

Council

C/58/13

Fifty-Eighth Ordinary Session
Geneva, October 25, 2024

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**SITUATION IN THE LEGISLATIVE, ADMINISTRATIVE AND TECHNICAL FIELDS:
 REPORTS BY REPRESENTATIVES OF MEMBERS AND OBSERVERS**

Document prepared by the Office of the Union

Disclaimer: this document does not represent UPOV policies or guidance

1. According to the practice introduced on the occasion of the twenty-sixth ordinary session of the Council, 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 are requested to be submitted in writing, in advance, to increase the ability of the Council to carry out its tasks effectively.

2. Written reports were requested by the Office of the Union in the invitation circular relating to this session and a model format was proposed. The following reports were submitted (in alphabetical order of the names in French):

Members: Annexes I to XII: South Africa, Belarus, China, Hungary, New Zealand, Poland, Republic of Moldova, United Kingdom, Serbia, Singapore, Ukraine, European Union

3. Reports received after September 27, 2024, will be included as an addendum to this document, which will be published after the Council session.

4. The Council is invited to note that the number of reports submitted by UPOV members is generally low and that this year 12 out of 79 UPOV members contributed. Some of the information in the reports is also collected through other means. The Office of the Union is conscious about the fact that the compiling of information and data is time consuming for UPOV members. There may be alternatives to collect information that is useful for UPOV members following an approach that requires less resources and facilitates better access to the information. For these reasons, it is proposed that, starting in 2025, the Office of the Union implements a more efficient way to collect and present priority information from UPOV members and observers.

5. The Council is invited to note the information provided in this document and to endorse the proposal in paragraph 4.

[Annexes follow]

SOUTH AFRICA

PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

- Adaptation to the 1991 Act of the Convention

None to report.

- Other amendments, including in respect of fees

The fees on Plant Breeders' Rights were published in the SA Government Gazette, No. 50442 of 5 April 2024 in respect of the 2024/25 financial year, ending 31 March 2025.

1.2 Extension of protection to further genera and species (made or planned)

Planned to be published in the SA Government Gazette in 2024:

- *Boronia* Sm. [Boronia]
- *Melinis* P. Beauv. [Natal grass]
- *Scletium tortosum* (L.) N.E. Br. [Kanna]
- *Viburnum* L. [Snowball tree]

2. Cooperation in examination

- Conclusion of new agreements (completed, in progress or planned)

None to report.

- Amendment of existing agreements (completed, under way or planned)

None to report.

3. Situation in the administrative field

- Changes in the administrative structure

3.1 Registrar: Plant Breeder's Rights

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3.2 Scientist Manager (Head): Variety Control (DUS Evaluation Centre)

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- Changes in office procedures and systems

None to report.

4. Situation in the technical field

The evaluation centres are responsible for the biological examination (DUS testing).

- 323 PBR applications were received of which 57% [185] were for Agricultural crops, 9% [28] for Ornamental crops, 25% [82] for Fruit crops and 9% [28] for Vegetable crops.

Total of 318 grants from January to December 2023 were as follows:

Agricultural crops	114
Vegetable crops	37
Fruit crops	124
Ornamental crops	43

- As of December 2023, a TOTAL of 3809 varieties had valid plant breeder's rights in South Africa, of which 20% [804] were for Ornamental crops, 40% [1500] for Agricultural crops, 32% [1205] for Fruit crops and 8% [300] for Vegetable crops.

5. Activities for the promotion of plant variety protection

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)
1. Visit to the South African PBR Office by plant breeding students from University of Limpopo	9 September 2023	Agricultural Research Council, Roodeplaat, Pretoria. South Africa	Agricultural Research Council	Present to plant breeding students PBR and DUS activities and procedures	62 Students 1 Lecturer 2 PBR officials 3 DUS Examiners
2. Workshops on new Plant Breeders Rights Draft Regulations	11-12 October 2024 8-9 November 2024	Pretoria, South Africa Cape Town, South Africa	SA PBR Office, Department of Agriculture, Land Reform and Rural Development	Presentations and discussions on new Plant Breeder's Rights Draft Regulations	Industry, Commodity groups, Researchers, DUS Examiners, Farmers Organisations, Civil Society Organisations, Government officials and Patent Lawyers ± 100 participants
3. NUMPRO Meeting [Nuclear Material Producers]	14 May 2024	Pretoria, South Africa	Potato Certification Service	Report on the PBR statistics for potato varieties	South African potato Industry ± 60 participants
4. Workshop on the South African Plant Breeders Rights System at University of Limpopo	15 May 2024	University of Limpopo	SA PBR Office, Department of Agriculture, Land Reform and Rural Development	Present to plant breeding students PBR and DUS activities and procedures	±100 Students 3 Lecturers 2 PBR officials 1 DUS Examiner 1 Gene bank Scientist

[Annex II follows]

ANNEX II

BELARUS

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

Due to the sanctions pressure on Belarus in the agricultural sector, including conducting VCU and DUS testing, as well as in the area PBR, Belarus received an official refusal from the CPVO, since the CPVO received instructions from the European Commission that DUS reports shall not be sent to the Belarus Plant Variety Protection authority. Consequently, the CPVO will not be able to provide Belarus with the requested certified copies [below] in violation of the cooperation regulations in accordance with the basic document UPOV TGP/5 Experience and Cooperation in DUS Testing.



**State Inspection for Testing and Protection
of Plant Varieties of the Republic of Belarus
90/1 Kazintsya str.
BY - 220108 Minsk
BELARUS**

Sent by e-mail: sortpatent@mail.ru; belsort@mail.ru

Angers, 1 July 2024

Subject: **International cooperation in Variety Testing**

Ref.: JM-gg/24-09424

Dear Mrs. Siamashka,

Further to your last request for DUS results, please find enclosed the CPVO answer-form concerning the following plant variety:

CPVO file number	Species	Your Reference	Breeder's reference	Denomination
2018/2023	<i>Malus domestica</i> (Suckow) Borkh.	110/1	gs 62	'Sunspark'

The CPVO got instructions from the European Commission that DUS reports shall not be sent to the Belarus Plant Variety Protection authority.

Consequently, the CPVO will not be able to provide you with the requested certified copies.

For the Community Plant Variety Office,

Yours sincerely,

Ghislaine GUILBERT
Plant Variety Expertise Unit
guilbert@cpvo.europa.eu
Phone: +33 (0)2 41 25 64 39

To overcome this situation, in 2024 Belarus amended the current Law on Patents for Plant Varieties, as well as by-laws.

ЗАКОН РЕСПУБЛИКИ БЕЛАРУСЬ **13 апреля 1995 г. N 3725-XII**

О ПАТЕНТАХ НА СОРТА РАСТЕНИЙ

(в ред. Законов Республики Беларусь от 04.01.2014 N 108-З,
от 18.12.2019 N 275-З, от 09.01.2023 N 243-З)

1.2 Extension of protection to further genera and species (made or planned)

No changes.

1.3 Case law

Belarussian authority (SE “State Inspection for Testing and Protection of Plant Varieties”) is not aware of such cases.

2. Cooperation in examination

- Conclusion of new agreements (completed, in progress or planned)
- Amendment of existing agreements (completed, under way or planned)

Due to the official refusal of CPVO to provide Belarus with DUS reports in violation of the cooperation regulations in accordance with the basic document UPOV TGP/5 Experience and Cooperation in DUS Testing, Belarus has lost the opportunity to receive from CPVO DUS report, which are in demand in our country due to similar agroclimatic conditions. Accordingly, SE “State Inspection for Testing and Protection of Plant Varieties” is working on issues of concluding new Agreements with other members of UPOV, including the countries of the CIS (Community of Independent States).

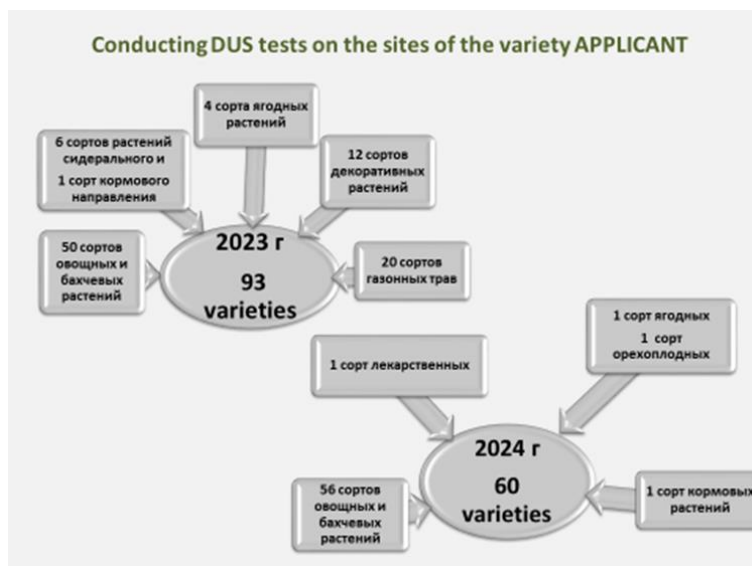
3. Situation in the administrative field

- Changes in the administrative structure
- Changes in office procedures and systems

In connection with the amendments being developed in The Law on Patents for Plant Varieties and by-laws and taking into account the minimization of the burden on the Applicant, the application for a patent will be optimized (fewer documents will be required)

4. Situation in the technical field

Also, to minimize the consequences of the above-mentioned violation of CPVO of the cooperation regulations in accordance with the basic document UPOV TGP/5 Experience and Cooperation in DUS Testing SE “State Inspection for Testing and Protection of Plant Varieties” is expanding DUS testing at the APPLICANT’s sites.

