes that the application complies with the requirements provided for in Paragraph (5);
- b) notify the applicant of detected irregularities and request the applicant to remove those irregularities within a two-month period from the date of notification if the deadline prescribed by the Regulations, if it establishes that an application does not satisfy the requirements provided for by paragraph (5).

(7) Where, following the notification pursuant to Paragraph (6) letter b) the applicant does not remedy the identified irregularities within the prescribed period, the application shall be considered withdrawn, the applicant shall be accordingly notified.

### **Article 21. Publication of the application**

Where the requirements provided for by Article 20 paragraph (6) letter (a) are satisfied, the application data shall be published in BOPI. The application elements to be published are provided for in the Regulation.

### **Article 22. Objection**

(1) Within a three-month period from the date of publication of the application, any person having a legitimate interest is entitled to file an objection against the registration.

(2) The reasoned objection should be submitted in writing to the AGEPI and it must be accompanied with proof of payment of the prescribed fees. If the fee is not paid within the required period of time, the objection shall be considered not submitted. The person submitting

the objection may present additional proof and arguments within 1 month from the date of submitting the objection.

(3) The objection shall be admissible to examination only if it is received by AGEPI within the time-limit set in Paragraph (1).

(4) Objection against the registration of an appellation of origin or a geographical indication shall be admissible only if it:

a) shows non-compliance with the conditions referred to in Article 5 Paragraph (1) or (2), of this Law as the case may be; or

b) shows that the registration of the name proposed would be contrary to Article 7 Paragraph (1) letter d), or Article 7 Paragraph (2) or (3) of this Law; or

c) shows that the registration of the name proposed would damage an already protected and entirely or partly homonymous designation of origin or geographical indication or of a trademark of goods or services or the products which have been legally on the market for at least 5 years preceding the date of publication provided for in Article 21 of this Law; or

d) presents evidence from which it can be concluded that the name for which registration is requested is generic within the meaning of Article 7 Paragraph (6).

(5) The objection against the registration of a traditional specialty guaranteed shall be admissible only if it :

a) shows non-compliance with the conditions referred to in Article 6; or

b) demonstrates that the name for which registration is sought will be contrary to the provisions of Article 7 paragraphs (4) and (5); or

c) demonstrates that use of the name for which registration is sought is lawful, renowned and economically significant for similar agricultural products or foodstuff.

### **Article 23. Substantive examination**

(1) During the substantive examination AGEPI shall examine:

a) whether no grounds for refusal exist pursuant Article 7;

b) objections submitted according to Article 22.

(2) Depending on the findings of the substantive examination, AGEPI shall adopt the decision of registration, as appropriate, of the appellation of origin, geographical indication or traditional specialties guaranteed or reject the application. The decision shall be communicated to the applicant within one month from the date of adoption.

(3) The procedure of substantive examination shall be subject to payment of the prescribed fees.

### **Article 24. Examination of the objection**

(1) If the objection is admissible within the meaning of Article 22 Paragraph (3), AGEPI shall notify the applicant accordingly, that within the term of 2 months may express his point of view, and invite the interested parties to engage in consultations to reach an agreement.

(2) If the opponent and the applicant come to an agreement, it shall be communicated to AGEPI, accompanied by opinions of the both parties. If the above agreement does not result in any modifications of the data published according to Article 21, or the introduced modifications are insignificant, AGEPI shall take into consideration the reached agreement and proceed in accordance with Article 26. Otherwise AGEPI shall repeat the examination referred to in Article 19.

(3) If the parties do not come to an agreement, AGEPI shall examine the objection according to Paragraph (4)-(7) and take a decision having regard to fair and traditional usage and the actual likelihood of confusion.

(4) AGEPI shall verify the admissibility of the objection and evaluate the arguments of the parties. The criteria referred to in Article 22 Paragraph (4) Letter b) - d) or, as the case may be, in Paragraph (5), shall be evaluated in relation to the territory of the Republic of Moldova, and in case of intellectual property rights - in relation to the rights protected on the territory of the Republic of Moldova.

(5) Upon the applicant's request, the owner of a prior trademark who has submitted an objection must provide evidence that during 5 years prior to the publication of the application pursuant to Article 21, the prior trademark forming the basis for the objection has been actually used in the Republic of Moldova in respect of the products and/or services for which it was registered, or there have been valid grounds for its non-use, provided that at the respective date the trademark is registered for at least 5 years. The objection shall be rejected in the absence of such evidence.

(6) The examination of the objections may be suspended for the period up to 6 months on the force of a reasoned request submitted by any of the parties.

(7) If the examination finds the objection admissible, AGEPI shall reject the application on registration, on the contrary, the objection shall be rejected, the parties being informed accordingly.

#### **Article 25. Rejection of an application on registration**

(1) AGEPI shall take a decision to reject a request for registration where:

a) the examination according to Articles 23 of this Law reveals that the name for which registration is requested does not comply with the requirements provided for in this Law for its registration as an appellation of origin, or a geographical indication, or a traditional specialty guaranteed, as the case may be, or the product for which registration is requested does not comply with the requirements provided for in this Law for its registration as a traditional specialty guaranteed;

b) the objection against the registration has been admitted.

