



C/39/12

ORIGINAL: English/French/German

DATE: September 23, 2005

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Thirty-Ninth Ordinary Session
Geneva, October 27, 2005****REPORTS BY REPRESENTATIVES OF MEMBERS AND OBSERVERS
ON THE LEGISLATIVE, ADMINISTRATIVE AND TECHNICAL FIELDS***Document prepared by the Office of the Union*

1. According to the practice introduced on the occasion of the twenty-sixth ordinary session of the Council, it is recommended that the reports from the representatives of members and observers on the situation in the legislative, administrative and technical fields of plant variety protection and related areas be submitted in writing, in advance, to increase the ability of the Council to carry out its tasks effectively.

2. Written reports have been requested by the Office of the Union in the invitation circulars relating to this session and a model format has been proposed for the purpose. The reports submitted by the following members and observers are reproduced in Annexes I to XVIII (in the alphabetical order of the names in French of members and observers): South Africa, Albania, Germany, Austria, Belgium, Latvia, Lithuania, Norway, Poland, Republic of Moldova, United Kingdom, Serbia and Montenegro, Slovenia, Sweden, Switzerland, Tunisia, Turkey and Ukraine.

[Annexes follow]

ANNEX I

SOUTH AFRICA

PLANT VARIETY PROTECTION1. Situation in the Legislative Field

- 1.1 South Africa is in the process of reviewing its national legislation pertaining to plant breeders' rights.
- 1.2 South Africa has not yet ratified the 1991 Convention.
- 1.3 Plant Breeders' Fees have been increased from April 1, 2005 again. This is an annual process, and fees are increased in order to keep up with inflation and salary increases. Details of the increases have been forwarded to UPOV.
- 1.4 An objection was received regarding the grant of a PBR to a Capsicum variety. Statements and counter-statement from the two companies concerned have been received and the objection will be heard shortly, most probably during October 2005.
- 1.5 Extension of protection was extended to 22 genera and species.

2. Cooperation in Examination

There were no further developments in this regard.

3. Situation in the Administrative Field

During the period from September 1, 2003, to August 30, 2004, 224 applications for plant breeders' rights were received and 111 rights were granted. On August 30, 2004, there were 806 new applications under consideration and 1,655 plant breeders' rights in force. Further details are given below.

	Agricultural Crops	Vegetable Crops	Ornamental Crops	Fruit Crops	Total
Applications received	51	27	124	62	264
Plant Breeders' Rights Granted	35	16	61	27	139
Valid Plant Breeders' Rights	569	227	788	255	1,839
Applications under consideration	274	16	385	294	969

South Africa is still experiencing difficulties with the issuance of PBR within the novelty requirements of UPOV (4 or 6 years). For example, by the time that the potential of a variety has been tested and evaluated in Europe, two or three years of sales have already elapsed in Europe. After another two to three years in quarantine and a further three to four years in South Africa, the varieties are normally “too old” to obtain plant breeders’ rights in South Africa.

We are also concerned with a new trend developing in SA where certain holders of PBR do not sell a variety to someone, but only the right to use the variety. The material remains their property of the plant breeder. This is conducted on the basis of a contract between the relevant parties.

4. Situation in the Technical Field

Differences between varieties which are constantly becoming smaller and smaller are still our biggest problem and because of this, more difficulties are sometimes encountered to distinguish between varieties.

Open-pollinated maize varieties are still very popular and are being bred continually in South Africa, especially for the African market. One of the biggest problems with these varieties is the maintenance thereof. The only solution is not to grade the seeds of these varieties in any way as this constantly leads to the shifting of the genetic make-up of the variety which again results in differences in the varieties every year.

5. Activities for the Promotion of Plant Variety Protection

Seminars, courses and workshops are held on an ongoing basis throughout the year to educate people about the benefits of plant breeders’ rights and variety lists.

6. Related Field of Activities

Genetically modified varieties are still being tested and Cotton, Maize and Soybean GMO varieties were released during the past year.

Applications for general release/commercial production of genetically modified varieties (with stacked genes) are under consideration and applications for stacked gene varieties of maize are also anticipated.

[Annex II follows]

ANNEX II

ALBANIA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Amendments of the law and the implementing regulations

The law for the “Plant Breeder Rights” has been approved in Albania. This law was submitted to the Council of UPOV at the beginning of 2004 for advice on conformity with the 1991 Act of the Convention. The Council, during the extraordinary session of April 2, 2004, declared that the Albanian Law conformed with the 1991 Act of the Convention and decided that the Albanian Government could deposit its instrument of accession. The Council recommended some amendments. In the meantime, we have prepared the implementation regulations and the instrument of accession to UPOV. In May 2005, our Parliament approved the law for the accession of our country to the UPOV Convention. Our Ministry of Foreign Affairs has already deposited the instrument of accession with the UPOV Office.

In accordance with the Council recommendation, draft amendments to the law have been prepared. During this work, we had the legislative consultation assistance of Mr. Barry Greengrass.

We have also approved the rules and the fees for variety protection. Variety protection extends to 22 species.

2. Cooperation in Examination

Conclusion of new agreements is in progress or planned.

3. Situation in the Administrative Field

- The relevant department of the National Seeds Institute (NSI) has become operational.
- The administration office procedures have been approved.

4. Situation in the Technical Field

The technical methods of testing have been adapted to the UPOV methods.

5. Activities for the Promotion of Plant Variety Protection

- There have been seminars for the training of the DUS testing experts.
- Responsible persons have participated in the meetings of the Technical Working Parties and the Technical Committee of UPOV.
- We have had the technical assistance of Mr. Arnold van Wijk for the implementation of the PBR system.

RELATED FIELDS OF ACTIVITY

The catalogue of varieties authorized for sale was published for 2005.

[Annex III follows]

ANNEX III

GERMANY

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 On January 28, 2005, the Plant Varieties Protection Law was amended with reference to Directive 98/44/EC on the legal protection of biotechnological inventions.

1.2 Nothing to report.

1.3 Nothing to report.

2. Cooperation in Examination

Nothing to report.

3. Situation in the Administrative Field

Nothing to report.

4. Situation in the Technical Field

Nothing to report.