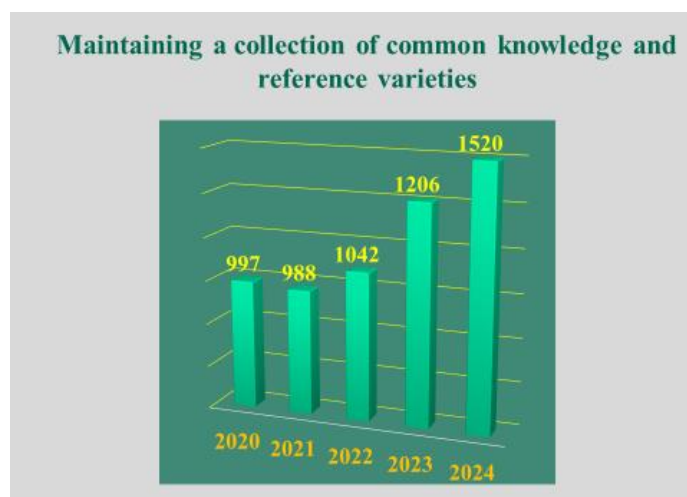


To improve the quality of DUS testing, SE “State Inspection for Testing and Protection of Plant Varieties” is actively introducing photo catalogs of morphological characteristics. In 2024, in cooperation with national breeders, a PHOTO CATALOGUE of the main morphological characteristics of FRAGARIA L. was developed and published with high quality printing.

This CATALOGUE was also transferred to the varietal control system of Belarus.



In order to conduct reliable DUS testing, SE “State Inspection for Testing and Protection of Plant Varieties” continued to actively form a collection of common knowledge and reference varieties of both national and foreign breeding, storing them in a collection warehouse with a controlled environment.



5. Activities for the promotion of plant variety protection

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)	Comments
1. DUS training course	10-15 March 2024	Belarusian Agricultural Academy Belarus	SE "State Inspection for Testing and Protection of Plant Varieties"	DUS training for DUS experts of Belarus	Belarus	Useful cooperation, especially practical training at DUS plots
2. Experience exchange	27-28 March 2024	Russian Federation	"State Commission of the Russian Federation for Testing and Protection of Selection Achievements	To discuss the strategy for developing variety testing in accordance with the regulations of the Eurasian Economic Union (EAEU) and the International Union for the Protection of New Varieties of Plants (UPOV).	Belarus Russian Federation	Fruitful cooperation
3. VCU and DUS Training course	17 - 22, June 2024	Belarus Minsk, Molodechno Testing Station, Vileyka Testing Station, Zhodino	SE "State Inspection for Testing and Protection of Plant Varieties"	- the implementation of the Cooperation Program in the field of state testing and patent protection of plant varieties between the State Commission for Variety Testing of Agricultural Crops of the Republic of Kazakhstan and the State Inspectorate for Testing and Protection of Plant Varieties of the Republic of Belarus for 2021-2025 and the Protocol of the eighteenth meeting of the Intergovernmental Belarusian-Kazakhstan Commission on Trade and Economic Cooperation - a training seminar in the field of state variety testing and examination of plant varieties	Belarus Kazakhstan	Fruitful cooperation Useful training, especially practical training at DUS plots
4. VCU and DUS Training course	15-20 July 2024	Belarus, Minsk, Gorki Testing Station	SE "State Inspection for Testing and Protection of Plant Varieties	-the implementation of the Protocol of the tenth meeting of the Joint Intergovernmental Commission on Bilateral Cooperation between the Republic of Belarus and the Republic of Uzbekistan - a training seminar in the field of state variety testing and examination of plant varieties	Belarus, Uzbekistan	Fruitful cooperation Useful training, especially practical training at DUS plots

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

The number of patents for plant varieties in connection with the modernization of DUS testing the number of license agreements for the propagation of protected plant varieties is constantly increasing.



The employees of SE “State Inspection for Testing and Protection of Plant Varieties” actively use PLUTO Plant Variety Database in their work. On March 25, 2024 Belarus contributed data: 7280 total number of records.

UPOV PLUTO Premium My search criteria Submission Info. Welcome Tatiana SIAMASHKA... English ? Logout			
Authority	File name	Latest contribution date	Total number of records per file
BY	BY20240325.xlsx	2024-03-25	7280

In 2024 experts of SE “State Inspection for Testing and Protection of Plant Varieties” were awarded the UPOV International Certificate on Plant Variety Protection (UPOV PVP Certificate) The UPOV PVP Certificate provides international recognition of knowledge and expertise in PVP matters. Holders of the UPOV PVP Certificate demonstrate to have followed a certain number of courses and contributed to activities concerning the UPOV Convention and its guidance, operation of a PVP Office and examination of applications, including DUS examination.



In 2024 experts of SE “State Inspection for Testing and Protection of Plant Varieties” took an active part in the WIPO Summer School and also presented a report on “Legal Protection of Plant Varieties in the Republic of Belarus” in the regulations for holding the WIPO Summer School on Intellectual Property, organized by the World Intellectual Property Organization (WIPO), Section IV Other Intellectual Rights, together with the National Center for Intellectual Property (NCIP), the State Committee on Science and Technology of the Republic of Belarus (SCST), the National Library of Belarus.



[Annex III follows]

ANNEX III

CHINA

ACTIVITIES FOR THE PROMOTION OF PLANT VARIETY PROTECTION

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)
1. The Training I on Raising Ability of Plant Variety Protection and DUS Testing in 2023	July 2-5, 2023	Dali City, Yunnan Province	Development Center of Science and Technology, Ministry of Agriculture and Rural Affairs, P. R. China	To meet the requirements of breeders of research institutes, universities, and seed companies as well conducting DUS Testing by themselves and improving ability on DUS tests and PVP under the new situation	125 Chinese trainees
2. The Training II on Raising Ability of Plant Variety Protection and DUS Testing in 2023	October 15-19, 2023	Tianjin City	Development Center of Science and Technology, Ministry of Agriculture and Rural Affairs, P. R. China	To meet the requirements of breeders of research institutes, universities, and seed companies as well conducting DUS Testing by themselves and improving ability on DUS tests and PVP under the new situation	Over 90 Chinese trainees
3. Action to Promote Intellectual Property Rights and its Utilization in the Seed Industry (2023)	September 21, 2023	Xuzhou City, Jiangsu Province	Development Center of Science and Technology, Ministry of Agriculture and Rural Affairs, P. R. China together with Xuzhou municipal people's government	To improve the implementation of the new Seed Law, push forward the EDV system workable and practical, strengthen the implementation of laws and regulations in the realm of seed industry, aiming to its vitalization and promote the transformation of innovative achievements in plant breeding	Over 300 Chinese participants
4. The Training Course on Raising Ability of Plant Variety Protection and DUS Testing	July 21-26, 2027	Lijiang City, Yunnan Province	Plant New Variety Protection Committee, China National Seed Association	To meet the requirements of breeders of research institutes, universities, and seed companies as well conducting DUS Testing by themselves and improving ability on DUS tests and PVP under the new situation	160 Chinese trainees

OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

China, together with the Office of the Union, implemented the Program for the use of the Chinese language in UPOV. The report on the Program for the use of the Chinese language in UPOV will provide more detailed developments.

[Annex IV follows]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

From 1 January 2024, 85% of the application fee for plant variety protection shall be paid in case of electronic submission (Article 115/O (1b), ACT XXXIII OF 1995 ON THE PROTECTION OF INVENTIONS BY PATENTS).

1.2 Extension of protection to further genera and species (made or planned)

No changes. Pursuant to the rules in force, plant variety protection extends to all plant genera and species.

1.3 Case law

No data.

2. Cooperation in examination

No changes. According to paragraphs (3) and (4) of Article 114/R of the Patent Act the results of experimental testing (DUS examination report) carried out by a competent foreign authority may be taken into consideration with the consent of such authority. The costs of experimental testing shall be borne by the applicant. Therefore, the Hungarian Intellectual Property Office (HIPO) took steps to conclude agreements with national and regional offices on sending reports on DUS technical examination from the relevant Office to the HIPO.

The Hungarian Intellectual Property Office concluded agreements on sending reports on DUS technical examination with the Community Plant Variety Office (CPVO), with the Bundessortenamt (Germany) as well as with the Board for Plant Breeders' Rights of the Ministry of Agriculture, Nature and Food Quality (Kingdom of the Netherlands).

3. Situation in the administrative field

No changes. The HIPO is authorised to grant protection to plant varieties. In the national system the HIPO is responsible for the examination of novelty, denomination and unity as well as for the registration of plant varieties. The National Food Chain Safety Office is responsible for the biological examination (DUS-testing).

4. Situation in the technical field

Technical examination is carried out by the National Food Chain Safety Office.

[Annex V follows]

ANNEX V

NEW ZEALAND

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

The Plant Variety Rights Act 2022 is in force and provides for the rights set out under UPOV 91. Although New Zealand has not acceded to UPOV 91, it remains a member under UPOV 78.

The Plant Variety Rights Act 2022 is not retrospective, and all applications made, and rights granted for varieties before 24 January 2023, the date the Plant Variety Rights Act 2022 came into force, remain subject to the earlier Plant Variety Rights Act 1987.

