TRATATUL DE LA BUDAPESTA PRIVIND RECUNOAȘTEREA INTERNAȚIONALĂ A DEPOZITULUI MICROORGANISMELOR ÎN SCOPUL ASIGURĂRII PROTECȚIEI PRIN BREVETE*

ADOPTAT LA 28 APRILIE 1977

ȘI MODIFICAT LA 26 SEPTEMBRIE 1980

BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

DONE ON APRIL 28, 1977

AND AMENDED ON SEPTEMBER 26, 1980

* *În vigoare pentru Republica Moldova din 25 decembrie 1991.*

Article 1
Establishment of a Union

The States party to this Treaty (hereinafter called "the Contracting States") constitute a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedure.

Article 2
Definitions

For the purposes of this Treaty and the Regulations:

(i) references to a "patent" shall be construed as references to patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition;

(ii) "deposit of a microorganism" means, according to the context in which these words appear, the following acts effected in accordance with this Treaty and the Regulations; the transmittal of a microorganism to an international depositary authority, which receives and accepts it, or the storage of such a microorganism by the international depositary authority, or both the said transmittal and the said storage;

(iii) "patent procedure" means any administrative or judicial procedure relating to a patent application or a patent;

(iv) "publication for the purposes of patent procedure" means the official publication, or the official laying open for public inspection, of a patent application or a patent;

(v) "intergovernmental industrial property organization" means an organization that has filed a declaration under Article 9(1);

(vi) "industrial property office" means an authority of a Contracting State or an intergovernmental industrial property organization competent for the grant of patents;

(vii) "depositary institution" means an institution which provides for the receipt, acceptance and storage of microorganisms and the furnishing of samples thereof;

(viii) "international depositary authority" means a depositary institution which has acquired the status of international depositary authority as provided in Article 7;

(ix) "depositor" means the natural person or legal entity transmitting a microorganism to an international depositary authority, which receives and accepts it, and any successor in title of the said natural person or legal entity;

(x) "Union" means the Union referred to in Article 1;

(xi) "Assembly" means the Assembly referred to in Article 10;

(xii) "Organization" means the World Intellectual Property Organization;

(xiii) "International Bureau" means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(xiv) "Director General" means the Director General of the Organization;

(xv) "Regulations" means the Regulations referred to in Article 12.

CHAPTER I

SUBSTANTIVE PROVISIONS

Article 3
Recognition and Effect of the Deposit of Microorganisms

(1) (a) Contracting States which allow or require the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the deposit of a microorganism with any international depositary authority. Such recognition shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority as well as the recognition of the fact that what is furnished as a sample is a sample of the deposited microorganism.

(b) Any Contracting State may require a copy of the receipt of the deposit referred to in subparagraph (a), issued by the international depositary authority.

(2) As far as matters regulated in this Treaty and the Regulations are concerned, no Contracting State may require compliance with requirements different from or additional to those which are provided in this Treaty and the Regulations.

Article 4
New Deposit

(1) (a) Where the international depositary authority cannot furnish samples of the deposited microorganism for any reason, in particular,

(i) where such microorganism is no longer viable, or

(ii) where the furnishing of samples would require that they be sent abroad and the sending or the receipt of the samples abroad is prevented by export or import restrictions, that authority shall, promptly after having noted its inability to furnish samples, notify the depositor of such inability, indicating the cause thereof, and the depositor, subject to paragraph (2) and as provided in this paragraph, shall have the right to make a new deposit of the microorganism which was originally deposited.

(b) The new deposit shall be made with the international depositary authority with which the original deposit was made, provided that:

(i) it shall be made with another international depositary authority where the institution with which the original deposit was made has ceased to have the status of international depositary authority, either entirely or in respect of the kind of microorganism to which the deposited microorganism belongs, or where the international depositary authority with which the original deposit was made discontinues, temporarily or definitively, the performance of its functions in respect of deposited microorganisms;

(ii) it may be made with another international depositary authority in the case referred to in subparagraph (a)*(ii)*.