5. Activities for the Promotion of Plant Variety Protection

During the reporting period, the Federal Plant Varieties Office received delegations from the non-member States Saudi Arabia and Serbia and Montenegro, and also from the member States Bulgaria, France and the Czech Republic.

RELATED FIELDS OF ACTIVITY

Nothing to report.

[Annex IV follows]

ANNEX IV

AUSTRIA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

List of fees of the Federal Office for Food Safety for acts pursuant to the 2001 Law on Plant Variety Protection (plant variety protection fees 2005-SST 2005, applicable from July 1, 2005).

Ordinance of the Federal Minister for Agriculture, Forestry, Environment and Water Management for extending the list of species to varieties of all plant genera and species is under preparation.

2. Cooperation in Examination

Extension of the examination agreement with the Community Plant Variety Office.

Examination agreement with Hungary under preparation.

3. Situation in the Administrative Field

Activities of the Federal Office for Food Safety with respect to plant variety protection
(for the period of September 1, 2004 to August 31, 2005):

Number of applications:	1
Number of titles of protection granted:	4
Number of titles having ceased:	9
Number of titles of protection in force:	126

RELATED FIELDS OF ACTIVITIES

Provisions in the Field of Genetic Engineering

No releases have yet been accepted in Austria.

[Annex V follows]

ANNEX V

BELGIUM

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

Adaptation to the 1991 Act of the Convention

This project is in progress. The draft law will shortly be submitted for consultation to the professional sectors concerned.

Access to plant variety protection under the 1991 Act is nevertheless still possible on Belgian territory through the Community Plant Variety Office by virtue of the European provisions on the subject.

2. Cooperation in Examination

No change.

3. Situation in the Administrative Field

- Changes in the Administrative Structure

No change.

- Volume of Activity – Status on August 31, 2005

Since the entry into force of the plant variety legislation in Belgium and up to August 31, 2005, 2,239 applications for protection have been registered and 1,788 certificates issued, including 298 that are still in force.

DEVELOPMENTS IN RELATED FIELDS OF ACTIVITY

National Catalogues of Varieties

- Order of the Walloon Government dated May 27, 2004, on Testing for the Inclusion of Varieties of Agricultural and Vegetable Species in the National Catalogue.

Control of Seeds and Seedlings – Certification

- Besluit van de Vlaamse regering van 25 maart 2005 houdende reglementering van de handel in en de keuring van zaaizaad van groenvoedergewassen
= Order of the Flemish Government of March 25, 2005, regulating the trading and inspection of fodder crops.
- Order of the Government of the Brussels-capital region dated May 3, 2005, on the marketing of seed of fodder crops.
- Order of the Walloon Government of April 21, 2005, on the marketing of propagative material of fruit crops and fruit crops for the production of fruit.
- Besluit van de Vlaamse regering van 18 maart 2005 houdende het in de handel brengen van teelmateriaal en plantgoed van groentegewassen, met uitzondering van groentezaden
= Order of the Flemish Government of March 18, 2005, on the marketing of propagative material and seedlings of vegetables, with the exception of vegetable seed.
- Besluit van de Vlaamse regering van 18 maart 2005 houdende het in de handel brengen van teelmateriaal van fruitgewassen, alsmede van fruitgewassen die voor de fruitteelt worden gebruikt
= Order of the Flemish Government of March 18, 2005, on the marketing of propagative material of fruit crops and fruit crops for the production of fruit.

Legislation on the Release and Marketing of GMOs

- Royal decree of February 21, 2005, on the deliberate release into the environment of genetically modified organisms or products containing them. This decree transposes into Belgian law Directive 2001/18/EC of the European Parliament and of the Council of March 12, 2001, on the deliberate release into the environment.

Legal Protection of Biotechnological Inventions

- Law of April 28, 2005, modifying the law of March 28, 1984, on patents in respect of the patentability of biotechnological inventions. That law transposes into Belgian law directive 98/44/EC of the European Parliament and of the Council of July 6, 1998, on the protection of biotechnological inventions.

Other Matters

- Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004, on the enforcement of intellectual property rights. The Directive on the application of intellectual and industrial property rights, like copyright and related rights, trademarks, designs or patents, was adopted in April 2004. The Member States have to introduce the legislative, regulatory and administrative provisions necessary to comply with this Directive by April 29, 2006, at the latest. A preliminary draft law was finalized by the Administration.

- A preliminary draft law on the repression of counterfeiting and piracy of intellectual property rights was finalized by the Administration.

[Annex VI follows]

ANNEX VI

LATVIA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 The Plant Varieties Protection Law came into force on May 31, 2002, and complies with the 1991 Act of the UPOV Convention. We have prepared amendments (completed) the Latvian Plant Varieties Protection Law. Amendments could come into force at the end of 2005.

1.2 Case law: Nothing to report.

1.3 No changes have been done.

2. Cooperation in Examination

- The unilateral agreement for cooperation in DUS testing with COBORU (Poland) signed in 1995.
- The designation agreement for cooperation in DUS testing with CPVO, signed in December 2004.
- The bilateral agreement for cooperation in DUS testing with Plant Production Inspectorate (Estonia) is in progress.

3. Situation in the Administrative Field

3.1 Changes in the administrative structure: No changes have taken place.

3.2 Changes in office procedure and systems:

- On May 1, 2004, Latvia became a member State of the European Union;
- The first edition of the Latvian Gazette for Plant Breeders' Rights in Latvian and English has been sent to the UPOV Office in Geneva and to the UPOV members.