The Plant Variety Rights Act 2022 recognises and respects obligations under the principles of the Treaty of Waitangi through protecting kaitiaki relationships with indigenous and non-indigenous species of significance. Subpart 3 of Part 5 of the Plant Variety Rights Act 2022 provides additional procedures and includes the establishment of the Māori Plant Varieties Committee. The Committee is in the process of establishment and will be operating when Part 5 comes into force in November 2024.

The first grant under the Plant Variety Rights Act 2022 was made on 2 Feb 2024 for Lilium variety 'Strong Love'.

2. Cooperation in examination

New Zealand continues to purchase test reports from member states, on an as required basis, under the general provisions of the UPOV Convention. New Zealand will supply a test report, on request from a foreign PVP Authority, at no cost. In 2023, fifteen (15) foreign test reports were utilized for New Zealand Rights decisions and fifteen (15) test reports were supplied to foreign PVP authorities.

New Zealand intends to join UPOV e-PVP and will utilise the test report exchange module. New Zealand participated in a test exercise in May 2024 and looks forward to the future use of the module when the module becomes available.

New Zealand was invited by the East Asia PVP Forum to participate as an observer for the development of e-PVP Asia. e-PVP Asia is an initiative, supported by the Forum, to develop a regional approach to the use of UPOV e-PVP tools in potential UPOV member states in Southeast Asia. New Zealand has participated in two forum virtual meetings.

3. Situation in the administrative field

During the financial year 1 July 2023 to 30 June 2024, 125 applications for plant variety rights were accepted (27% increase on the previous year), 93 grants were issued (8% decrease on the previous year) and 116 grants were terminated (60 % increase on the previous year). At 30 June 2024 there were 1293 valid grants, a slight decrease in comparison with the previous financial year.

The Intellectual Property Office of New Zealand (IPONZ) has begun a review of fees prescribed under the Plant Variety Rights Act 2022. Public consultation on fees is planned for later in 2024 and a revised fee schedule is expected to enter into force by mid-2025.

A study to determine the Economic, Innovation and Public Good Value of plant variety protection in New Zealand was completed in late 2023 and published in March 2024. The study collected data and information on the impact of plant variety protection and the findings will be used for the future development of the scheme.

The report is available at [Plant Variety Rights: Economic and public good benefits \(iponz.govt.nz\)](https://iponz.govt.nz/plant-variety-rights-economic-and-public-good-benefits)

4. Situation in the technical field

As of 1 July 2024, there are 363 varieties under test or examination, a slight decrease in comparison with last year. The average length of time under application for varieties belonging to non woody species is two (2) years and for woody species four (4) years.

A steady number of applications for plantain (*Plantago lanceolata* L.) and chicory (*Cichorium intybus* L.) varieties for forage use have provided the need to draft national test guidelines and adapt existing UPOV test guidelines. The UPOV Test Guideline for chicory was drafted for particular types of varieties but is used nationally for different variety types. The national changes to characteristics may be proposed for consideration at a wider UPOV level in order that the UPOV test guideline for chicory include characteristics and states of expression better suited for forage varieties. The increase in the range of species for forage use, is likely influenced by the industry objective to reduce methane production from livestock.

The first DUS trial in New Zealand for a Rochefort fungi (*Penicillium roqueforti* Thom.) variety will be undertaken later in 2024. The application has required considerable investigation regarding the method of DUS testing and the identification of any similar varieties. The cooperation of the breeder has been important in the development of the DUS testing and in the overall examination.

[Annex VI follows]

POLAND

Period: September 1, 2023 – August 30, 2024

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

The Act of June 26, 2003 on the Legal Protection of Plant Varieties (consolidated text: OJ of 2021, item 213) constitutes the legal basis for the national PBR protection system in Poland.

The Polish plant variety protection law is based on the 1991 Act of the UPOV Convention. Since November 1, 2000 all plant genera and species are eligible for PBR protection in Poland.

In respect of the fees, the Decree of the Minister of Agriculture and Rural Development of February 17, 2004 on fee rates for the lodging an application for the Plant Breeders' Rights protection, DUS testing as well as for the granting and the maintenance of the exclusive right titles (OJ No 60 of 2004, item 567; OJ of 2015, item 2166) is in force.

Poland became a UPOV member on November 11, 1989 and acceded to the 1991 Act of the UPOV Convention as the twenty-fourth State, on August 15, 2003.

2. Cooperation in examination

The Research Centre for Cultivar Testing (COBORU) in Słupia Wielka continues its cooperation in the field of technical examination with different countries.

We have signed bilateral agreements on DUS testing with the Czech Republic, Hungary and Slovakia. Unilateral agreements with Estonia, Latvia, Lithuania, Romania, Slovenia and Ukraine are in force.

In the reporting period, Poland carried out DUS tests for the authorities from the following countries: Austria (7 varieties), Belgium (1 variety), Croatia (5 varieties), Czech Republic (6 varieties), Denmark (8 varieties), Estonia (8 varieties), Finland (1 variety), France (1 variety), Germany (1 variety), Hungary (19 varieties), Latvia (13 varieties), Lithuania (85 varieties), Norway (3 varieties), Netherlands (Kingdom of) (4 varieties), Slovakia (1 variety), Slovenia (5 varieties), Sweden (1 variety), Switzerland (26 varieties), United Kingdom (6 variety) as well as for the CPVO (65 varieties).

These tests were done for the different species of agricultural (161 varieties), vegetable (30 varieties), ornamental (44 varieties) and fruit (31 varieties) plants.

Altogether, 266 varieties were tested as a commissioned work for the above-mentioned authorities.

As in previous years, some authorities, namely Austria, Bosnia and Herzegovina, Canada, CPVO, Czech Republic, Denmark, Estonia, France, Ireland, Japan, Lithuania, Norway, Romania, Serbia, Slovenia, Switzerland, Türkiye and United Kingdom, took the technical examination results over from COBORU, in order to base their decisions for their own procedures.

Poland actively participated in the work on the elaboration of the technical protocols during the meetings organized by the CPVO.

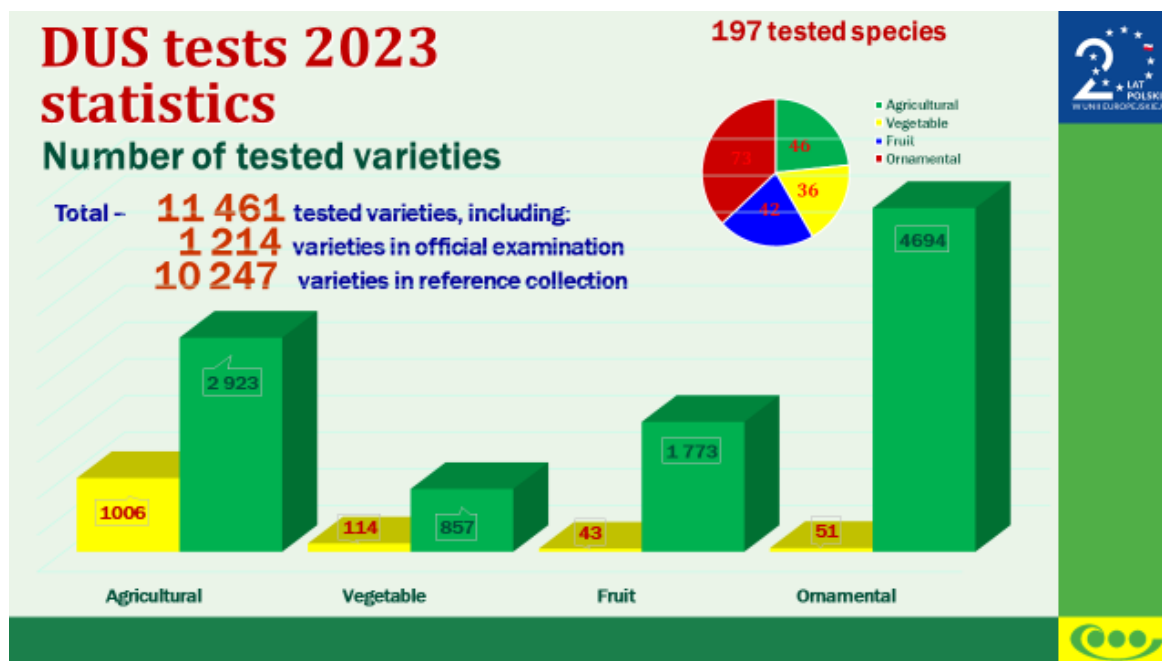
3. and 4. Situation in the administrative and technical fields

COBORU variety testing activity in the field of DUS is done in 13 different Experimental Stations for Variety Testing located all over the country.

In 2023, 11 461 varieties within 197 plant species were tested (which included 10 247 varieties in living reference collection and 1214 candidate varieties).

The number of varieties tested in Poland, per plant sector, is shown in the graph below.

Number of varieties in DUS testing in 2023



In 2023, COBORU received 159 applications for national PBR protection in total, which constitutes an increase by 43 applications in comparison with the previous year.

From January 1 to August 30, 2024, 86 new applications, including 44 domestic and 42 foreign, have been submitted for national PBR. This number is higher by 5 applications than that observed in the previous reporting period (81).

In 2023, COBORU Director granted 56 titles of national protection (9 titles less than in 2022). At the end of 2023, there were 1310 national PBR titles in force, which comparing to the previous year represents a decrease by 7 varieties.

In the period from January 1 to August 30, 2024, 70 titles of national PBR protection have been granted. In total, 1329 varieties are protected in Poland (as of August 30, 2024).