(2) If the name requested for registration as a name of an appellation of origin, or a geographical indication, contains one or more generic terms, and the inclusion of these elements in the name is likely to be misleading as to the scope of its protection, AGEPI shall request, as a pre-requisite for registration, that the applicant declare his agreement not to claim any exclusive rights to such elements. This declaration shall be published together with the application to register the respective name or, as the case may be, together with the data regarding its registration.

(3) Where an application is rejected because the name applied for registration as an appellation of origin or geographical indication is generic, AGEPI shall publish the respective information in BOPI.

(4) The decision to reject the application may be taken only after the applicant is given the possibility to withdraw or modify the application in question or to express his opinion regarding the reasons for refusal.

#### **Article 26. Registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed**

(1) If the examination of the application pursuant to Articles 20 and 23 reveals that the conditions are satisfied for the registration of an appellation of origin, or a geographical

indication, or a traditional specialty guaranteed, and if no objections or appeals are submitted against its registration or the received objections or appeals are deemed not admissible, AGEPI shall decide to register:

a) an appellation of origin – in the National Register of Protected Appellations of origin;

b) a geographical indication – in the National Register of Protected Geographical Indications;

c) a traditional specialty guaranteed - in the National Register of Traditional Specialties Guaranteed, (2) Within 3 months from the date of adopting the decision to register, AGEPI shall issue the applicant, on request and free of charge, the certificate for the right to use the protected appellation of origin or the protected geographical indication.

(3) The data relating to the registration of an appellation of origin, or a geographical indication, or a traditional specialty guaranteed as well as data relating to the holders of the right to use the protected appellation of origin or the protected geographical indication shall be published in BOPI.

### **Article 27. Registers**

(1) AGEPI shall keep The National Register of the Applications on Registration of the Geographical Indications, the National Register of the Applications on Registration of the Appellations of origin, the National Register of the Applications on Registration of the Traditional Specialties Guaranteed, the National Register of Protected Appellations of origin, the National Register of Protected Geographical Indications and the National Register of Traditional Specialties Guaranteed. In the registers shall be entered the data which has to be registered according the present Law and the Regulation. Any entries or amendments, produced in the registers shall be published in BOPI.

(2) The registers referred to in Paragraph (1) shall be available for public consultations.

(3) AGEPI may issue extracts from the above Registers upon request and subject to payment of the prescribed fees.

### **Article 28. The Official Bulletin of Intellectual Property**

The Official Bulletin of Intellectual Property is the official periodical publication, published by AGEPI, in which the following is published:

a) the data on the industrial property objects entered in the National Registers, including the data on appellations of origin, geographical indications and traditional specialties guaranteed, as well as other information thereon, which are subject to publication under this Law or other applicable laws and other normative acts in the field;

b) national and international acts, communications and information of general character as well as any other information pertaining to industrial property.

*[Art. 28, the heading and introductory part modified by the Law no.101 of 26.05.16]*

## **CHAPTER IV. APPEALS, CONFLICTS WITH OTHER RIGHTS AND INSPECTION**

### **Article 29. Appeals against decisions regarding applications for registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed**

(1) Any decisions regarding applications on registration of appellations of origin, geographical indications or traditional specialties guaranteed may be subjects of appeals filed by the involved parties within 2 months from the date of its receipt or by any third party, who have

information related to the respective registration, within the period between the date of issuance of the decision and the date of registration. The appeal shall have a suspending effect.

(2) Appeals shall be filed with AGEPI and examined by the Appeals Board according to its Regulations approved by the Government.

(3) Appeals shall be filed in writing and duly reasoned; they shall be deemed filed only upon payment of the prescribed fees.

(4) The Appeals Board shall take decisions and ordinances, within its powers.

### **Article 30. Examination of appeals**

(1) During the examination of appeals the Appeals Board shall invite the parties to submit their comments regarding the appeals filed by the other party. Where within the process of examining the appeal, differences of the normative character appears, the rules of the Code of Civil Procedure shall apply.

(2) Based on the findings of the appeal examination, the Appeals Board shall take one of the following decisions:

a) to maintain the effectiveness of the appealed decision;

b) to cancel the appealed decision in full or in part.

(3) The decision of the Appeals Board shall enter in force on the date it is taken.

(4) The decision of the Appeals Board shall be communicated to the parties and it may be appealed in the district court where AGEPI premises are located within the period prescribed in the legislation in force.

### **Article 31. Use of homonymous names**

The use of homonymous registered geographical indications or appellations of origin shall be authorized only if the homonymous name registered subsequently is sufficiently distinct from the prior registered one, having regard to the need to treat the producers concerned in an equitable manner and not to mislead the consumer.

### **Article 32. Relations between appellations of origin, geographical indications and trademarks**

(1) Where an appellation of origin or a geographical indication is protected under this Law, the application on registration of a trademark corresponding to one of the situations referred to in Article 11 of this Law and relating to the same category of product shall be refused if the application on registration of the trademark is submitted after the date of beginning the protection of an appellation of origin or a geographical indication.