3.3 Plant Variety Protection Statistics

Year	Applications filed by:			Titles issued to:			Titles having ceased to be in force in reference year	Titles in force at end of reference year
	Residents	Non-residents	Total	Residents	Non-residents	Total		
2000	19	41	60	45	0	45	1	113
2001	38	89	127	19	4	23	7	129
2002	27	13	40	35	29	64	0	193
2003	7	17	24	16	8	24	6	211
2004	11	5	16	18	22	40	1	250

Applications filed by (first line) and titles of protection issued to (second line) non-residents in 2004, broken down according to the country of origin of the applicant

Country of origin	DE	MD	MX	NL	NO	NZ	PL	PT	RO	RU	SE	SI	SK	UA	US	UY	ZA	BY	TOTAL
Reporting country																			
LV Latvia	1	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	5
	8	-	-	3	-	-	1	-	-	-	10	-	-	-	-	-	-	-	22

4. Situation in the Technical Field

DUS test was carried out in Latvia in 2004 on:

Species	For Latvia	For Estonia
<i>Malus Mill.</i> (fruit)	4	17
<i>Ryus communis</i> L.		2
<i>Prunus cerasus</i> L.		15
<i>Prunus domestica</i> L.		9
<i>Ribes nigrum</i> L.		5
<i>Rubus idaeus</i> L.	1	2
<i>Rosa</i> L.	3	
<i>Rhododendron</i> L.	6	

[Annex VII follows]

ANNEX VII

LITHUANIA

1. Situation in the Legislative Field

1.1 Amendments of the law and the implementing regulations:

- Law on Plant Variety Protection of the Republic of Lithuania (Official Journal, 2001, No. 104-3701);
- Regulation No. 710 of the Government of the Republic of Lithuania of December 15, 2005, regarding Replacement of Regulation of the Republic of Lithuania No. 1458 of December 15, 2000, concerning Fee Rates (Official Journal, 2005, No. 81-2958);
- Regulation No. 1473 of the Government of the Republic of Lithuania of September 19, 2002, regarding Replacement of Regulation of the Republic of Lithuania No. 1458 of December 15, 2000, concerning Fee Rates (Official Journal, 2002, No 93-3987);
- Order No. 14 of the Director of Lithuanian State Plant Varieties Testing Center of August 5, 2003, on the Approval of Application Forms for Plant Variety Protection and Technical Questionnaires Forms for all Protected Plant Species;
- Order No. 3 D – 371 of the Minister of Agriculture of the Republic of Lithuania of June 23, 2004, regarding remuneration.

1.2 Law on Plant Variety Protection of the Republic of Lithuania

1.3 Order No. 288 of the Minister of Agriculture of the Republic of Lithuania of August 1, 2002, on the Approval of the List of Plant Genera and Species of the Varieties which are Subject to Legal Protection in the Republic of Lithuania and on the Appointment of the Administrator of the List of Protected Varieties in the Republic of Lithuania (Official Journal, 2002, No. 79-3354).

2. Cooperation in Examination

Bilateral agreement with the Polish Research Centre for Cultivar Testing regarding performing DUS tests of August 11, 2000.

3. Situation in the Administrative Field

- Commission for Evaluation of Applications for Variety Protection has been approved by Order No. 16 of the Director of the Lithuanian State Plant Varieties Testing Center of September 10, 2003;
- Plant variety protection shall be approved by the order of the Director of Lithuanian State Plant Varieties Testing Center;
- Procedures for plant varieties protection are provided in the Law on Plant Variety Protection of the Republic of Lithuania.

4. Situation in the Technical Field

DUS tests are performed by the Polish Research Centre for Cultivar Testing according to bilateral agreement of August 11, 2000.

5. Activities for the Promotion of Plant Variety Protection

- On March 30 and 31, 2005, Lithuania participated at the meetings of the Administrative Council of the Community Plant Variety Office (CPVO) in Rome and on July 14, 2005, at the meeting in Angers, France;
- From April 4 to 6, 2005, Lithuania participated at the session of the Technical Committee of the Office of the International Union for the Protection of New Varieties of Plants (UPOV) in Geneva, Switzerland;
- Information Bulletin for Plant Breeder's Rights and National List No. 3 of Lithuanian State Plant Varieties Testing Center have been published in January 2005 and No. 4 in June 2005.

RELATED FIELDS OF ACTIVITIES

- Every year, the Lithuanian National List of Varieties is approved by the order of the Director of the Lithuanian State Plant Varieties Testing Center. Propagating material of each variety from each plant species can be certified according to Mandatory Requirements, prepared according to EU directive;
- Law on Genetically Modified Organisms of the Republic of Lithuania (Official Journal, 2001, No. 56-1976) and Law on the Amendment of the Law on Genetically Modified Organisms of the Republic of Lithuania (Official Journal, 2003, No. 34-1419) provides control on genetically modified organisms and safe supply to the market;
- Law on the National Plant Genetic Resources of the Republic of Lithuania (Official Journal, 2001, No. 90-3144) provides preservation of genetic resources.

[Annex VIII follows]

ANNEX VIII

NORWAY

1. Situation in the Legislative Field

No changes have been done.

2. Cooperation in Examination

Norway received 39 DUS reports from other members.

3. Situation in the Administrative Field

From January 1 to December 31, 2004, 37 applications have been received. 42 titles were issued.

Grant of rights by crop kind were as follows:

Agrostis stolonifera	1	Euphorbia pulcherrima	2	Ribes nigrum	2
Argyranthemum frutescens	1	Festuca ovina	1	Rosa	13
Begonia hiemalis	2	Fragaria x ananassa	3	Rubus idaeus	1
Bromus inermis	1	Hordeum vulgare	2	Trifolium pratense	1
Buxus sempervirens	1	Lolium x boucheanum	1	Triticum aestivum	2
Calibrachoa	2	Pelargonium	3		
Dactylis glomerata	1	Petunia	2		

219 titles were in force August 1, 2005.

[Annex IX follows]

ANNEX IX

POLAND

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

The Law of June 26, 2003, on the Legal Protection of Plant Varieties - published in the Polish Official Journal No. 137/2003, item 1300 (*Dziennik Ustaw Nr 137/2003, poz. 1300*) - is in force since the day of the Republic of Poland's accession to the European Union (May 1, 2004).

Its English translation was published, in September 2004, in the Gazette and Newsletter of the International Union for the Protection of New Varieties of Plants No 97, whereas information on fee rates was included in the No. 98 of this Gazette (December 2004).

The Polish Law contains provisions which make the existence of two PBR systems on the territory of Poland possible, i.e. national and the Community plant variety rights systems.

The Law establishes provisions in respect of breeders' rights for their varieties, based on the 1991 Act of the UPOV Convention.

Poland acceded, as the twenty-fourth State, to the 1991 Act of the UPOV Convention (August 15, 2003).