Details on the statistics are given in the table below.

In the column "Titles having ceased", 28 varieties for which - within the reported period - national PBR expired are included.

Plant Species	Applications for PBR 1.01. – 30.08.2024			Grants of PBR 1.01. – 30.08.2024			Titles having ceased	Titles in force as of 30.08.2024
	domestic	foreign	together	domestic	foreign	together		
Agricultural	29	13	42	38	4	42	36	739
Vegetable	0	0	0	2	1	3	3	212
Ornamental	15	27	42	9	2	11	6	255
Fruit	0	2	2	11	3	14	6	123
Total	44	42	86	60	10	70	51	1329

5. Activities for the promotion of plant variety protection

Representatives from Poland regularly participate in the sessions of the UPOV organs and in the UPOV Technical Working Parties.

Furthermore, Polish representatives take part in the meetings of the Standing Committee on CPVR DG SANTE, Brussels as well as in the CPVO Administrative Council meetings.

Within the reporting period, the UPOV Distance Learning Courses: "Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention" (DL-205), "Administration of Plant Breeders' Rights" (Part A of DL-305 course: Examination of applications for plant breeders' rights) and "DUS Examination (Part B of DL-305 course: Examination of applications for plant breeders' rights)" have successfully been completed by twenty eight COBORU experts or specialists.

Publications

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

The list of varieties protected by national Plant Breeders' Rights (including provisional PBR's), as of June 30, 2024, has been published in the third number of the *Polish Gazette for Plant Breeders' Rights and National List*, i.e. No 3(182)2024.

The Official Gazette can also be found on our website, in the section: *Publications*.

Additionally, the Research Centre for Cultivar Testing maintains and updates systematically a homepage www.coboru.gov.pl that contains the official information on PVP matters in Poland.

During the reporting period COBORU was involved in the following promotional activities:

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)
LiveSeeding Organic Seed Policy Conference	29.09.2023	Poznań, Poland	LiveSeeding consortium	Organic Seed Policy Conference	PL: 20 Total: 60
"100th Anniversary of Establishment of the National Plant Variety Resources of Ukraine"	29.09.2023	online	Ukrainian Institute for Plant Variety Examination	International cooperation UA-PL	PL: 1 Total: 150
Twining Project Meetings: UA 19 ENI HE 01 20 for Ukraine	10.11.2023	Słupia Wielka/ Poznań, Poland	COBORU, GIORIN	International cooperation UA-PL	PL: 5 UA: 5
Meeting of representatives of competent authorities from Poland, Estonia, Lithuania and Latvia	13.12.2023	Białystok, Poland	COBORU	Cooperation in the field of carrying out by COBORU DUS tests of varieties for the benefit of authorities from the Baltic States	PL:5 EE:4 LV: 2 LT: 2
IPM ESSEN 2024	23-26.01. 2024	Essen, Germany	IPM	PVP and Variety Offices promotion	PL: 8 DE:5 NL:6 FR:2 CPVO:1 Total:36,000 visitors

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

The *Polish National List of Agricultural Plant Varieties*, the *Polish National List of Vegetable Plant Varieties* and the *Polish National List of Fruit Plant Varieties* were issued in May 2024. These Official Lists as well as updated lists of varieties are also available at: www.coboru.gov.pl

REPUBLIC OF MOLDOVA

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

No changes.

1.2 Extension of protection to further genera and species (made or planned)

According to the Law No.39-XVI/2008 on the Protection of Plant Varieties, the protection is offered to varieties of all botanical genera and species, including hybrids between genera and species.

1.3 Case law

There is no precedent with regard to the protection of breeders' rights.

2. Cooperation in examination

Utilization of existing DUS report offered by:

- CPVO
- GEVES, FR
- Bundessortenamt, DE
- Naktuinbouw, NL

3. Situation in the administrative field

- Changes in the administrative structure: No changes.
- Changes in office procedures and systems: No changes.

Changes in the procedural and protection system

Four (4) national test guidelines were developed for:

- *Prunus tomentosa* Thunb. - MTG/27/1
- *Thymus x citriodorus* (Pers.) Schreb - MTG/28/1
- *Galega orientalis* Lam. - MTG/29/1
- *Helichrysum italicum* (Roth) Gussone - MTG/30/1

Statistics

In the period from January 1, 2023 to December 31, 2023:

- 17 applications have been received;
- 32 decisions of plant variety patent granting have been adopted;
- 24 plant variety patents have been issued.

4. Situation in the technical field

No changes.

5. Activities for the promotion of plant variety protection

On a regular basis, AGEPI maintains the web site www.agepi.gov.md, where the national legislation in the field of plant varieties protection can be accessed, as well as the application forms for a plant variety patent, and useful related information for applicants and breeders, available in Romanian, Russian and English languages.

Information materials related to the protection of plant varieties are distributed under the different activities organized by AGEPI or in which AGEPI is involved, like seminars, IP awareness campaigns and exhibitions.

Since 2016 the Republic of Moldova, represented by AGEPI, is a participating member of the UPOV project on the development of an electronic application form UPOV PRISMA. The related information on the procedure of protecting plant varieties using the electronic application form UPOV PRISMA can be accessed on the web site www.agepi.gov.md.

[Annex VIII follows]

ANNEX VIII

UNITED KINGDOM

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

Nothing to report.

1.2 Extension of protection to further genera and species (made or planned)

The UK has continued work to extend the term of Plant Breeders' Rights for the species asparagus and the species groups flower bulbs, woody small fruits and woody ornamentals from 25 to 30 years. This work is not expected to reach completion until 2025 at the earliest.

1.3 Case law

Nothing to report.

2. Cooperation in examination

A draft cooperation agreement is in progress between the United Kingdom and Japan.

3. Situation in the administrative field

- Changes in the administrative structure
- Changes in office procedures and systems

It is UK Government policy to charge for many publicly provided goods and services. The standard approach is to set fees to recover the full costs of service delivery and to review these fees on a regular basis (either annually or biennially as required). This relieves the general taxpayer of costs, so that they are properly borne by users who benefit from a service. This allows for a more equitable distribution of public resources and enables lower public expenditure and borrowing.

Plant Varieties and Seeds services operate in line with this principle of full cost recovery. Plant Varieties and Seeds fees are reviewed regularly and adjusted to ensure no under, or over, recovery of costs.

Fee changes were applied from 1 June 2024 for both Great Britain/Northern Ireland (GB/NI) Variety Listing and Plant Breeders Rights (VL/PBR) and Seed Certification services. These changes were necessary because of increased input costs since the last fee changes.

In 2025, the Plant Variety Rights Office (PVRO) for the UK will aim to implement the UPOV e-PVP Administration Module and DUS Report Exchange Module. These new modules will complement the UPOV PRISMA application tool, which UK adopted in 2021.

4. Situation in the technical field

The UK has two active research projects to support DUS testing, funded by Defra, on developing the use of genetic markers and combining this with the pattern recognition of Artificial Intelligence (AI) for reference collection management. The UK is aiming to provide a report to UPOV in 2025 on the projects, along with proposals for use of the AI model.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

The Genetic Technology (Precision Breeding) Act 2023 was introduced in March last year for England. The Act covers the release into the environment and marketing of plants and animals that have been developed through modern biotechnology techniques, such as gene editing, where the genetic changes could have occurred naturally or through traditional breeding methods. Work is in progress on the Statutory Instruments required to implement the Act, with precision bred plants being prioritised first.

The Genetic Technology (Precision Breeding) Act 2023, introduces four key policy changes:

- a. Removing precision bred plants and animals from regulatory requirements applicable to Genetically Modified Organisms (excluding those relating to microbes, organics and contained use).
- b. Introducing two notification system for research and marketing purposes where breeders and researchers will need to make notifications.
- c. Establishing a proportionate regulatory system for the marketing of precision bred animals to ensure animal welfare is safeguarded.
- d. Establishing a new science-based authorisation process for food and feed products developed using precision bred organisms.

[Annex IX follows]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

There were no changes.

- Other amendments, including in respect of fees

New fees related to plant breeders' rights are published in the Law on Administrative Fees ("Official Gazette of RS", No.63/24), which have been in force since August 1, 2024.

1.2 Extension of protection to further genera and species (made or planned)

All plant genera and species are subject to protection under the Law on the Protection of Plant Breeders' Rights („Official Gazette of RS“, No. 41/2009 and 88/2011).

2. Cooperation in examination

Nothing to report.

3. Situation in the administrative field

- Changes in the administrative structure

There were no changes in the administrative structure.

Ministry of Agriculture, Forestry and Water Management - Plant Protection Directorate is designated authority for the protection of the plant breeders' rights in the Republic of Serbia. Plant Protection Directorate performs also tasks related to: protection of plants against harmful organisms; authorization and control of plant protection and plant nutrition products; plant variety registration for National List; biological safety (GMO); phytosanitary inspections. Within Plant Protection Directorate, Group for Plant Variety Protection and Biosafety exercises administrative procedures related to provisions of the Law on Protection of Plant Breeders' Rights and to granting of plant breeders rights, also as tasks related to biological safety (GMO).

- Changes in office procedures and systems

There were no changes.

4. Situation in the technical field

From September 2023 to September 2024, plant breeders' rights have been granted for 52 plant varieties, based on the results of the examination of plant varieties and proposals of the Expert Council for Protection of Plant Breeders' Rights, as a special expert body of the Ministry of Agriculture, Forestry and Water Management - Plant Protection Directorate.