(2) Trademarks registered in contravention of the Paragraph (1) shall be cancelled.

(3) A trademark the use of which corresponds to one of the situations referred to in Article 11, which has been applied for or registered in good faith before the date of beginning the protection of an appellation of origin or a geographical indication, as the case may be, may continue to be used notwithstanding the registration of an appellation of origin or geographical indication, provided that no grounds for its cancellation or revocation of the applicant's rights exist, in conformity with the applicable trademark Law. In such a case the appellation of origin or the geographical indication may be used concomitantly with the respective trademark.

### **Article 33. Official controls**

(1) The Government shall, in accordance with the legislation in force, designate the competent authorities responsible for official controls for the purposes of verifying compliance with the specification of products with a protected appellation of origin, with a protected geographical indication and of traditional specialties guaranteed.

(1<sup>1</sup>) For the purposes of this Law, the official control shall cover:

a) verification of a product's conformity with the corresponding product specification;

b) surveillance of the use of registered names to describe products placed on the market in conformity with Article 11 – in the case of appellations of origin and geographical indications and in conformity with Article 12 – in the case of traditional specialties guaranteed.

(2) Any producer complying with this Law is entitled to be covered by a system of official control.

(3) AGEPI shall publish in BOPI and update periodically the names and addresses of the controlling authorities and bodies referred to in Paragraph (1) of this Article and in Article 34.

### **Article 34. Verification of compliance with specifications**

(1) The Government shall designate, for different product categories, competent authorities empowered with and responsible for approval of specifications, completion of general principles, approval of control phases and procedures as to ensure compliance with specifications in accordance with the provisions of this law.

(2) Verification of compliance with the product specification in respect of appellations of origin and geographical indications relating to a defined geographical area within the territory of the Republic of Moldova, and in respect of traditional specialties guaranteed produced on the territory of the Republic of Moldova shall be ensured by the competent authority designated in accordance with Article 33 paragraph (1). (3) Verification of compliance with the product specification in respect of appellations of origin and geographical indications relating to a defined geographical area outside the territory of the Republic of Moldova, and in respect of traditional specialties guaranteed produced outside the territory of the Republic of Moldova shall be ensured by the authority designated by the country of origin.

(5) The costs of verification of compliance with the specifications shall be paid by the producers subject to this control.

### **Article 35. Names, indications and symbols**

(1) An appellation of origin or geographical indication protected under this Law may be used only by the possessors of the right to use them.

(2) The products originating in the Republic of Moldova, marketed under a name protected under this Law, may be marked with the indications “protected appellation of origin” or “protected geographical indication” and/or the national symbols associated with them and approved by the Government.

(3) The products originating in third countries and marketed under a name protected under this Law may also be marked with the indications referred to in Paragraph (2).

(4) Only producers complying with the product specification may refer to a traditional specialty guaranteed on the labelling, advertising or other documents relating to an agricultural product or foodstuff.

(5) Where reference is made to a traditional specialty guaranteed on the labelling of an agricultural product or foodstuff produced in the Republic of Moldova, the name of the product shall be accompanied by the indication “Traditional specialty guaranteed” and/or the national symbols associated with it approved by the Government.

(6) The indication referred to in Paragraph (5) shall be optional on the labelling of traditional specialties guaranteed which are produced outside the territory of the Republic of Moldova.

### **Article 36. Detailed rules for the use of names of traditional specialties guaranteed**

(1) From the date of publication of the information on registration of a traditional specialty guaranteed, the name entered in the National Register of traditional specialties guaranteed may be used only to identify the agricultural product or foodstuff corresponding to the product specification as a traditional specialty guaranteed in accordance with the provisions laid down in Article 35 paragraphs (4), (5) and (6).

(3) In the case of names of traditional specialties guaranteed where registration is sought in a single language, the applicant group may specify in the product specification that, when the product is marketed, the label may contain, in addition to the name of the product in the original language, an indication in other languages that the product has been obtained in accordance with the tradition of the region or third country from which the application originated.

### **Article 37. Amending the product specification**

(1) A group satisfying the conditions of Article 9 paragraph (2) and having a legitimate interest may request entry of amendments in the product specification and, where appropriate, in the single document referred to in Article 16 paragraph (1) letter c), in respect of an appellation of origin, a geographical indication and a traditional specialty guaranteed, as appropriate. The request shall include a description of the requested amendments and a justification thereof.

(2) The amendment application shall, according to paragraph (1) of this Article, be accompanied by:

a) the decision of the competent authority designated in accordance with Article 34 paragraph (1) on approval of amendments where the defined geographical area is in the territory of the Republic of Moldova;

b) the proof of making the amendments concerned in the country of origin, where the defined geographical area is outside the territory of the Republic of Moldova.

(3) Where the amendment to the product specification requested according to paragraph (1) involves one or more amendments that are not minor, the amendment application shall be subject to examination and publication and shall be open to opposition procedures.