The Law provides, *inter alia*,

- protection of all plant genera and species (since Nov. 1, 2000)
- duration of the breeder's right for varieties of potato, vines and trees - 30 years from the date of grant of the breeder's right and for varieties of remaining species - 25 years
- publication of the Polish Gazette for Plant Breeders' Rights and National List every two months
- provisional protection since the date of publication of an application in our Official Gazette

The implementing regulations to the Law are:

- The Decree of the Minister of Agriculture and Rural Development of February 17, 2004, on fee rates for the lodging of an application for the Plant Breeders' Rights protection, DUS testing as well as for the granting and the maintenance of the exclusive right titles (P.O.J. No. 60/2004, item 567)
- The Decree of the Minister of Agriculture and Rural Development of March 5, 2004, on application form for the grant of Plant Breeders' Rights (PBR) as well as the technical questionnaire form (P.O.J. No. 60/2004, item 569)

- The Decree of the Minister of Agriculture and Rural Development of March 1, 2004 concerning the quantity of seed material necessary for conducting the distinctness, uniformity and stability tests and the dates of its supplying (P.O.J. No. 60/2004, item 568).

2. Cooperation in Examination

The Research Centre for Cultivar Testing (COBORU) in Słupia Wielka cooperates in the field of DUS examination with different countries.

We have bilateral agreements with the Czech Republic, Hungary and Slovakia.

Unilateral agreements are in force with Estonia, Latvia and Lithuania. Poland carries out DUS tests for the authorities of Estonia, Latvia and Lithuania. It refers to different species of agricultural, vegetable and fruit plants.

COBORU receives considerably more requests for the technical examination results from authorities of other UPOV members, especially from Slovenia and the Community Plant Variety Office (CPVO).

Poland actively participates in the ring test program. This year, pepper and potato varieties have been a subject of these tests, with meetings in Hungary and Poland. Two Polish experts attended, on August 4 and 5, 2005, the pepper ring test meeting in Monor (Hungary).

On July 13 and 14, 2005, COBORU organized the Potato Ring Test meeting in the Experimental Station for Cultivar Testing in Karżniczka. Twenty-five persons from ten countries were acquainted with the system of official variety assessment and potato breeding in Poland.

3. Situation in the Administrative and Technical Field

In the reporting period, there has been a considerable decrease in numbers of applications for national PBR which is caused by the functioning of the Community PVP system – since May 1, 2004 – on the Polish territory.

An increase of withdrawals of varieties from the national PVP system in Poland was observed, which is connected with the existence of the Community PVP system.

From January 1 to September 10, 2005, 86 new applications for PBR, including 64 domestic and 22 foreign, were submitted for national protection.

One hundred and eighty-five titles of PBR protection have been granted in the same period.

In total (as of September 10, 2005) 1,739 varieties are protected in Poland.

Details on statistics are given below (see table).

Table

Crops	Applications for PBR 1.01. – 10.09.2005			Grants of PBR 1.01. – 10.09.2005			Titles having ceased	Titles in force at 10.09.2005
	domestic	foreign	together	domestic	foreign	together		
Agricultural	39	10	49	47	18	65	46	665
Vegetables	-	-	-	20	2	22	6	293
Ornamentals	23	12	35	24	55	79	382	683
Fruit trees and berry plants	2	-	2	7	12	19	11	97
Miscellaneous	-	-	-	-	-	-	5	1
Total	64	22	86	98	87	185	450	1,739

4. Activities for the Promotion of Plant Variety Protection

Poland participates in the sessions of the organs of UPOV, e.g. the Council, the Administrative and Legal Committee, the Consultative Committee and the Technical Committee, in Geneva, Switzerland.

From April 24 to 26, 2005, Prof. Edward S. Gacek visited, as a member of a CPVO delegation, the Ukrainian Institute for Plant Variety Examination, State Service on Right Protection for Plant Varieties, and gave a presentation on the activity of the CPVO Administrative Council.

On the request of the breeders from the German companies W. Kordes Söhne and Rosen Tantau, a meeting in order to discuss the matters connected with an infringement of plant breeders' rights in relation to Rose varieties protected both on national and Community levels was organized in COBORU on April 29, 2005,. As a result, the Research Centre for Cultivar Testing will perform identity tests of Rose varieties commissioned by their breeders.

Meetings, seminars, etc.

The group of forty German breeders and scientists from the Institute for Plant Protection in Field Crops and Grassland visited the Research Centre for Cultivar Testing (COBORU) on June 13, 2005. They were informed about the system of national listing and PBR protection as well as the organization of DUS and VCU examination in our country.

On June 17, 2005, three representatives of the State Inspection for Testing and Protection of Plant Varieties of the Republic of Belarus attended a training course, organized by COBORU, touching on the subject concerning the system of national listing and PBR protection in Poland after Poland's accession to the European Union.

Three specialists from the Central Institute for Supervising and Testing in Agriculture (UKZUZ - Czech Republic) visited COBORU and its experimental stations on June 23 and 24, 2005.

This meeting covered the topics related to DUS testing of certain species of agricultural, fruit, ornamental and vegetable plants and the use of electrophoretic analysis for cereals.

From July 11 to 15, 2005 COBORU organized a meeting with the participation of three specialists from Slovakia (UKSUP), comprising inspection of DUS tests in experimental stations.

From August 29 to September 2, 2005, in COBORU, a training seminar on the organization of DUS examination system and the procedure of national listing and granting of PBR protection in Poland was organized for six specialists from the State Service on Right Protection for Plant Varieties of the Ministry of Agrarian Policy of Ukraine.

Publications

COBORU issues, every two months, the Polish Gazette for Plant Breeders' Rights and National List (Diariusz) which contains detailed information referring to PBR protection and national listing systems.

The list of varieties protected by national Plant Breeders' Rights (including provisional PBRs), valid as of June 30, 2005, was published in the third number of the Polish Gazette for Plant Breeders' Rights and National List (No. 3(68)2005).

In addition, the Research Centre for Cultivar Testing maintains and updates every two weeks a homepage www.coboru.pl that contains the above-mentioned list, PBR information, application forms, fee rates and time limits for their remittance.

RELATED FIELDS OF ACTIVITIES

The Polish National List of Varieties of Agricultural and Vegetable Plants as well as the Polish National List of Varieties of Fruit Plants were issued in May 2005.