Serbia participates in the UPOV PRISMA PBR Application Tool.

5. Activities for the promotion of plant variety protection

Title of activity	Date	Location	Organizer(s)	Purpose of activity
Plant Breeders Rights System in Serbia	October 12, 2023	Belgrade Republic of Serbia	United States Agency for International Development (USAID) Embassy of the Netherlands (Kingdom of the) in Belgrade, Serbia Ministry of Agriculture, Forestry and Water Management of the Republic of Serbia AGRO Belgrade	Berry Business Forum A specialized conference organized for the producers and exporters of fresh berries and berry industry members in Serbia

[Annex X follows]

SINGAPORE

PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

There has been no amendment made to the Singapore Plant Variety Protection (PVP) legislation after the report to the council in 2022.

The latest Singapore legislation is as follows:

- Singapore PVP Act
- Singapore PVP Rules

1.2 Extension of protection to further genera and species (made or planned)

Singapore has allowed the protection of all plant genera and species since 30 July 2014.

1.3 Case law

There are no updates.

2. Cooperation in examination

There are no updates.

3. Situation in the administrative field

Administrative Structure

There is no change in administrative structure.

Office Procedure and Systems

Electronic Filing via IPOS Digital Hub: With effect from 23 November 2023, the default mode through which parties file, send or serve on the Registrar documents for all requests (except for a request for the inspection of register under Section 40 of the Plant Varieties Protection Act) will be via the electronic online system ([IPOS Digital Hub](#)). The default mode for submission of a request for inspection of register under Section 40 of the Plant Varieties Protection Act will remain on [FormSG](#).

4. Situation in the technical field

There are no updates.

5. Activities for the promotion of plant variety protection

There are no updates.

[Annex XI follows]

UKRAINE
(2023)

I. PLANT VARIETY PROTECTION

1. State of the legal sector

Law Ukraine dated November 16, 2022, No. 2763-IX «On Amending Certain Legislative Acts of Ukraine on Bringing Legislation in the Sphere of Plant Variety Rights Protection and Seed and Seedling Production in Line with the Provision of the European Union Legislation» was adopted, about which UPOV was informed and provided with a translation by the Ministry of Agrarian Policy and Food of Ukraine dated of 10.05.2023 No. 21-1331-06.1/12514.

Due to the absence of the Law on the UPOV website (<https://upovlex.upov.int/en/legislation/profile/UA>), we are re-translating the Law.

Adopted resolutions of the Cabinet of Ministers of Ukraine:

- dated of December 12, 2023 No. 1305 «On Approval of the Procedure for Requesting Trial Samples of Parent Components That Are Constituent Components of the Variety Application Object»;
- dated August 4, 2023 No. 813 «On Amendments to Resolution No. 1183 of the Cabinet of Ministers of Ukraine dated August 19, 2002».

Adopted orders of the Minagropolicy:

- dated August 31, 2023 No. 1609 «On Approval of the Procedure for Drawing up, Submitting and Considering a Variety Application», registered with the Ministry of Justice of Ukraine on October 3, 2023 No. 1735/40791;
- dated September 26, 2023 No. 1710 «On Approval of the Procedure for Providing Official and Experimental Samples of Planting Material of the Variety», registered with the Ministry of Justice of Ukraine on October 12, 2023 No. 1785/40841;
- dated July 5, 2023, No. 1344 «On Approval of the Procedure for Conducting Variety Qualification Examination», registered with the Ministry of Justice of Ukraine on July 21, 2023 No. 1244/40300;
- dated November 16, 2023 No. 1981 «On Approval of the Procedure for Conducting pre-registration Sorting Studies», registered with the Ministry of Justice of Ukraine on January 9, 2024 No. 45/41390.

Has expired:

- Resolution of the Cabinet of Ministers of Ukraine dated September 19, 2018 No. 756 «On Approval of the Procedure for Requesting Samples of Planting Material of Parent Components of the Object of the Application»;
- Order of the State Service for the Protection of Rights to Plant Varieties dated March 12, 2003 No. 3-2/139-43 «On Approval of the Procedure for Distribution in Ukraine of a Variety to which the Exclusive Right of the Owner Does Not Exist», registered in the Ministry of Justice of Ukraine on March 27, 2003 No. 241/7562;
- Order of the Minagropolicy dated May 28, 2003 No. 151 «On Approval of the Regulation on the Certificate of Authorship of a Plant Variety», registered in the Ministry of Justice of Ukraine on June 11, 2003 No. 470/7791;
- Order of the Minagropolicy dated February 28, 2018 No. 110 «On Approval of the Rules for Drawing up and Submitting Applications for Plant Varieties», registered in the Ministry of Justice of Ukraine on July 5, 2018 No. 781/32233.

2. Cooperation in examination

Ukraine exchanged 112 reports on the results of field research at the Council of Europe during 2023. Ukraine used the reports from the examination at the General Assembly of the following countries: Slovakia, Austria, Hungary, Germany, Spain, France, Romania.

3. State of the administrative sector

Since 2020, the Minagropolicy has authorized to be the competent body for the registration of plant variety rights in Ukraine.

4. State of the technical sector

4.1 Changes were made to the following:

- «METHODS OF CONDUCT OF QUALIFICATION EXAMINATION OF PLANT VARIETIES FOR SUITABILITY FOR PROPAGATION IN UKRAINE (Methods for determining the quality indicators of crop production)» (order of the Minagropolicy dated November 27, 2023 No. 2055);
- Methodology for determining the conformity of varieties of Portuguese cabbage (*Brassica oleracea* L. var. *costata* DC.), brain cabbage (*Brassica oleracea* L. convar. *acephala* (DC.) Alef. var. *medullosa* Thell.), cabbage curly (*Brassica oleracea* L. convar. *acephala* (DC.) Alef. var. *sabellica* L.), leafy green cabbage (*Brassica oleracea* L. convar. *acephala* (DC.) Alef. var. *viridis* L.), leafy palm leaf cabbage (*Brassica oleracea* L. var. *palmifolia* DC.) criteria of distinction, uniformity and stability (order of the Minagropolicy dated of 01.12.2023 No. 2092);
- Methodology for determining the compatibility of varieties of Japanese cabbage (*Brassica rapa* L. subsp. *nipposinica* (L. H. Bailey) Hanelt), Chinese cabbage x Japanese cabbage (hybrids between *Brassica rapa* L. Emend. Metz. ssp. *chinensis* (L.) Hanelt and *Brassica rapa* L. subsp. *nipposinica* (L. H. Bailey) Hanelt), Japanese cabbage x broad-nosed cabbage (hybrids between *Brassica rapa* L. subsp. *nipposinica* (L. H. Bailey) Hanelt and *Brassica rapa* L. subsp. *narinosa* (L. H. Bailey) Hanelt.), Japanese cabbage x turnip (hybrids between *Brassica rapa* L. subsp. *nipposinica* (L. H. Bailey) Hanelt and *Brassica rapa* L. subsp. *Rapa*) to the criteria of difference, uniformity and stability (Order of the Minagropolicy dated of 01.12.2023 No. 2092);
- Methodology for determining the compliance of varieties of large-flowered sedge (*Koeleria macrantha* (Ledeb.) Schult.) and gray sedge (*Koeleria glauca* (Spreng.) DC.) with the criteria of distinction, uniformity and stability (order of the Minagropolicy dated of 01.12.2023 No. 2092);
- Methodology for determining compliance of sorghum varieties (*Sorghum Moench*) with the criteria of distinction, homogeneity and stability (order of the Minagropolicy dated of 01.12.2023 No. 2092).

4.2 Approved:

- Methodology for conducting a qualification examination of plant varieties for suitability for distribution in Ukraine (general part) (Order of the Minagropolicy dated of November 17, 2023 No. 2005);
- Methodology for determining the compatibility of varieties of Portuguese cabbage (*Brassica oleracea* L. var. *costata* DC.), brain cabbage (*Brassica oleracea* L. convar. *acephala* (DC.) Alef. var. *medullosa* Thell.), curly cabbage (*Brassica oleracea* L. *acephala* (DC.) leafy cabbage (*Brassica oleracea* L. convar. *acephala*) leafy cabbage (*Brassica oleracea* L.) (var. *palmifolia* DC.) criteria of distinction, uniformity and stability (Order of the Minagropolicy dated of 17.01.2023 No. 42);
- Methodology for determining the compatibility of varieties of Japanese cabbage (*Brassica rapa* L. subsp. *nipposinica* (L. H. Bailey) Hanelt), Chinese cabbage x Japanese cabbage (hybrids between *Brassica rapa* L. Emend. Metz. ssp. *chinensis* (L.) Hanelt and *Brassica rapa* L. subsp. *nipposinica* (L. H. Bailey) Hanelt), Japanese cabbage x broad-nosed cabbage (hybrids between *Brassica rapa* L. subsp. *nipposinica* (L. H. Bailey) Hanelt and *Brassica rapa* L. subsp. *narinosa* (L. H. Bailey) Hanelt.), Japanese cabbage x turnips (hybrids between *Brassica rapa* L. subsp. *nipposinica* (L. H. Bailey) Hanelt and *Brassica rapa* L. subsp. *Rapa*) to the criteria of difference, homogeneity and stability (Order of the Minagropolicy dated of 02.03.2023 No. 133);