(4) The amendment applications submitted by domestic applicants in the wine sector and the oppositions relating to these applications shall be submitted by a group within the meaning of Article 9 paragraph (2), or by the opposing party, as appropriate, to the Ministry of Agriculture, Regional Development and Environment and shall be examined pursuant to the procedure approved by the latter. In the case of approval of the amendments requested, the referred authority shall, within 5 working days from the date of approval thereof, submit to the AGEPI the information concerned for publication in BOPI and entry in the registers referred to in paragraph (12) of this Article.

(5) Where the amendments, the registration of which is requested in accordance with paragraph (1) are minor, the registration thereof shall be made without recourse to the procedures referred to in paragraph (3).

(6) An amendment shall be deemed minor, in the case of protected appellations of origin and protected geographical indications, if it does not:

a) relate to the essential characteristics of the product;

b) amend the link referred to in Article 8 paragraph (2) letter f);

- c) include a change to the name or to any part of the product name;
- d) affect the defined geographical area; or
- e) generate further restrictions on the marketing of the product or of the raw materials.

(7) An amendment shall be deemed minor, in the case of traditional specialties guaranteed, if it does not:

- a) relate to the essential characteristics of the product;
- b) introduce essential changes to the production method; or
- c) include a change to the name, or to any part of the product name.

(8) Where entry of amendments to a traditional specialty guaranteed is requested, besides the oppositions referred to in Article 22 paragraph (5), the oppositions showing an economic interest in the production of traditional specialties guaranteed shall also be admissible.

(9) The oppositions submitted against entry of amendments in the product specification shall be subject *mutatis mutandis* to the examination procedures referred to in Article 24. AGEPI shall notify the competent authority designated in accordance with Article 34 paragraph (1) on the submitted opposition, which shall, within 2 months from the date of notification, express its views.

(10) If, following the adoption by public administration authorities of mandatory sanitary or phytosanitary measures, entry of certain temporary amendments to the product specification is requested, the amendment application shall be accompanied by appropriate supporting documentation, and the information relating to their registration shall be published without being subjected to opposition proceedings. (11) The amendment application referred to in paragraph (1) or in paragraph (10), where appropriate, shall be filed with AGEPI. The conditions for drawing up, submission and examination of the amendment application shall be set out in the Regulation.

(12) If, following the examination of the amendment application, it is established that all requirements provided for in this Law and Regulation are fulfilled and if no opposition was filed against amendment registration or the oppositions filed have been rejected, AGEPI shall entry all amendments made and a justification thereof in the National Register of protected appellations of origin, the National Register of protected geographical indications or the National Register of traditional specialties guaranteed, where appropriate, and shall publish that information in BOPI.

*[Art. 37(4) modified by the Law no.79 of 24.05.18]*

**Article 38. Interdiction on the use of an appellation of origin, or a geographical indication or of the name of a traditional specialty guaranteed**

(1) Any natural or legal person who claims that:

- an appellation of origin,
- a geographical indication, or
- a name of a traditional specialty guaranteed, reserved under Article 36 Paragraph (2),

protected under this Law, is used in direct or indirect prejudice of his/her interests and in violation of his/her rights in respect of a natural or processed product, having a different origin, or, as the case may be, lacking the respective specificity, shall be entitled to request an interdiction on the use of that designation, or indication, or name.

(2) Unions and associations for the protection of consumers' rights, which are activating for at least 6 months earlier, shall be entitled to proceed in conformity with Paragraph (1) in respect of the rights which they are willing to protect.

(3) The application seeking interdiction on the use of a protected appellation of origin, or a protected geographical indication, or a name of a traditional specialty guaranteed, reserved under Article 36 Paragraph (2), shall be submitted with the Chisinau Court of Appeals.

### **Article 39. Cancellation of the registration or revocation of the protection or of the right to use**

(1) If the controls performed according to Articles 33 or 34 of this Law show that compliance is no longer ensured in respect of the conditions of the specification for a product covered by an appellation of origin or a geographical indication or for a traditional specialty guaranteed, registered under this Law, the control authority shall initiate the procedure for the cancellation of the registration or, where appropriate, revocation of the protection or decide to revoke the right to use the respective name. The decision of the competent authority to revoke the right to use may be appealed in the court within the period prescribed by the Administrative Litigation Law No. 793-XIV of 10 February 2000.

(2) Any natural or legal person having a legitimate interest may request cancellation of the registration or revocation of the protection of an appellation of origin, or a geographical indication, or a traditional specialty guaranteed or, as the case may be, of the right to use an appellation of origin, or a geographical indication, or a name of a traditional specialty guaranteed.

(3) The provisions of Paragraph (2) shall apply mutatis mutandis to unions and associations for the protection of consumer or producer rights, working for at least 6 months, in respect of the rights which they are willing to protect.

(4) A request to cancel the registration or to revoke the protection of an appellation of origin, a geographical indication or a traditional specialty guaranteed or, as the case may be, a right to use an appellation of origin, or a geographical indication, shall, under the provisions of paragraph (2), be filed with the district court where AGEPI premises are located;

(5) The competent authorities designated in accordance with Article 34 paragraph (1) shall notify the AGEPI of the information on the revocation of protection or the revocation of the right to use a protected appellation of origin or a protected geographical indication within 5 working days after the final decision.