[Annex X follows]

ANNEX X

REPUBLIC OF MOLDOVA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1. Amendments to the Law and Regulation on the application of the Law:

The Law No. 915-XIII of July 11, 1996, on the Protection of Plant Varieties of the Republic of Moldova was amended in 2002 by the Law No. 1446-XV of November 8, 2002, with regard to the Art. 1, 4(4), 6 a), b), 17, 18, 20 and in 2003 by the Law No. 469-XV of November 21, 2003, with regard to the Art. 17.

Short-term prospects

In order to fulfill Moldova's commitments under the Partnership and Cooperation Agreement between the Republic of Moldova (RM) and the European Union (EU), the work on harmonization of the national *sui generis* system of plant variety protection with the European legislation has started.

According to the RM – EU Action Plan:

- the elaboration of a new law on the protection of plant varieties in compliance with the UPOV Convention and European Directives in the field is under way; and
- capacity-building of the national bodies responsible for the administration of the plant variety protection system is foreseen in 2006-2007.

Problems encountered

Restrained financial resources for extending the list of the protected plant variety species and for purchasing specialized equipment for DUS examination.

1.2 Case Law: No precedents with regard to the protection of breeders' rights.

1.3 Extension to the protection to other genera and species (done or planned):

At present, the plant variety protection is extended to 24 species.

A decision on the extension of protection for a number of 35 botanical plant genera and species has been presented to the Government for its approval.

2. Cooperation in Examination

There are no bilateral agreements of cooperation in the examination of plant varieties.

3. Situation in the Administrative Field

Following a countrywide governmental initiative aimed to strengthen and foster the innovation potential of the country, a new Code on Science and Innovation has been adopted. According to this code, the State bodies dealing with IP issues, namely the State Agency on Industrial Property Protection (AGEPI) and the State Agency on Copyright, were merged, in September 2004, in a single body – the State Agency on Intellectual Property.

As the successor in rights of the two former IP agencies and according to Article 106 of the Code on Science and Innovation of the Republic of Moldova, the State Agency on Intellectual Property represents the Republic of Moldova in the World Intellectual Property Organization, and other international specialized organizations, and has assumed the responsibility for Moldova's commitments under the international and bilateral agreements in the field of intellectual property.

In that context, new application forms were adopted for industrial property objects, including the ones for the plant varieties.

Changes in the Procedural and Protection System

No changes.

Statistics

In the period from July 1, 2003, to September 1, 2004, 70 applications were received, as follows:

69 national applications: Barley: 4; Wheat: 7; Vetch: 6; Soybean: 3; Pea: 3; Sunflower: 10; Tomato: 6; Maize: 21; Sugar beet: 5; Bean: 2; Cucumber: 2;

1 foreign application: Wheat: 1 (UA).

In November 2003, 10 decisions for the grant of patents were adopted (all of them refer to vine (*Vitis vinifera* L.)).

In the period from September 1, 2004, to September 1, 2005, 8 national applications were received, as follow:

Sage – 1, Lavender – 3, Winter wheat – 2, Pea – 1, Soybean – 1.

In May 2005, 2 patents were granted (both refer to vine (*Vitis vinifera* L.)).

At present, 19 variety patents are in force.

4. Situation in the Technical Field

No changes.

5. Activities for the Promotion of Plant Variety Protection

Meetings, seminars

In the period under review, for the purpose of implementing the provisions and requirements of the Law No. 915-XIII of July 11, 1996 on the Protection of Plant Varieties of the Republic of Moldova, the State Agency on Intellectual Property continued to organize seminars and workshops for representatives in industrial property, interested persons, including scientists and breeders, held within the AGEPI library, the Agriculture University of Moldova as well as in the territory.

In September 2004 a national seminar with the theme “Exclusive right in new plant varieties under the UPOV Convention – a real opportunity of securing investments in the plant amelioration field” was organized in the Republic of Moldova. Held under the auspices of the Ministry of Agriculture and Food Industry and honored by the presence of Mr. Rolf Jördens, Vice Secretary-General of UPOV, the seminar was one of the most important events in this particular area.

Some reports regarding the advantages of the UPOV Plant Variety Protection System and the news of the 1991 Act of the UPOV Convention were prepared for the Scientific Symposium “AGEPI Readings”, held in April 2004 and 2005, in Chisinau, Republic of Moldova.

On June 10, 2005 the Academy of Sciences of Moldova, in cooperation with the AGEPI, organized the international conference “Technology Transfer in Agriculture and Food Production” with focus on some aspects of inventive activities in the area of agriculture, as well as activities of R&D institutions in agricultural field in condition of market economy.

Publications

A range of articles concerning the granting procedure of a plant variety patent according to the legislation of the Republic of Moldova were published by the AGEPI examiners in “INTELLECTUS” magazine of the AGEPI.

In 2005 was launched a new interface of the AGEPI web site: www.agepi.md, including the national legislation in the field of plant varieties protection, the application form for a plant variety patent, and useful information for applicants and breeders, the information being available in the English, Romanian and Russian languages.

The AGEPI Publishing Office published the updated versions (in Russian and Romanian) of the booklets “How to obtain a plant variety patent in the Republic of Moldova”, and “Intellectual Property Protection in the Republic of Moldova”, which contain information on plant variety protection.

[Annex XI follows]

ANNEX XI

UNITED KINGDOM

1. Situation in the Legislative Field

There have been no significant developments in the legislative field with regard to Plant Breeders' Rights following the ratification of the 1991 UPOV Convention in 1998.

2. Cooperation in Examination

The United Kingdom continues to play an active role in the testing of various species for a number of countries and the Community Plant Variety Office (CPVO), although the numbers of requests for DUS testing has decreased.

3. Situation in the Administrative Field

Website address

The website address of Defra's Plant Variety Rights Office and Seeds Division is as follows: <http://www.defra.gov.uk/planth/pvs/default.htm>

The PVRO Plant Varieties and Seeds Gazette, which is published monthly, can be found at this address, in addition to other information relating to the Office. Also published on this website is the Special Edition of the Gazette, which lists all varieties holding UK Plant Breeders' Rights and/or with UK National Listing as at December 31 of each year.