- Methodology for determining the conformity of varieties of large-flowered gorse (*Koeleria macrantha* (Ledeb.) Schult.) and gray gorse (*Koeleria glauca* (Spreng.) DC.) to the criteria of distinction, homogeneity and stability (Order of the Minagropolicy dated of 14.02.2023 No. 190);
- Methodology for determining compliance of sorghum varieties (*Sorghum Moench*) with the criteria of distinction, homogeneity and stability (order of the Minagropolicy dated of 10.03.2023 No. 422);
- Methodology for determining the suitability of varieties of red fescue (*Festuca rubra* L.), sheep fescue (*Festuca ovina* L.), thin-leaved fescue (*Festuca filiformis* Pourr.), rough fescue (*Festuca brevipila* R. Tracey), variegated fescue (*Festuca heterophylla* Lam.), fescue (*Festuca pseudovina* Hack. ex Wiesb.), red fescue (*Festuca rubra* var. *commutata* Gaudin.), furrowed fescue (*Festuca rupicola* Heuff.), Welsh fescue (*Festuca valesiaca* Schleich. ex Gaudin.), red fescue red (*Festuca rubra* L. subsp. *rubra*) criteria of distinction, homogeneity and stability (Order of the Minagropolicy dated of 17.03.2023 No. 530);
- Methodology for determining the compliance of varieties of the rose genus (*Rosa* L.) with the criteria of distinction, homogeneity and stability (order of the Minagropolicy dated of 29.03.2023 No. 667);
- Methodology for determining compliance of varieties of cultivated soybeans (*Glucine max* (L.) Merr.) with the criteria of distinction, homogeneity and stability (order of the Minagropolicy dated of 02.10.2023 No. 1745);
- Methodology for determining compliance of red clover varieties (*Trifolium pratense* L.) with the criteria of distinction, homogeneity and stability (order of the Minagropolicy dated of 02.10.2023 No. 1747);
- Methodology for determining compliance of varieties of viburnum (*Viburnum opulus* L.) with the criteria of distinction, homogeneity and stability (order of the Minagropolicy dated of 04.10.2023 No. 1754);
- Methodology for determining compliance of potato varieties (*Solanum tuberosum* L.) with the criteria of distinction, homogeneity and stability (order of the Minagropolicy dated of 06.10.2023 No. 1772).

5. Activities to promote the protection of plant varieties

[The Appendix contains] information about the activities for the promotion of plant variety protection and publications in the field of plant variety rights protection in electronic form.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

The statistical information on plant variety protection in Ukraine for 2023 was transmitted by the letter of the Minagropolicy dated April 19, 2024 No № 21-1331-06.1/11064 and in electronic form to the e-mail: upov.mail@upov.int.

[Appendix of Annex IX follows]

APPENDIX

ACTIVITIES FOR THE PROMOTION OF PLANT VARIETY PROTECTION

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)	Comments
«Plant Varieties Studying and Protection» Print ISSN 2518-1017 Online ISSN 2518-7457 № 1, 2, 3, 4, volume 19, 2023 https://journal.sops.gov.ua/issue/archive	quarterly	Kyiv, Ukraine	Ukrainian Institute for Plant Variety Examination, Plant Breeding & Genetics Institute – National Center of Seeds and Cultivar Investigation of NAAS, Institute of Plant Physiology and Genetics, National Academy of Sciences of Ukraine	Publications on plant variety studying and science, genetics, breeding and seed production, plant physiology, biotechnology and biosafety, plant production, plant variety market, plant varieties protection, international cooperation, information systems and technologies, young scientist's view, history of science, anniversaries	Ukraine	
Bulletin «Plant Varieties Protection», № ½, № 3, № 4, № 5, № 6, № 7, № 8, № 9, № 10, № 11, №12, 2023. https://sops.gov.ua/buleten-arhiv-nomeriv	monthly	Kyiv, Ukraine	Ukrainian Institute for Plant Variety Examination	Bulletin issued pursuant to the Law of Ukraine “Plant Varieties Protection” for the purpose of official information activity in the field of plant variety rights and implementation of Ukraine's international obligations arising from its membership in the International Union for the Protection of New Varieties of Plants (UPOV)	Ukraine	
International Applied Research Conference of Young Scientists and Specialists “Breeding, Genetics and Technologies for Growing Crops” http://confer.uesr.sops.gov.ua/miron2023/schedConf/presentations	21.04.2023	village Centralne, Kyiv region	V.M. Remeslo Myronivka Institute of Wheat of National Academy of Agrarian Sciences of Ukraine; Ukrainian Institute for Plant Variety Examination	Definition of modern trends in agricultural research and evaluation of plant varieties	Ukraine, Egypt (200 participants)	published a collection of conference materials
VI Internet Conference for Young Scientists “Breeding of agricultural crops – from molecule to variety” http://confer.uesr.sops.gov.ua/genetika2023/schedConf/presentations	07.09.2023	Kyiv, Odesa	Ukrainian Institute for Plant Variety Examination; Plant Breeding & Genetics Institute – National Center of Seeds and Cultivar Investigation of National Academy of Agrarian Sciences of Ukraine	Application of modern methods of biotechnology and genetics in agriculture and variety testing	Ukraine (29 participants)	published a collection of conference materials

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Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)	Comments
The International Applied Science Conference "100th anniversary of Establishment of the National Plant Variety Resources of Ukraine" https://events.sops.gov.ua/uploads/Zbirnyk Hundred.pdf http://confer.uisr.sops.gov.ua/100nsrr/sch edConf/presentations	29.09.2023	Kyiv	Ukrainian Institute for Plant Variety Examination	The plant variety examination development, modern trends in agricultural research	Ukraine (100 participants)	published a collection of conference materials

[Annex XII follows]

EUROPEAN UNIONⁱ
Period: July 2023 - July 2024

(Report prepared by the European Commission
in close relation with the Community Plant Variety Office)

PLANT VARIETY PROTECTION

1) Legislation

General

1.1 Amendment of the law and the implementing Regulations:

From 1 April 2024, following the judgement of the Court of Justice of the European Union in Case C-522/21, the EU amended the implementing rules on the agricultural exemption, through the Commission Implementing Regulation (EU) 2024/833 of 11 March 2024 amending Commission Regulation (EC) No 1768/95 as regards the liability for damage pursuant to Article 94(2) of Council Regulation (EC) No 2100/94.

1.2 Case law

1.2.1 General Court of the European Union

Judgment of 28 February 2024 in case T-556/22, House Foods Group, Inc. vs CPVO ('SK20')

In December 2017, House Foods Group Inc. ("applicant") filed an application for Community plant variety right ("CPVR") protection for a variety of the species *Allium cepa* (Cepa group) with denomination 'SK20' (file No 2017/3314). The CPVO found that the variety met the DUS requirements and issued a positive final report on the technical examination along with the variety description. The applicant, however, requested the addition in the variety description of a characteristic not included in the technical protocol.

The Office refused the request explaining that the variety had already been found to be as distinct from the common knowledge based on other morphological characteristics that were part of the relevant protocol. The CPVR was then granted.

The applicant (now "appellant") appealed the Office's decision on the grant of the CPVR before the Board of Appeal of the CPVO ("Board"). The appeal was based essentially on the ground that the CPVO decision refusing to amend the variety description to reflect the additional characteristic invoked by the appellant affected the scope of protection of the right granted.

By decision dated 1 July 2022 (No A018/2021), the Board dismissed the appeal. The Board found it inadmissible pursuant to Article 49(1) of Regulation (EC) No 874/2009 ("Proceedings Regulation" or "PR") in conjunction with Article 81 of Regulation (EC) 2100/94 ("Basic Regulation" or "BR"), as the appellant did not qualify as "losing party".

The appellant filed a further action against the Board's decision before the General Court. The General Court also dismissed the action, confirming the Office and Board's position.

In its judgement, the General Court clarified that the official variety description is not intended to reflect the expression of all the characteristics resulting from a candidate variety's genotype, but only that of those characteristics sufficing to demonstrate the distinctness of the variety. It is sufficient that the variety is clearly distinguishable by at least one characteristic. Therefore, even if the additional characteristic had been included in the technical examination and in the variety description, this would not have had any bearing on the protection conferred by the CPVR.

The General Court further ruled that inserting the additional characteristic in the variety description cannot procure any advantage as regards the scope of protection of a CPVR. This is because the scope of the CPVR concerns the variety itself and all its plant material, encompassing all the variety's characteristics resulting from

its genotype, and regardless of which characteristics are reflected in the variety description. On that basis, the General Court found that the Board was right to find that the appellant had no interest in filing the appeal.

Lastly, the General Court confirmed that the Board was right in noting that the President of the CPVO had no obligation to trigger the procedure of additional characteristics of Art. 23 PR, since the distinctness of the variety had already been established based on at least one characteristic.

Judgement of 17 April 2024 in case T-2/23, Romagnoli Fratelli SpA vs CPVO ('Melrose')

This case concerns the CPVR for the potato variety 'Melrose' belonging to Romagnoli Fratelli SpA ("holder"). On 27 October 2021, the CPVO sent to the holder via the online platform MyPVR User Area the debit note regarding the payment of the annual fee for maintaining the CPVR. In the absence of payment, the CPVO sent via the MyPVR User Area a reminder on 10 January 2022, again via MyPVR, providing the holder a time limit of one month to pay the annual fee. On 21 March 2022 and based on the lack of payment, the CPVO cancelled the CPVR in accordance with Article 21 of the Basic Regulation. On 6 May 2022, the holder filed an application for *restitutio in integrum* pursuant to Article 80 BR. The CPVO refused this application for not meeting the legal conditions required.