## **CHAPTER V. INTERNATIONAL REGISTRATION OF APPELLATIONS OF ORIGIN**

### **Article 40. General provisions**

The provisions of this Law shall apply mutatis mutandis to international registrations of appellations of origin pursuant to the Lisbon Agreement, for which the Republic of Moldova is a country of origin or which cover the Republic of Moldova, excepting the cases where the above Agreement provides otherwise.

### **Article 41. The international application**

(1) An international application pursuant to Article 5 of the Lisbon Agreement for an appellation of origin entered in the National Register of Protected Appellations of origin, for which the Republic of Moldova is a country of origin, shall be filed with the International Bureau via AGEPI.

(2) An international application pursuant to Paragraph (1) may be filed by any natural and/or legal person who has the right to use the respective appellation of origin.

(3) An international application should be drawn in conformity with the Implementing Regulation to the Lisbon Agreement.

**Article 42. Effect of the international registration of an appellation of origin, having the Republic of Moldova as the country of origin**

(1) The international registration performed by the International Bureau of an appellation of origin, for which Moldova is a country of origin, shall ensure, without renewal, its protection in the member-states of the Lisbon Agreement, which have not made a declaration of refusal or which have withdrawn such declaration subsequently, for the entire duration of protection granted to the respective designation in the Republic of Moldova.

(2) The international protection for the appellation of origin referred to in Paragraph (1) shall expire if the respective designation is no longer protected on the territory of the Republic of Moldova.

**Article 43. The fees for filing an international application**

(1) Filing an international application shall involve payment of the following fees:

a) at AGEPI - for receiving, verification, examination and transfer of the application to the International Bureau;

b) at the International Bureau – for registration of the appellation of origin pursuant to Article 7 of the Lisbon Agreement.

(2) The fees referred to in Paragraph (1) letter b) may be paid directly or transferred to the International Bureau via AGEPI.

(3) The international application shall be considered not filed if the respective fees are not paid.

**Article 44. The procedure for verification of an international application with AGEPI**

(1) Within 1 month from the receiving date AGEPI shall examine and verify the documents contained in the international application for compliance with the provisions of Article 41 Paragraph (3) and conformity of the application data with the data entered in the National Register of Protected Appellations of origin.

(2) Where the application satisfies the requirements of this Law and the Implementing Regulation to the Lisbon Agreement, AGEPI shall sign and send a copy thereof to the International Bureau, with a copy to the applicant as confirmation of filing.

(3) The date of the international registration shall be the date on which the application, including all the elements referred to in the Implementing Regulation to the Lisbon Agreement, is received by the International Bureau.

(4) If following verification conducted in accordance with Paragraph (1), errors or irregularities are identified, AGEPI shall notify the applicant and invite him/her to remedy them within a reasonable period of time, with due account of the provisions of Paragraph (3).

**Article 45. The procedure of examination of an international registration notified by the International Bureau**

(1) Any international registration notified by the International Bureau is subject to procedures of objection pursuant to Article 22 and substantive examination provided for in Article 23 on the same conditions as an application filed with AGEPI directly.

(2) Where the international registration subject to examination pursuant to Paragraph (1) does not satisfy the conditions for protection provided for by this Law or where an objection is received against such registration, AGEPI shall issue a declaration of refusal, which is notified to the International Bureau.

(3) The period of time for the communication of a declaration of refusal shall not exceed 1 year from the date on which AGEPI receives the notification of the International Bureau regarding the international registration in question.

(4) Any procedure provided for by the Law, subsequent to the declaration of refusal referred to in Paragraph (2), shall take place directly between AGEPI and the applicant represented by a patent attorney.

(5) AGEPI shall, following the prescribed procedures, notify the International Bureau on the total or partial withdraw of declaration of refusal and on all final decisions taken by the court on the revocation of protection or cancellation of the international registration.

(6) Where the examination according to Paragraph (1) shows that the appellation of origin has already been used by third parties on the territory of the Republic of Moldova prior to the date of notification, AGEPI shall grant such third parties a period not exceeding 2 years to terminate such use and notify accordingly the International Bureau within 3 months following the expiration of the period provided for in Paragraph (3).

#### **Article 46. The effect of international registration in the Republic of Moldova**

(1) Any international registration of an appellation of origin notified by the International Bureau shall have the same effect as an application filed directly with AGEPI, starting on the date of the international registration.

(2) Where AGEPI does not notify a declaration of refusal to the International Bureau in conformity with Article 45 Paragraph (2), or if the notified declaration of refusal is withdrawn subsequently in a whole or in a part, the appellation of origin shall be considered granted protection in the Republic of Moldova, starting on the date referred to in Paragraph (1), as if it has been registered directly with AGEPI.

(3) If the granting of protection to an appellation of origin was refused pursuant to Article 45 Paragraph (2), it shall be considered that the respective international registration has no effect referred to in Paragraphs (1) and (2) on the territory of the Republic of Moldova.

(4) An appellation of origin which complies with the provisions of Paragraph (2) may not become generic as long as it is protected as an appellation of origin in the country of origin.