4. Situation in the Technical Field

4.1 PBR Applications

There had been a marked decrease in the numbers of applications for UK PBR over the past five or six years, a fact which could be attributed almost directly to the increase in the number of applications for Community Plant Variety Rights. This trend, however, now appears to be starting to level out.

4.2 European Plant Breeders' Rights

The United Kingdom continues to contribute to the development and management of the EU system through membership of the CPVO Administrative Council and various working groups.

4.3 National Listing and PBR Review

The UK National Authorities have almost completed their review of National Listing and Plant Breeders' Rights. The aims of the review include full cost recovery and savings to plant breeders. The Review has considered plant variety testing systems, including the use of breeders' trials and collaborative agreements with other countries.

4.4 Technical developments

The PVRO continues to support research and technical development aimed at improving the cost-effectiveness of variety testing. Attention is focused on electronic image capture and analysis, statistical techniques and molecular techniques.

5. Activities for the Promotion of Plant Variety Protection

The UK continues to receive visitors from overseas wishing to learn more about plant breeders' rights. This year, the PVRO has been pleased to welcome visitors from Estonia. PVRO staff are assisting an EU accession country with its legislation and operational systems, and are participating in the UPOV Distance Learning Course.

[Annex XII follows]

ANNEX XII

SERBIA AND MONTENEGRO

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

There were no further developments in this field. The draft of Plant Variety Protection Law is conform with the 1991 Act of the UPOV Convention and will be adopted after harmonization in the competences between two states of State Community Serbia and Montenegro.

2. -

3. Situation in the Administrative Field

The Department for Seed and Seedlings, which is in charge for plant variety registration and protection, has been renamed to the Department for Plant Variety Registration and Protection. The Department is part of the Ministry of Agriculture, Forestry and Water Management of Republic of Serbia.

4. Situation in the Technical Field

For the purpose of DUS examination in the Republic of Serbia, a problem is the absence of a reference collection and example varieties, also as preservation of seed samples. The Department for Plant Variety Registration and Protection has started to collect seed samples of different plant species for reference collection.

5. Activities for the Promotion of Plant Variety Protection

In January 2005, an enhanced permanent dialog was held with EU representatives to whom the situation on the protection of plant varieties and a draft of the Plant Variety Protection Law were presented.

For the purpose of implementation of DUS tests, representatives from the Department for Plant Variety Registration and Protection, Ministry of Agriculture, Forestry and Water Management of Republic of Serbia, visited the National Institute for Agricultural Quality Control (OMMI) in Hungary in September 2004. Also in June 2005, representatives from the Department visited the Bundessortenamt (Federal Office of Plant Varieties) in Germany.

A delegation from the Institute for Seed and Seedlings from the Republic of Croatia, on June 20, 2005, visited one of the stations in Serbia where DUS tests will be performed.

In order to define and harmonize criteria used in DUS tests, representatives from the Ministry of Agriculture, Forestry and Water Management of the Republic of Serbia,

The Department for Plant Variety Registration and Protection, took part in the international project “Ring Test for Potato 2005”. The results of trials that were organized in every participating country during spring/summer 2005, were discussed at a final meeting in Poland from July 13 to 15, 2005. The host of the final meeting was COBORU, the Research Center for Cultivar Testing. Participants were experts from Austria, Croatia, the Czech Republic, Estonia, Germany, the Netherlands, Serbia and Montenegro, Slovakia, Slovenia, Romania and the United Kingdom.

The Ministry of Agriculture, Forestry and Water Management of Republic of Serbia, Department for Plant Variety Registration and Protection, was a participant in the “Ring Test for Pepper 2005”. Results from trials performed in this project were discussed at a final meeting in Hungary on August 4 and 5, 2005. The host of the final meeting was OMMI, the National Institute for Agricultural Quality Control in Hungary. Participants were experts from Bulgaria, the Czech Republic, France, Greece, Hungary, the Netherlands, Poland, Serbia and Montenegro, Slovakia, and Romania.

A EU Delegation from TAIEX visited the Ministry of Agriculture, Forestry and Water Management of the Republic of Serbia from August 15 to 19, 2005. The situation in the legislative, administrative and technical fields was introduced. Also on August 18, 2005, in Belgrade, a Seminar on the EU phytosanitary and Seed acquis was held. The aim of this seminar was to present the main EU acquis in the phytosanitary and seed sectors to a wider audience, including the relevant stakeholders and industries.

RELATED FIELDS OF ACTIVITIES

- Catalogue of varieties authorized for sale (registered plant varieties in the Republic of Serbia) is available on the website of the Ministry of Agriculture, Forestry and Water Management of Republic of Serbia (www.minpolj.sr.gov.yu)
- The Parliament of the Republic of Serbia adopted two new laws: The Law on planting material of fruit, grapevine and hops, in February 2005, and the Law on Seed, in May 2005. For the first time, the obligations of DUS tests for the purpose of registration of new plant varieties are incorporated in these laws.

[Annex XIII follows]

ANNEX XIII

SLOVENIA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

New sub-law regulations for the marketing of seed of fodder crops and beet, marketing of seed of vegetables, marketing of seed of oil and fibre plants and marketing of cereal seed were published in January 2005. New rules on the marketing of vegetable propagating and planting material, other than seed and rules on the marketing of propagating material of ornamental plants were published in July 2005.

2. Cooperation in Examination

The bilateral agreements of cooperation with Austria, Croatia, the Czech Republic, Hungary and Slovakia are still under preparation.

We continue cooperation in the field of DUS examination with Austria, Croatia, the Czech Republic and Hungary.

3. Situation in the Administrative Field

From September 2004 up to September 2005, 2 applications were filed and no new titles of protection issued. Total number of titles in force is 47 (agricultural crops: 22; vegetables: 5; fruit crops: 5; ornamentals: 15).

RELATED FIELDS OF ACTIVITIES

New National List of Varieties, including the list of protected varieties, was published in August 2005.

Four new issues of the Slovenian Plant Breeder's Rights and Variety Registration Gazette have been published since September 2004.