The holder (now "appellant") challenged the CPVO decision on his application for *restitutio in integrum* directly before the General Court. He claimed that despite having exercised all due care, unforeseeable circumstances linked to the Covid-19 pandemic prevented him to follow-up on the payment required. This would justify his failure to observe the time limit for the payment. The holder then contested the legality of the CPVO's electronic communication channel MyPVR as a valid means for notifying debit notes and reminders relating to the payment of annual fees.

From its part, the CPVO challenged the admissibility of the appellant's action because there was no legal basis to do so. Decisions of *restitutio in integrum* are not subject to appeal within the meaning of Article 67(1) of the Basic Regulation and, moreover, the appellant had challenged a decision of the CPVO directly before the General Court, not passing through the Board.

The General Court found the action admissible but not well-founded and dismissed the appeal.

As regards the admissibility of the action, the General Court found that despite the absence of specific procedural provisions in the Basic Regulation to bring an action against a decision of the Office following an application for *restitutio in integrum*, the CPVO must apply the principles of procedural law which are generally recognised in the Member States. These principles, coupled with certain legal provisions in the Treaty on the Functioning of the European Union (TFEU), should be seen as providing the possibility for action against the acts of any EU body, including the CPVO.

As regards the substance, the General Court dismissed the appellant's pleas in law as unfounded. Firstly, the General Court considered that the CPVO acted correctly when it found that the evidence provided by the appellant was not sufficient to prove the invoked unforeseeable circumstances, and that the due care required by the appellant could not be established. Therefore, the application for *restitutio in integrum* did not comply with the conditions laid down in Article 80 of the Basic Regulation, and the correctness of the decision of the CPVO was confirmed. Secondly, the General Court held that CPVO could not be criticised for having sent the debit note reminders via MyPVR, given that the applicant had previously opted for electronic communication by signing the Terms and Conditions of use of MyPVR. Thirdly, the court found that the CPVR legal framework recognises electronic means as valid method of communication, this framework including the decision of the President of the CPVO establishing MyPVR as means of communication with e-users.

It is noted that the appellant filed on 14 June 2024 an action before the Court of Justice to contest the General Court's judgment (case C-426/24 P). The admissibility criteria at the Court of Justice's instance are restrictive, so it remains to be seen if the action is deemed admissible in the first place.

Judgment of 29 May 2024 in case T-77/23, Jaw de Croon Holding BV vs CPVO ('Belsemred1')

In November 2015, Belgicactus BVBA ("applicant") applied for a CPVR for the *Sempervivum arachnoideum* L. variety 'Belsemred1'. The right was granted in March 2018. In October 2019, Jaw de Croon BV filed a nullity petition to challenge the CPVR, claiming that the protected variety did not meet the requirements of distinctness and novelty. According to the nullity petitioner, a *Sempervivum* red variety "identical or similar" to 'Belsemred1' existed since 2007 and it had been commercialised in big quantities since 2009/2010. It also claimed that the technical examination of 'Belsemred1' had not been conducted properly as it had not considered the alleged identical variety.

The CPVO rejected the nullity petition by its decision of October 2021 based on evidence insufficiency. The nullity petitioner (now “appellant”) appealed the decision before Board, claiming that errors by the CPVO in assessing the nullity petition and requesting a new technical examination.

By decision dated 16 December 2022 (No A024/2021), the Board dismissed the appeal. The Board found that the CPVO was correct in dismissing the nullity petition and had not misused its discretion when rejecting the evidence filed by the appellant. The evidence was insufficient and unreliable.

The appellant filed an action against the Board’s decision before the General Court. The General Court also dismissed the action, confirming the Office and Board’s positions.

In the action before the General Court, the appellant put forward two main pleas on the contested Board’s decision: i) infringement of essential procedural requirements —arguing that the reasoning of the Board was insufficient and unconvincing; and ii) errors in the assessment of the requirements of novelty and distinctness of the candidate variety ‘Belsemred1’ —as regards the assessment of the evidence and the obligation of the CPVO to organize a new technical examination.

As regards the first argument, the General Court confirmed that the obligation to state reasons can be satisfied without it being necessary to respond expressly and exhaustively to all the arguments raised by the parties. Moreover, it also found that rights of defense are infringed by a procedural irregularity only in so far as the irregularity limits or affects the defense of the party.

As regards the second argument, the General Court confirmed that in technical matters the scope of its review is limited to manifest errors of assessment, whereas for factual assessments it carries out a full review of legality (e.g.: on novelty matters). Moreover, the Court acknowledged that the burden of proof is on the nullity petitioner and considered that in the case at hand the Office had complied as well with its obligation to examine facts of its own motion. Moreover, the Court clarified that the claim of identity of two varieties for the purpose of establishing novelty is an objective concept requiring proof by appropriate evidence. Lastly, the Court confirmed the Office’s decision to refuse a new technical examination due its lack of usefulness, given that a new examination would not reflect the situation before the date of the application for registration of ‘Belsemred1’.

It is finally noted that the appellant filed on 29 July 2024 an action before the Court of Justice to contest the General Court’s judgment (case C-520/24 P). The admissibility criteria at the instance of the Court of Justice are very restrictive, so it remains to be seen whether the action is deemed admissible in the first place.

1.2.2 Board of Appeal of the CPVO

Decision of the Board of 13 December 2023 in case No A001/2022 (‘Queen’)

An action against the Office and before the Board was undertaken by Ángel Teresa Hermanos S.A. (“ATH”, “appellant”) in February 2022. The appellant criticised the fact that the CPVO had entered into its Register the transfer of the CPVR for the variety ‘Queen’ to Seedless Gold International S.L (“SGI”) based on allegedly deficient documentary evidence. The appellant claimed that its former procedural representative had requested the registration of the transfer in bad faith. The appellant also initiated in parallel criminal judicial proceedings in Spain against the procedural representative and against SGI. Based on the pending outcome of such proceedings, the CPVO stayed the proceedings of the appellant’s request for deletion of the entry of the transfer and the appellant contested this procedural step taken by the Office.

In the grounds of appeal, the appellant requested the Board to declare the transfer null and void and to reflect in the CPVO Register the CPVR as belonging to the original holder, ATH. The appellant alleged that the CPVO did not properly analyse the evidence before registering the transfer. From its part, the CPVO pleaded the inadmissibility of the appeal. The CPVO argued that it lacked the competence to adopt decisions on transfers, since those decisions pertain to the private sphere of holders, so there was thus no decision to appeal. Moreover, the procedural representative designated by the appellant still appeared in the Registry in that role at the time when the transfer was received and registered. This is why the CPVO, considering the apparent validity of the document submitted, had no reason not to register the transfer. According to the CPVO, it was the appellant’s responsibility to inform the CPVO that the procedural representative was no longer working with them and could thus no longer act before the CPVO.

The Board upheld the appeal, finding it admissible and well-founded. It found that the transfer should have never been registered based on lack of sufficient evidence and ordered the CPVO to reflect the appellant as the legitimate holder of the CPVR 'Queen'.

It is noted that the Board's decision is not yet firm. SGI filed on 13 February 2024 an action against the Board's decision before the General Court (T-74/24). In these proceedings, the CPVO will maintain its position, as defended before the Board. A judgment of the General Court on the matter is thus pending, so it remains to be seen if the General Court will confirm or annul the Board's decision.

Decision of the Board of 12 January 2024 in joint cases A019/2021 and A020/2021 ('Cripps Pink' / 'Cripps Red')

In December 2020, Teak Enterprises Pty filed nullity petitions against two CPVRs. The two concerned CPVRs were 'Cripps Pink' (file No 1995/1039) and 'Cripps Red' (file No 1995/1040). The Office adopted two separate decisions on 17 May 2021. The CPVO considered that serious doubts about the CPVRs' validity had not been raised, a notion that must be met as per Article 53a of the Proceedings Regulation for the CPVO to be able to formally open the nullity proceedings.

In July 2021, the nullity petitioner (now "appellant") appealed the CPVO decisions before the Board. The appellant requested the Board to set aside the Office's decisions not to open nullity proceedings as well as to go into the merits of the nullity petitions and declare both CPVRs null and void.

From its part, the CPVO, together with Western Australian Agriculture Authority ("WAAA" or "intervener"), claimed that the appeal was unfounded and should be dismissed. They claimed that the Board's review was limited to the Office's decisions not to open nullity proceedings and could not assess the merits on whether the CPVRs had to be declared (or not) null and void at this stage.

The Board upheld the appeal, finding it admissible and well-founded. The Board ruled that the CPVO decisions had to be set aside. The case was remitted back to the CPVO, for it to formally open the nullity proceedings against the concerned CPVRs and to conduct comprehensive assessments and investigations of all the relevant facts and evidence put forward by the appellant. The Board considered that the CPVO had erred in its assessment of the (partially new) facts and evidence, and in not opening nullity proceedings.

It is noted that the Board's decision is not yet firm. WAAA filed on 21 March 2024 an action against the Board's decision before the General Court (T-159/24). In these proceedings, the CPVO will maintain its position, as defended before the Board. A judgment of the General Court on the matter is thus pending, so it remains to be seen if the General Court will confirm or annul the Board's decision.

2) Cooperation in examination

2.1 Conclusion of new agreements

The CPVO entered in a written agreement with the Ministry of Agriculture in Japan to take over reports of *Flammulina velutipes*, *Grifola frondosa*, *Hypsizygus marmoreus*, *Lentinula elodes* and *Pleurotus eryngii* varieties.