(c) Any new deposit shall be accompanied by a statement signed by the depositor alleging that the newly deposited microorganism is the same as that originally deposited. If the allegation of the depositor is contested, the burden of proof shall be governed by the applicable law.

(d) Subject to subparagraph (a) to subparagraph (c) and subparagraph (e), the new deposit shall be treated as if it had been made on the date on which the original deposit was made where all the preceding statements concerning the viability of the originally deposited microorganism indicated that the microorganism was viable and where the new deposit was made within three months after the date on which the depositor received the notification referred to in subparagraph (a).

(e) Where subparagraph (b)*(i)* applies and the depositor does not receive the notification referred to in subparagraph (a) within six months after the date on which the termination, limitation or discontinuance referred to in subparagraph (b)*(i)* was published by the International Bureau, the three month time limit referred to in subparagraph (d) shall be counted from the date of the said publication.

(2) The right referred to in paragraph (1)(a) shall not exist where the deposited microorganism has been transferred to another international depositary authority as long as that authority is in a position to furnish samples of such microorganism.

Article 5
Export and Import Restrictions

Each Contracting State recognizes that it is highly desirable that, if and to the extent to which the export from or import into its territory of certain kinds of microorganisms is restricted, such restriction should apply to microorganisms deposited, or destined for deposit, under this Treaty only where the restriction is necessary in view of national security or the dangers for health or the environment.

Article 6
Status of International Depositary Authority

(1) In order to qualify for the status of international depositary authority, any depositary institution must be located on the territory of a Contracting State and must benefit from assurances furnished by that State to the effect that the said institution complies and will continue to comply with the requirements specified in paragraph (2). The said assurances may be furnished also by an intergovernmental industrial property organization; in that case, the depositary institution must be located on the territory of a State member of the said organization.

(2) The depositary institution must, in its capacity of international depositary authority:

(i) have a continuous existence;

(ii) have the necessary staff and facilities, as prescribed in the Regulations, to perform its scientific and administrative tasks under this Treaty;

(iii) be impartial and objective;

(iv) be available, for the purposes of deposit, to any depositor under the same conditions;

(v) accept for deposit any or certain kinds of microorganisms, examine their viability and store them, as prescribed in the Regulations;

(vi) issue a receipt to the depositor, and any required viability statement, as prescribed in the Regulations;

(vii) comply, in respect of the deposited microorganisms, with the requirement of secrecy, as prescribed in the Regulations;

(viii) furnish samples of any deposited microorganism under the conditions and in conformity with the procedure prescribed in the Regulations.

(3) The Regulations shall provide the measures to be taken:

(i) where an international depositary authority discontinues, temporarily or definitively, the performance of its functions in respect of deposited microorganisms or refuses to accept any of the kinds of microorganisms which it should accept under the assurances furnished;

(ii) in case of the termination or limitation of the status of international depositary authority of an international depositary authority.

Article 7

Acquisition of the Status of International Depositary Authority

(1) (a) A depositary institution shall acquire the status of international depositary authority by virtue of a written communication addressed to the Director General by the Contracting State on the territory of which the depositary institution is located and including a declaration of assurances to the effect that the said institution complies and will continue to comply with the requirements specified in Article 6(2). The said status may be acquired also by virtue of a written communication addressed to the Director General by an intergovernmental industrial property organization and including the said declaration.

(b) The communication shall also contain information on the depositary institution as provided in the Regulations and may indicate the date on which the status of international depositary authority should take effect.

(2) (a) If the Director General finds that the communication includes the required declaration and that all the required information has been received, the communication shall be promptly published by the International Bureau.

(b) The status of international depositary authority shall be acquired as from the date of publication of the communication or, where a date has been indicated under paragraph (1)(b) and such date is later than the date of publication of the communication, as from such date.

(3) The details of the procedure under paragraph (1) and paragraph (2) are provided in the Regulations.