[Annex XIV follows]

ANNEX XIV

SWEDEN

PLANT VARIETY PROTECTION

1. Situation in the Administrative Field

Number of applications received:

July 1, 2002, to June 30, 2003:	36
July 1, 2003, to June 30, 2004:	26
July 1, 2004, to June 30, 2005:	30

Number of titles of protection issued:

2002:	34 (26 agricultural, 7 fruit and 1 ornamental)
2003:	30 (27 agricultural and 3 vegetables)
2004:	16 (15 agricultural and 1 fruit)

Number of grants valid as per July 1:

2003:	309 (229 agricultural, 4 vegetable, 34 fruit and 42 ornamental)
2004:	285 (205 agricultural, 7 vegetable, 33 fruit and 40 ornamental)
2005:	297 (190 agricultural, 5 vegetable, 20 fruit and 28 ornamental)

2. Situation in the Technical Field—Genetically Modified Organisms

At present, applications are pending for three genetically modified potato varieties. For one potato variety, the DUS test is completed and the decision is pending an EU decision on market release.

[Annex XV follows]

ANNEX XV

SWITZERLAND

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Amendment of the Law and of the implementation provisions.

For Switzerland to ratify the 1991 Act of the Convention, the relevant national Law has to be partly revised. The Message to Parliament on the revision of the Plant Variety Protection Law was submitted in June 2004. The Proposal was debated in the Council of States and adopted with minor amendments. The preparatory Committee of the National Council decided to suspend proceedings in August 2005 until the revision of the patent law had also been debated. The proposal is not likely to be discussed further until early next year.

1.2 Case Law

To our knowledge, no court decisions have been given in the past year in connection with plant variety protection. However, an agreement has been made between a trademark right holder and the wine sector determining how (size, position) the plant varieties should be indicated on the wine label to avoid any likelihood of legal action due to infringement of trademark law. (The word/figurative mark contains the same word as used for the plant variety designation.)

1.3 Extension of Protection to Additional Genera and Species

There has been no extension to additional genera or species in the past year. The current list is already very comprehensive, and the new Law will extend protection to all genera and species.

2. Cooperation in Examination

No changes. As no trials are conducted in Switzerland, all examination is done abroad under contract or alternatively existing examination reports are adopted.

3. Situation in the Administrative Field

The application form has been redesigned and is now available on Internet. The technical questionnaire is to be found on the corresponding UPOV Internet pages.

Various queries show that the differences and relationships between the terms holder of plant variety protection rights, representatives and licensees, and also plant variety protection and trademark protection are often not understood. Further information is required in this context.

4. Situation in the Technical Field

Nothing to report, as no trials are conducted in Switzerland.

5. Activities for the Promotion of Plant Variety Protection

Representatives of Malaysia and the Republic of Korea visited the Swiss Plant Variety Protection Office. They were shown how plant variety protection under the UPOV Convention can be negotiated even with minimal resources.

[Annex XVI follows]

ANNEX XVI

TUNISIA

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Amendment of the law and implementation documents

The department responsible for Plant Variety Protection made the following amendments:

- Law No. 99-42 of May 10, 1999, on seed, seedlings and plant varieties was modified specifically in respect of Article 26 by Law 2000-66 of July 3, 2000, on seed, seedlings and plant varieties.
- Decree No. 2000-102 establishing the composition and operating procedures of the technical commission on seed, seedlings and plant varieties was modified by Decree 2004-2322 of September 27, 2004.
- The Order of the Minister of Agriculture of June 24, 2000, establishing the list of plants subject to protection, the data and the method of registering the applications for plant variety certificates in the national plant variety catalogue was modified by the Order of the Minister of Agriculture, Environment and Hydraulic Resources of September 9, 2004.

1.2 -

1.3 Extension of protection to other genera and species

Extension of protection was given to the following species:

- Artichoke: *Cynara scolimus*
- Garlic: *Allium sativum* L.

2. Cooperation in Examination

The department in charge of plant variety protection has established close cooperation with institutes of higher education and agricultural research and the technical centres for cereals and potato for the evaluation of plant species, and conventions have been established in this respect.

This department also envisages to introduce, within the framework of bilateral and multilateral cooperation, a project for cooperation in plant variety protection both with the Spanish authorities and with the European Community.

3. Situation in the Administrative Field

The department has not registered any changes in the administrative structure and in the procedures and systems. However, with respect to activities, the applications for listing and protection of plant varieties has continued to increase. Twenty-one new applications have been received and are being published in the Official Journal of the Republic of Tunisia, in addition to the 31 applications for protection already published in that Official Journal. Additionally, six new plant variety certificates have been issued.

4. Situation in the technical field (see point 3)

5. Activities for the Promotion of Plant Variety Protection

With respect of this activity, the department has not been particularly active and no visits have been made to non-member States and organizations.

RELATED AREAS OF ACTIVITY

In this respect, the department in charge of the catalogue and plant variety protection is finalizing the document on the list of plant species by variety accepted for marketing.

[Annex XVII follows]

ANNEX XVII

TURKEY

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

Law 5042 on “Protection of Plant Breeder’s Right of New Plant Varieties”, which was prepared based on the 1991 Act of the UPOV Convention and EU regulation 2100/94 on Community Plant Variety Rights. The law was approved in the Turkish Parliament on January 8, 2004. It was published in the official Gazette 25347 on January 15, 2004, and put in force. The secondary legislation on “Implementation of Farmer’s Exemption” and “Protection of Plant Breeder’s Right of New Plant Varieties” were published in the official Gazette on August 12, 2004.

2. Cooperation in Examination

DUS tests for the varieties, which were applied for Plant Breeder’s Right based on the Law 5042, will be done by the Turkish Variety Registration and Seed Certification Center. The species of which DUS tests cannot be carried out will be sent to other countries for DUS tests, and the Variety Registration and Seed Certification Center has started to investigate the labs which DUS tests will be carried out.

3. Situation in the Administrative Field

From the approval of Law 5042 up to now, the number of applications has been 139 in 30 different species. Eighty-one of the applications were accepted and published in the Plant Varieties Bulletin. Twenty-nine applications were rejected and examinations of other 29 applications is in progress. When the announcement duration finished for the accepted applications, DUS tests for the varieties will be started. For the varieties for which DUS tests were done in the past will be discussed in Registration Committee for Plant Breeder’s Right.

4. Situation in the Technical Field

Improvement of infrastructure for technical staff and equipment (lab equipment, experimental material, computer, training and so on) is under the progress in Variety Registration and Seed Certification Center.