### **CHAPTER VI. ENFORCEMENT OF THE RIGHTS**

#### **Article 47. An action in connection with the infringement of rights**

(1) Any natural or legal person or any other interested bodies whose rights are infringed by the illegal use of a protected geographical indication, a protected designation of origin, or a right to traditional speciality guaranteed, causing direct or indirect damage, shall be entitled to initiate a court action following the procedures provided for by the Law, in order to protect its legitimate rights and interests.

(2) The following persons shall be entitled to bring an action regarding the infringement of the rights conferred under Articles 11 or 12 of this Law:

a) the holder of the right to use a protected geographical indication, or a protected designation of origin, or a right to traditional speciality guaranteed;

b) other persons or entities entitled to represent the holder of the rights to use or organizations established specially for that purpose, provided that the latter have been in function for at least 6 months.

(3) In the proceeding of a case related to an infringement of the right to use, the defendant may be entitled to contest the right to use which has generated the conflict, requesting cancellation or revocation of that right;

(4) In the above situation, the examination of the action shall be suspended till the definitive decision regarding the validity of the right to use.

#### **Article 48. An action seeking a statement regarding non-infringement of rights**

(1) Any party believing that an action may be started against it regarding the infringement of the rights to a protected geographical indication or a protected designation of origin, may, prior to the initiation of such action, to request taking of a decision which states that its product does not infringe the rights to a protected name. During the examination of the application, the court may invite any interested party to take part in the proceedings, such as the holder of the right to use.

(2) If a definitive decision is taken on non-infringement of rights according to Paragraph (1), an action regarding the infringement of a protected geographical indication or a protected appellation of origin shall not be started against the same party in respect of the same product.

(3) Court costs and other expenses incurred in connection to the court proceedings, including the expenses incurred by the holder of the right to use a protected geographical indication or a protected appellation of origin shall be reimbursed by the person initiating the action regarding a statement of non-infringement.

(4) The court which examines an action regarding a statement of non-infringement shall determine the amount of the expense incurred by the holder of the right to use the protected geographical indication or the protected appellation of origin, and this amount shall be reimbursed by the person who has initiated the action regarding a statement of non-infringement.

#### **Article 49. Measures for preserving evidence prior to court actions**

(1) Any entitled person, who presents sufficient evidence to demonstrate that his rights are infringed, may request the court prior to beginning of the proceedings against the illegal actions, to take prompt and provisional action to protect the relevant evidence - subject to the protection of confidential information and provision of security or the equivalent guarantee, which would be necessary to repair the eventual damage which might be caused to the defendant in case the infringement is not confirmed.

(2) Within actions to protect the evidence, the court may:

a) request the detailed description of the products covered by the litigation with or without taking of samples;

b) arrest the products covered by the litigation;

c) arrest materials and tools used to produce and/or distribute the products covered by the litigation as well as documents referring to them.

(3) The actions to ensure the evidence referred to in this Article and in Article 50 shall be taken by the court in conformity with the respective provisions of the Civil Procedure Code. The actions to ensure the evidence shall be taken with the participation of a court bailiff and, if applicable, a representative of the competent authorities designated in accordance with Article 33 paragraph (1), who may be assisted by a police officer.

### **Article 50. Urgent measures for preserving evidence**

(1) Actions to preserve evidence may be taken without hearing the defendant where a delay may cause irreparable damage to the rightholder or where there is likelihood of evidence being destroyed in the opposite case. The court decision shall be communicated promptly to the affected party.

(2) The affected party is entitled to appeal against the actions taken to preserve the evidence.

(3) The court shall take action to preserve the evidence only provided the plaintiff provides security or the equivalent guarantee, which would be necessary to repair the eventual damage which might be caused to the defendant pursuant to Article 51 Paragraph (2).

### **Article 51. Cancellation of measures for preserving evidence**

(1) The measures for preserving evidence shall be cancelled by court in its official capacity or upon the defendant's request in the following cases:

a) where the plaintiff does not initiate a court action on infringement of rights within 20 working days or 31 calendar days from the date of the decision on measures for preserving evidence;

b) as the consequence of any damaging actions or inaction on the part of the plaintiff;

c) where no infringement or threat of infringement of rights is found to exist;

d) in other situations provided for in the applicable Law.

(2) Where the measures for preserving evidence have caused prejudice and are cancelled, the plaintiff is liable to pay an appropriate compensation to the defendant.

### **Article 52. Presentation and preservation of evidence in the proceedings regarding the infringement of rights**

(1) Where a party provides evidence substantiating its claim and makes reference to the information and certain evidence in possession of the opponent party, the court shall order that such evidence be presented in sufficient and reasonable amounts, provided the protection of confidential information is ensured. Where substantial commercial damage is incurred, in order to assess such damage, the court may order the parties to present additionally the relevant banking, financial or commercial documents.

(2) Where a party to the proceedings refuses unreasonably to provide access to the necessary information or delays the presentation of such information, acting wilfully and thus creating obstacles for the settlement of the conflict, the court shall decide on the acceptability or rejection of the requested claim based on the available information, including the complaint or claim submitted by the party prejudiced by the prevention of access to the information, provided the parties are given the possibility to express their opinion regarding the claim or particular evidence components.