Article 8

Termination and Limitation of the Status of International Depositary Authority

(1) (a) Any Contracting State or any intergovernmental industrial property organization may request the Assembly to terminate, or to limit to

certain kinds of microorganisms, any authority's status of international depositary authority on the ground that the requirements specified in Article 6 have not been or are no longer complied with. However, such a request may not be made by a Contracting State or intergovernmental industrial property organization in respect of an international depositary authority for which it has made the declaration referred to in Article 7(1)(a).

(b) Before making the request under subparagraph (a), the Contracting State or the intergovernmental industrial property organization shall, through the intermediary of the Director General, notify the reasons for the proposed request to the Contracting State or the intergovernmental industrial property organization which has made the communication referred to in Article 7(1) so that that State or organization may, within six months from the date of the said notification, take appropriate action to obviate the need for making the proposed request.

(c) Where the Assembly finds that the request is well founded, it shall decide to terminate, or to limit to certain kinds of microorganisms, the status of international depositary authority of the authority referred to in subparagraph (a). The decision of the Assembly shall require that a majority of two thirds of the votes cast be in favor of the request.

(2) (a) The Contracting State or intergovernmental industrial property organization having made the declaration referred to in Article 7(1)(a) may, by a communication addressed to the Director General, withdraw its declaration either entirely or in respect only of certain kinds of microorganisms and in any event shall do so when and to the extent that its assurances are no longer applicable.

(b) Such a communication shall, from the date provided for in the Regulations, entail, where it relates to the entire declaration, the termination of the status of international depositary authority or, where it relates only to certain kinds of microorganisms, a corresponding limitation of such status.

(3) The details of the procedure under paragraph (1) and paragraph (2) are provided in the Regulations.

Article 9
Intergovernmental Industrial Property Organizations

(1) (a) Any intergovernmental organization to which several States have entrusted the task of granting regional patents and of which all the member States are members of the International (Paris) Union for the Protection of Industrial Property may file with the Director General a declaration that it accepts the obligation of recognition provided for in Article 3(1)(a), the obligation concerning the requirements referred to in Article 3(2) and all the effects of the provisions of this Treaty and the Regulations applicable to

intergovernmental industrial property organizations. If filed before the entry into force of this Treaty according to Article 16(1), the declaration referred to in the preceding sentence shall become effective on the date of the said entry into force. If filed after such entry into force, the said declaration shall become effective three months after its filing unless a later date has been indicated in the declaration. In the latter case, the declaration shall take effect on the date thus indicated.

(b) The said organization shall have the right provided for in Article 3(1)(b).

(2) Where any provision of this Treaty or of the Regulations affecting intergovernmental industrial property organizations is revised or amended, any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1) by notification addressed to the Director General. The withdrawal shall take effect:

(i) where the notification has been received before the date on which the revision or amendment enters into force, on that date;

(ii) where the notification has been received after the date referred to in *(i)*, on the date indicated in the notification or, in the absence of such indication, three months after the date on which the notification was received.

(3) In addition to the case referred to in paragraph (2), any intergovernmental industrial property organization may withdraw its declaration referred to in paragraph (1)(a) by notification addressed to the Director General. The withdrawal shall take effect two years after the date on which the Director General has received the notification. No notification of withdrawal under this paragraph shall be receivable during a period of five years from the date on which the declaration took effect.

(4) The withdrawal referred to in paragraph (2) and paragraph (3) by an intergovernmental industrial property organization whose communication under Article 7(1) has led to the acquisition of the status of international depositary authority by a depositary institution shall entail the termination of such status one year after the date on which the Director General has received the notification of withdrawal.

(5) Any declaration referred to in paragraph (1)(a), notification of withdrawal referred to in paragraph (2) or paragraph (3), assurances furnished under Article 6(1), second sentence, and included in a declaration made in accordance with Article 7(1)(a), request made under Article 8(1) and communication of withdrawal referred to in Article 8(2) shall require the express previous approval of the supreme governing organ of the intergovernmental industrial property organization whose members are all the States members

of the said organization and in which decisions are made by the official representatives of the governments of such States.