In the framework of adaptation of EU rules to Turkish system, the project for seed quality, Plant Breeder’s Right and capacity increase of Turkish Ministry of Agriculture has provided training on the conducting DUS tests oriented to Plant Breeder’s Right for some plant species (vegetables, fruits, forage crops and so on). The project has been carried out by the coordination of the Turkish and Netherlands Governments.

5. Activities for the Promotion of Plant Variety Protection

Progress in 2005: A seminar on “International Plant Breeder’s Right” was held in Ankara on May 16 and 17, 2005, by the attendance of breeders from public and private companies or organizations. The seminar was arranged by the Turkish Ministry of Agriculture and UPOV.

Turkish Ministry of Agriculture arranged several seminars and trainings for people in the seed sector. In these seminars and trainings, information on basic rules and implementation of Plant Breeder’s Right in Turkish has been given.

Plant Varieties Bulletin has been published to inform related people on applications for variety protection periodically.

[Annex XVIII follows]

ANNEX XVIII

UKRAINE

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

- With the aim of accession of Ukraine to the 1991 Act of the UPOV Convention, the State Service on Right Protection for Plant Varieties has submitted to the Parliament of Ukraine drafts of Ukrainian Laws on amendments to the Law of Ukraine on the protection of plant variety rights and on amendments to certain Ukrainian Laws (as regards plant varieties), which take into consideration the proposals made by the Office of the Union concerning the Law of Ukraine currently in force and in order to satisfy the requirements of the UPOV Convention.
- The Ukrainian Government has extended the responsibility of the State Service on Right Protection for Plant Varieties in the monitoring of imports into the territory of Ukraine to plant varieties which contain genetically modified (GM) components.
- In July of this year the Cabinet of Ministers of Ukraine decided (Resolution No. 621) to establish an Interdepartmental Coordinating Council of Intellectual Property for Plant Varieties. A major function of this Council is to coordinate the work of Ministries, other central and municipal bodies of executive power, enterprises, institutions and organizations related to plant variety rights protection and effective use of the national plant variety resources.
- On August 2, 2005, the Cabinet of Ministers of Ukraine adopted the Conception on forming of plant variety resources for 2006 – 2011 with the aim to promote the realization of the state policy in the sphere of plant variety rights protection and to ensure the forming of national plant variety resources and their effective use.
- The State Service on Right Protection for Plant Varieties and the Community Plant Variety Office have signed a Memorandum of Understanding.

2. Cooperation in Examination

In 2005, Ukraine prepared for signature an Agreement between the Ministry of Agriculture of Azerbaijan and the Ministry of Agrarian Policy of Ukraine on cooperation in the field of testing and plant variety protection and an Agreement between the Ministry of Agriculture of the Republic of Turkmenistan and the Ministry of Agrarian Policy of Ukraine in the sphere of testing and plant variety protection.

It is planned to sign an Agreement on cooperation between the Ministry of Agriculture, Food, Fishing and Rural Development of France and the Ministry of Agrarian Policy of Ukraine in the sphere of testing and plant variety protection and also between the Ministry of Agrarian Policy of Ukraine and relevant Ministries of Georgia and Poland.

3. Situation in the Administrative Field

In 2005, Ukraine has introduced electronic forms for application for plant variety protection. The list of genera and species for which variety protection is available has been enlarged.

From the beginning of 2005, the State Service on Right Protection for Plant Varieties registered 333 applications for granting of PBR. 166 applications were obtained from residents and 167 from non residents.

95 PBR were granted, including 49 for residents and 46 for non residents, respectively.

4. Situation in the Technical Field

During 2004, 38 test guidelines were developed and adjusted to the circumstances of Ukraine.

The list of species and genera for which varieties have to be tested for VCU was extended to 80.

The Center for Seed Testing has been established within the Ukrainian Institute for Plant Variety Examination. The main activities of the Center include: qualifying examination of plant varieties on the basis of biochemical and technological methods, analysis of plant varieties for GM content, VCU-testing and the establishment of germplasm collections of varieties registered in Ukraine. Recently the Center started work on variety identification using molecular markers. On May 30, 2005, the Center became a member of the International Seed Testing Association (ISTA).

5. Activities for the Promotion of Plant Variety Protection

Meetings and seminars

In February and September 2005, the State Service on Right Protection for Plant Varieties and the Ukrainian Institute for Plant Variety Examination held three training seminars on the field examination of plant varieties for distinctness, uniformity and stability, which were organized for the experts of the State system on rights protection for plant varieties.

The International Symposium "Plant Variety Protection in Ukraine. Forward to European Union" was held in Kyiv from April 24 to 27, 2005 with the participation of Bart Kiewiet, President of CPVO, Dirk Theobald, Head of Technical Unit of CPVO, and the General Director of COBORU, Edward Gacek.

At the invitation of the Research Centre for Cultivar Testing of Poland, a delegation of State Variety Service took part in the Conference “Role and Importance of plant variety testing and seed in plant production of Opole province”.

The State Service on Right Protection for Plant Varieties, together with the Research Center for Cultivar Testing (COBORU, Poland) organized from August 29 to September 2, 2005, training of Ukrainian experts on the examination of varieties.

From September 19 to 24, 2005, a meeting of Ukrainian and Polish experts on plant variety protection took place in the Western region of Ukraine. During this meeting representatives from COBORU and the State Variety Service established the basis of an Agreement between the State Variety Service and COBORU in the sphere of plant variety rights protection.

During 2005, the following were published and circulated:

- Extract from the State Register of Plant Varieties suitable for Dissemination in Ukraine in 2005;
- Three editions of the Official Bulletin of the State Service on Right Protection for Plant Varieties with information in respect of varieties of plants;
- Catalogues with the characteristics of plant varieties suitable for the release in Ukraine in 2005 (winter and spring crops, oil and fibre crops, fodder crops, sugar and fodder beet, vegetable crops, fruit and berry crops, vine, flower and ornamental crops);
- Agro-biological data of varieties of sunflower, sugar beet, spring cereals and oats which are suitable for dissemination in Ukraine in (2004);
- Agro-biological data on the post-registration study of varieties of winter crops in 2005.

[End of Annex XVIII and of document]