### **Article 53. The right to information**

(1) Where it is found during the examination of the claim that the rights granted by a protected geographical indication, or a protected appellation of origin, or a traditional specialty guaranteed are actually infringed, the court may request that the information regarding the origin and distribution channels of the goods infringing the above rights be provided by the defendant and/or any other person who:

a) was found in possession of counterfeit goods intended for marketing;

b) was found to be using, for commercial purposes, the services involving counterfeit goods;

c) was found to supply for commercial purposes the services used in operations of counterfeiting; or

d) indicated by any person referred to in letters a), b) or c) as being involved in the production, manufacture or distribution of such goods or rendering such services.

(2) The information referred to in Paragraph (1) shall include, as appropriate:

a) the names and addresses of producers, distributors, suppliers and other previous possessors of such goods or services as well as their presumable wholesalers and retailers;

b) information regarding the quantities produced, supplied, received or ordered as well as prices for the respective goods or services.

(3) The provisions of Paragraph (1) and (2) shall apply without prejudice to other legal and regulatory provisions which:

a) entitle the holder of rights to receive more detailed information;

b) govern the use in civil or penal proceedings of the information provided pursuant to this article;

c) govern the responsibility for the misuse of the right to information;

d) afford the possibility of refusing to provide information which would force the person referred to in Paragraph (1) to admit his own participation or his close relatives participation in an infringement of the right in a protected geographical indication, a protected appellation of origin, or a traditional specialty guaranteed; or

e) govern the protection of confidentiality in respect of information sources or the processing of personal data.

#### **Article 54. Measures providing for injunction order on infringement of right**

(1) Where the court finds actual or imminently threatening violation of the rights on a protected geographical indication, or a protected appellation of origin, or a traditional specialty guaranteed, it may, upon request of the rightholder, take measures to bring a suit for infringement of rights in relation to the infringer and/or intermediaries, such as:

(a) issue an interlocutory injunction against any actions constituting an infringement of rights or to allow the continuation of the actions, subject to the lodging of guarantees sufficient to ensure the compensation of the rightholder;

b) seizure of goods suspected of infringing rights to prevent their introduction into the commercial circuit;

c) precautionary seizure of any property of the defendant, including the blocking of his/her bank accounts, communication of bank, financial or commercial documents in case the violation is committed on commercial scale and there is a risk of non-compensation of incurred damage.

(2) The court may take action provided for in the Paragraph (1) of this Article without hearing of the defendant. The provisions of Article 50 shall apply mutatis mutandis in that case.

#### **Article 55. Corrective measures**

(1) Having established that an infringement of rights has taken place, the court may order, upon the plaintiff's request, that appropriate measures be taken with regard to goods that have found to be infringing the rights in a protected geographical indication, or a protected appellation

of origin or a traditional speciality guaranteed, or, where appropriate, with regard to the materials and tools used to create and manufacture those goods. Such measures shall include, in particular:

- a) recall from the channels of commerce;
- (b) definitive removal from the channels of commerce; or
- (c) destruction.

(2) The measures mentioned in Paragraph (1) shall be performed at the defendant's expense, unless particular reasons are invoked for not doing so.

(3) In considering the request for corrective measures, the court shall be guided by the principles of justice, seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

#### **Article 56. Enforcement of court decision**

Where a judicial decision is taken finding an infringement of the rights in a protected geographical indication, or a protected appellation of origin, or a traditional specialty guaranteed, the court may, upon request of the rightholder, take measures to enforce the court decision against the defendant, forcing the latter to terminate any activities found to infringe the holders rights. To that end the court may request the defendant to provide adequate security or equivalent guarantees. The rightholder may request to apply similar measures against intermediaries whose services are used by a third party to infringe a protected geographical indication, or a protected appellation of origin, or a traditional specialty guaranteed.

#### **Article 57. Alternative measures**

Where the defendant has acted unintentionally or by imprudence, the court may order, upon request of the interested party, that pecuniary compensation to be paid instead of applying the measures provided for in this chapter if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

#### **Article 58. Damages**

(1) Upon request of the injured party, the defender who knowingly, or with reasonable grounds to know, infringed the rights on a protected geographical indication, or a protected appellation of origin, or a traditional specialty guaranteed shall be ordered to pay the rightholder damages appropriate to the actual prejudice suffered by him as a result of the infringement of his rights. When evaluating the damage, due account shall be taken of the respective circumstances, such as negative economic consequences, including lost profits suffered by the injured party, any unfair profits made by the defendant and, in appropriate cases, other elements, such as the moral prejudice caused to the rightholder as a result of infringing his rights.

(2) Where the defendant has committed the infringement unknowingly or is reasonably believed to be unaware of the infringement, he shall be obliged to reimburse the lost profits or the damage suffered by the rightholder, evaluated according to the applicable Law.

#### **Article 59. Publication of court decisions**

(1) In a proceeding initiated in connection with an infringement of the rights in a protected geographical indication, or a protected appellation of origin, or a traditional specialty guaranteed, the competent court may order, upon the plaintiff's request and at the expense of the infringer of

the right, appropriate measures for the dissemination of the information concerning the court decision, including displaying the decision and publishing it in full or in part.