CHAPTER II

ADMINISTRATIVE PROVISIONS

Article 10
Assembly

(1) (a) The Assembly shall consist of the Contracting States.

(b) Each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) Each intergovernmental industrial property organization shall be represented by special observers in the meetings of the Assembly and any committee and working group established by the Assembly.

(d) Any State not member of the Union which is a member of the Organization or of the International (Paris) Union for the Protection of Industrial Property and any intergovernmental organization specialized in the field of patents other than an intergovernmental industrial property organization as defined in Article 2*(v)* may be represented by observers in the meetings of the Assembly and, if the Assembly so decides, in the meetings of any committee or working group established by the Assembly.

(2) (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) exercise such rights and perform such tasks as are specially conferred upon it or assigned to it under this Treaty;

(iii) give directions to the Director General concerning the preparations for revision conferences;

(iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(v) establish such committees and working groups as it deems appropriate to facilitate the work of the Union;

(vi) determine, subject to paragraph (1)(d), which States other than Contracting States, which intergovernmental organizations other than intergovernmental industrial property organizations as defined in Article 2(v) and which international nongovernmental organizations shall be admitted to its meetings as observers and to what extent international depositary authorities shall be admitted to its meetings as observers;

(vii) take any other appropriate action designed to further the objectives of the Union;

(viii) perform such other functions as are appropriate under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) A delegate may represent, and vote in the name of, one State only.

(4) Each Contracting State shall have one vote.

(5) (a) One half of the Contracting States shall constitute a quorum.

(b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.

(6) (a) Subject to Article 8(1)(c) and Article 12(4) and Article 14(2)(b), the decisions of the Assembly shall require a majority of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either on his own initiative or at the request of one fourth of the Contracting States.

(8) The Assembly shall adopt its own rules of procedure.

Article 11
International Bureau

(1) The International Bureau shall:

(i) perform the administrative tasks concerning the Union, in particular such tasks as are specifically assigned to it under this Treaty and the Regulations or by the Assembly;

(ii) provide the secretariat of revision conferences, of the Assembly, of committees and working groups established by the Assembly, and of any other meeting convened by the Director General and dealing with matters of concern to the Union.

(2) The Director General shall be the chief executive of the Union and shall represent the Union.

(3) The Director General shall convene all meetings dealing with matters of concern to the Union.

(4) (a) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meeting convened by the Director General and dealing with matters of concern to the Union.

(b) The Director General, or a staff member designated by him, shall be ex officio secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).

(5) (a) The Director General shall, in accordance with the directions of the Assembly, make the preparations for revision conferences.

(b) The Director General may consult with intergovernmental and international nongovernmental organizations concerning the preparations for revision conferences.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(d) The Director General, or a staff member designated by him, shall be ex officio secretary of any revision conference.

Article 12
Regulations

(1) The Regulations provide rules concerning:

(i) matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed;

(ii) any administrative requirements, matters or procedures;

(iii) any details useful in the implementation of this Treaty.

(2) The Regulations adopted at the same time as this Treaty are annexed to this Treaty.

(3) The Assembly may amend the Regulations.

(4) (a) Subject to subparagraph (b), adoption of any amendment of the Regulations shall require two thirds of the votes cast.

(b) Adoption of any amendment concerning the furnishing of samples of deposited microorganisms by the international depositary authorities shall require that no Contracting State vote against the proposed amendment.

(5) In the case of conflict between the provisions of this Treaty and those of the Regulations, the provisions of this Treaty shall prevail.

CHAPTER III

REVISION AND AMENDMENT

Article 13
Revision of the Treaty

(1) This Treaty may be revised from time to time by conferences of the Contracting States.

(2) The convocation of any revision conference shall be decided by the Assembly.

(3) Article 10 and Article 11 may be amended either by a revision conference or according to Article 14.

Article 14
Amendment of Certain Provisions of the Treaty

(1) (a) Proposals under this Article for the amendment of Article 10 and Article 11 may be initiated by any Contracting State or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2) (a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption of any amendment to Article 10 shall require four fifths of the votes cast; adoption of any amendment to Article 11 shall require three fourths of the votes cast.

(3) (a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three fourths of the Contracting States members of the Assembly at the time the Assembly adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the Contracting States which were Contracting States at the time the amendment was adopted by the Assembly, provided that any amendment creating financial obligations for the said Contracting States or increasing such obligations shall bind only those Contracting States which have notified their acceptance of such amendment.

(c) Any amendment which has been accepted and which has entered into force in accordance with subparagraph (a) shall bind all States which become Contracting States after the date on which the amendment was adopted by the Assembly.

CHAPTER IV

FINAL PROVISIONS

Article 15
Becoming Party to the Treaty

(1) Any State member of the International (Paris) Union for the Protection of Industrial Property may become party to this Treaty by:

(i) signature followed by the deposit of an instrument of ratification, or

(ii) deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

Article 16
Entry Into Force of the Treaty

(1) This Treaty shall enter into force, with respect to the first five States which have deposited their instruments of ratification or accession, three months after the date on which the fifth instrument of ratification or accession has been deposited.

(2) This Treaty shall enter into force with respect to any other State three months after the date on which that State has deposited its instrument of ratification or accession unless a later date has been indicated in the instrument of ratification or accession. In the latter case, this Treaty shall enter into force with respect to that State on the date thus indicated.

Article 17
Denunciation of the Treaty

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) Denunciation shall take effect two years after the day on which the Director General has received the notification.

(3) The right of denunciation provided for in paragraph (1) shall not be exercised by any Contracting State before the expiration of five years from the date on which it becomes party to this Treaty.

(4) The denunciation of this Treaty by a Contracting State that has made a declaration referred to in Article 7(1)(a) with respect to a depositary institution which thus acquired the status of international depositary authority shall entail the termination of such status one year after the day on which the Director General received the notification referred to in paragraph (1).

Article 18

Signature and Languages of the Treaty

(1) (a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.

(b) Official texts of this Treaty shall be established by the Director General, after consultation with the interested Governments and within two months from the date of signature of this Treaty, in the other languages in which the Convention Establishing the World Intellectual Property Organization was signed.

(c) Official texts of this Treaty shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Japanese and Portuguese languages, and such other languages as the Assembly may designate.

(2) This Treaty shall remain open for signature at Budapest until December 31, 1977.

Article 19

Deposit of the Treaty; Transmittal of Copies; Registration of the Treaty

(1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations to the Governments of all the States referred to in Article 15(1), to the intergovernmental organizations that may file a declaration under Article 9(1)(a) and, on request, to the Government of any other State.

(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and to the Regulations to all Contracting States, to all intergovernmental industrial property organizations and, on request, to the Government of any other State and to any other intergovernmental organization that may file a declaration under Article 9(1)(a).

Article 20

Notifications

The Director General shall notify the Contracting States, the intergovernmental industrial property organizations and those States not members of the Union which are members of the International (Paris) Union for the Protection of Industrial Property of:

(i) signatures under Article 18;

(ii) deposits of instruments of ratification or accession under Article 15(2);

(iii) declarations filed under Article 9(1)(a) and notifications of withdrawal under Article 9(2) or Article 9(3);

(iv) the date of entry into force of this Treaty under Article 16(1);

(v) the communications under Article 7 and Article 8 and the decisions under Article 8;

(vi) acceptance of amendments to this Treaty under Article 14(3);

(vii) any amendment of the Regulations;

(viii) the dates on which amendments to the Treaty or the Regulations enter into force;

(ix) denunciations received under Article 17.