(2) Furthermore, the competent court may provide for additional publicity measures which are appropriate to particular circumstances, including prominent advertising.

(3) The court shall submit a copy of the definitive court decision to AGEPI.

## **CHAPTER VII. COMMON PROVISIONS**

### **Article 60. Authority to settle disputes**

(1) Any dispute arising from the application of this Law shall be settled by the AGEPI Appeals Board, the district court where AGEPI premises are located or a specialized Arbitration Court.

(2) The AGEPI Appeals Board shall settle disputes regarding appeals against decisions made by AGEPI subdivisions.

(3) The district court where AGEPI premises are located shall settle disputes regarding:

a) granting of the rights to use a protected appellation of origin or protected geographical indication;

b) infringement of the rights granted by the registration of appellation of origin, geographical indications or traditional specialties guaranteed;

c) litigations to protect the right to use a protected appellation of origin or a protected geographical indication;

d) cancellation of a registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed;

e) revocation of protection granted to an appellation of origin, a geographical indication or a traditional specialty guaranteed;

f) revocation of the right to use a protected appellation of origin or geographical indication;

g) actions regarding statements on non-infringement of rights;

h) measures to preserve evidence prior the initiation of a court action;

i) preventive and provisional actions referred to in Article 56;

j) measures issuing from the examination of the merits of the case;

k) examination of appeals submitted against decisions of the AGEPI Appeals Board.

(4) The specialized arbitration court shall examine litigations initiated in connection with industrial property relationships (contractual or non-contractual) and in particular those regarding:

a) acquisition of the right to use a protected appellation of origin or a protected geographical indication;

b) granting and use of the rights resulting from registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed;

c) violation of the right to use a protected appellation of origin or a protected geographical indication;

d) other disputes not connected with actions of public authorities.

### **Article 61. Fees**

(1) Submission and examination of an application for registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed; submission of an objection or appeal; registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed; as well as other actions of legal significance, which are connected with the application examination procedures and legal protection of appellations of origin, geographical indications and traditional specialties guaranteed, shall be subject to payment of fees.

(2) The list of the actions for which a fee is charged and the amount of the fee shall be approved by the Government.

(3) The fees shall be payable by the applicant, the holder of the right to use or any other duly authorized legal or natural person.

(4) The paid fees, excepting the fee payable for the filing of an application for the registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed, may be reimbursed to the payer upon request in case the procedures for which the fee was paid have not started.

(5) The fees paid in the amount below the prescribed rate shall be taken into account upon payment of the difference, and the procedure shall start upon payment of the fee in full.

(6) The fee for the registration of an appellation of origin, a geographical indication or a traditional specialty guaranteed for the license that has not been paid within the prescribed time may be paid later, within six months from the missed deadline, with a 50% increase.

(7) Where urgent execution of the procedures is requested, the fees payable for the urgency shall increase by 100% as compared to the prescribed rate for the respective procedure, and the term for the execution of the respective actions shall decrease by half.

(8) Objections and appeals of the central and local public authorities shall be examined free of charge where such authorities act in the interests of the state or in the public interest.

## **Article 62. The rights of foreign natural and legal persons**

Foreign natural and legal persons shall enjoy the rights granted by this Law, on an equal basis as the natural and legal persons of the Republic of Moldova.

## **CHAPTER VIII. FINAL AND TRANSITORY PROVISIONS**

### **Article 63. Entry in force and applicability**

(1) This Law shall enter into force upon expiry of 3 months after its publication with the exception of Articles 49, 50, 51 and 52, which shall be implemented upon the entry into force of the appropriate amendments made in the Civil Procedure Code.

(1<sup>1</sup>) This Law is compatible with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (published in the Official Journal of the European Union L 157 of 30 April 2004), and the Regulation (EU) No.1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (published in the Official Journal of the European Union L343 of 14 December 2012) as well as the Commission Regulation (EC) No.607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No.479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (published in the Official Journal of the European Union L 193 of 24 July 2009).

(2) The Law of the Republic of Moldova no. 588-XIII of 22 September 1995 on product trademarks and appellations of origin shall be abrogated on the date this Law enters into force.

(3) It is established that:

a) the applications for registration of appellations of origin, the examination procedures of which are not complete prior to the day of entry into force of this Law, shall be examined in accordance with the procedure established by this Law;

b) the appellations of origin registered with the AGEPI until the date of entry into force of this Law shall be equivalent in terms of the legal regime to the appellations of origin registered in accordance with this Law;

c) the disputes under examination on the date this Law enters into force shall be settled in compliance with the norms of the legislation applicable on the date the litigation arose.

**Article 64. Organisation of the implementation of this law**

Within three months of the day of entry into force of this Law the Government shall:

a) submit to the Parliament proposals for bringing the existing legislation in line with this Law;

b) bring its normative acts in line with this Law;

c) adopt normative acts necessary for the application of this Law

**CHAIRMAN OF THE PARLIAMENT      Marian Lupu**

**Chisinau, March 27, 2008**

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