2.2 Amendment of existing agreements

Nothing to report.

2.3 Memorandum of Understanding with third countries

Nothing to report.

3) Situation in the administrative field

Nothing to report.

4) Situation in the technical field

4.1 Information concerning the functioning of the EU Plant Variety Protection

a. Relation with Examination Offices (EO)

In December 2023 the CPVO held its 27th annual meeting with its EOs, which was also attended by representatives from the European Commission, the UPOV office and the breeders' organisations (CIOFORA, Euroseeds, Plantum and ECO-PB), as well as by representatives from Switzerland and Norway as a non-EU Plant Variety Right Offices. The meeting was held as a video conference. The main subjects of discussion were the following:

- Information to be provided in and layout of examination reports;
- Rules linked to the postponement of DUS testing in the fruit sector;
- Non-availability of reference varieties;
- Single observations in multi-annual testing;
- Revision of the CPVO policy on the status of plant material used for DUS testing purposes;
- Lack of uniformity (Art.8) vs. not-a-variety (Art.5).

Furthermore, the participants were informed on case law, developments in the Variety Finder, QAS activities, on the state of play of R & D projects, IT projects and the calculation of costs by the EOs.

b. Preparation of CPVO protocols

In 2023, experts from the EU Member States' examination offices were invited to participate in elaborating or revising technical protocols for DUS testing which either were subsequently approved by the Administrative Council or can be expected to be approved in 2024. Experts' meetings were held to discuss the technical protocols of:

- Agricultural crops: rice, potato, turnip rape, soya bean, common millet.
- Vegetable crops: lettuce, tomato rootstocks, watermelon, broccoli, brussels sprouts, cabbage, cauliflower, kohlrabi, radish and black radish, cornsalad.
- Ornamental crops: *Anthurium* Schott, *Berberis* L.; *Anigozanthos* Labill.
- Fruit crops: Walnut, Peach.

c. Further development of the CPVO Variety Finder

The CPVO Variety Finder is a centralised database gathering information on registers of plant varieties from 70 countries. In 2023, it included 1 558 000 denominations from 74 countries and data from 159 different registers such as Plant Breeder's Rights (PBR), national and Community Plant Variety Rights (CPVR). In addition, it includes data on varieties eligible for marketing in the EU (National listing (NLI) and common catalogue registers), plant patent registers, EU registered trademarks in the plant and living product from the European Union Intellectual Property Office (EUIPO) as well as any register of interest like commercialised varieties of common knowledge.

The Variety Finder offers users a general search tool and a similarity test tool to test the suitability of variety denominations which is a service to breeders, national authorities and the public in general. It is also a valuable source of information of all national or international bodies contributing to the database. The CPVO receives between 300 and 380 contributions per year.

The various contributors update the database as soon as data are officially published. A memorandum of understanding has been signed with UPOV to share the task of collecting data from EU Member States and non-EU countries and ensure a regular data exchange. EU data represents 66 % of the content of the Variety Finder and data from non-EU countries amount to 34%.

The CPVO applicants and titleholders represent the biggest group of users with more than 51% of the denomination tests of similarity launched. The number of tests increased by 5% compared to 2022.

The CPVO has also worked intensively in 2023 on several projects: the Application Programming Interface (API) developer program is one of them. This project should allow the use of Variety Finder functionalities (test, search) directly from internal user's applications.

The CPVO and the Commission (Directorate General for Health and Food Safety) also continued working intensively in 2023 on the joint project named “EU Plant Variety Portal (EU PVP)”. One of the objectives is to create a unique IT based notification system for plant varieties in the EU. It should offer to Member States a unique portal for notification of varieties to the Commission for the Common Catalogues of varieties, and to the CPVO for the Variety Finder.

In 2023, EU Member States started using the new portal of the Commission to notify varieties of their national variety registers of EU regulated agricultural and vegetable species and update the Commission Common Catalogue of varieties of agricultural and vegetable species. The scope of notifications should be extended in the future to allow contributing to the Variety Finder as well.

d. Cooperation in denomination testing with EU Member States

Collaboration among Member States is essential to ensure a harmonised and consistently interpreted approach to Article 63 of Council Regulation EC 2100/94, which is based on the UPOV convention. The cooperation service in denomination testing embodies this collaboration by fostering regular exchanges among the 27 participating countries and the Office, resulting in around 7 000 opinions issued each year. These opinions allow to stay updated on developments, trends, and changes. It is a collaborative monitoring tool that not only provide information at the earliest stages of denomination proposals but also proactively identifies certain issues. This approach enables to take transparent and coordinated actions to avoid administrative burdens that can adversely affect breeders.

Moreover, the cooperation service aims to highlight regulatory aspects that may lead to varying interpretations and ensures the provision of necessary clarifications.

Since the establishment of the denomination testing cooperation service in 2010, the guidelines for variety denominations and their explanatory notes have evolved significantly. These changes are the direct result of daily interactions between service users and the Office. The most recent version of the guidelines and explanatory notes, effective since January 2022, has introduced notable changes, the impact of which was assessed during its inaugural year.

Recognising the need for regular updates and adaptations of the rules and interpretations concerning variety denominations, as well as the importance of more frequent discussions on related topics, the CPVO has decided to establish a forum dedicated to denomination matters. At the Administrative Council in April 2024, the CPVO informed Member States about the establishment of a Technical Working Group on Variety Denominations. This expert group aims not only to finalise the first round of discussions on the 2022-version of the Guidelines, which started in 2023, but also to address other topics related to plant variety denominations such as databases, data exchange and IP cooperation in the field of variety denominations. The first meeting will be held online in September 2024.

4.2 Crop experts meeting

A meeting of agricultural experts was held electronically on 3 and 4 October 2023 to discuss:

- observing in multi-annual tests certain characteristics only once,
- maize: testing system with breeder's participation in Italy, technical elements of DUS testing in such system,
- spring barley: problems with distinctness observation,
- true potatoes seeds varieties (TPS), final draft of the CPVO Technical Protocol for potatoes discussed and approved,
- DUS assessment of oilseed rape hybrid varieties in Denmark,
- technical workshops to be organised in 2024,
- revisions to several technical protocols and new technical protocols.

A meeting of vegetable experts was held on 15 and 16 November 2023 to discuss and provide information on a number of topics:

- The group was working towards clarifying characteristics from the CPVO technical protocols that may only be observed once, enhancing the efficiency of DUS examination. A working group has been established and will prepare a document for 2024.
- Commitment of EOs and the CPVO has been reinforced towards adopting IBEB's recommendations, particularly concerning the integration of *Bremia* resistance characteristics into the technical protocols.

- Discussions are underway to clarify expectations from breeders in seed germination rates of samples delivered for DUS testing.
- Upon a request from Euroseeds, the group reflected on how to improve, within the network of EU Examination Offices, the processes for the management of the reference collections and the sending of the requests for obtaining the reference material.
- The group was updated about the latest results of ongoing R & D projects currently co-funded by the CPVO and was informed by Wageningen University on progresses made in image analysis in the INVITE project for the purpose to assist examiners and improve observations in DUS tests.

A meeting of fruit experts was held on 19-20 September 2023 to discuss among others:

- Testing of apple mutation groups, challenges in plant health matters,
- submission of samples: changes to the general requirements on submission of samples for fruit crops,
- Additional information linked to the UPOV code to group varieties,
- Revision of our plant health requirements in the request for plant material,
- Report from examination offices on specific measures taken to secure DUS trials from adverse weather conditions,
- Taking over of costs of testing in case of damages at Examination Office, timing of the payment/non – payment,
- Taking over of costs of testing in case of damages at Examination Office, timing of the payment/non – payment,
- Preparation of reports and variety descriptions – sharing experience by experts and CPVO position,
- Take over of reports by Australia,
- Vitis - possibility of using 2-year-old plants for planting in DUS trials
- Possible amendment of the CPVO TV warning letter
- Modifications in technical questionnaires: Confidentiality aspects, more dependencies between questions, Standardisation of section 7 and possibly 4 R&D projects in the fruit sector,
- update on developments in automated phenotyping,
- IT matters,
- funds to help SMEs.

A meeting of ornamental experts was held on 18 and 19 October 2023 to discuss or to provide information on a number of topics, among others:

- consideration of species material in the Distinctness assessment; assessment Uniformity; QN characteristics in cross-pollinated, seed-propagated ornamental varieties; revision of the general submission requirement; scope of the national guidelines; assessment of uniformity where more than one plant per pot is grown or where several scions are grafted per rootstock plant; new or revised Technical Protocols of Berberis, Anigozanthos and Anthurium.

4.3 Quality Audit Service (QAS)

A total of nine on-site assessment exercises were carried out by QAS to entrusted examination offices in the EU in the twelve months to July 2024. All of these were carried out according to the revised Entrustment Requirements which came into force on 1 January 2023.

Due to the reinforcement of DUS working process in various chapters of the revised Entrustment Requirements, improvements in the quality of DUS testing work were widely implemented by the examination offices assessed in the last twelve months. Nonetheless, QAS delivered more nonconformities to the nine entrusted examination offices than was the case three years earlier when they were last assessed under the old version of the Entrustment Requirements. The one area where all nine examination offices received a nonconformity or observation, was in not fully implementing the requirement that all DUS examiners should have followed the UPOV DL-305 distance learning course. Most of the nonconformities raised by QAS were able to be resolved by the examination offices within the designated deadline, allowing QAS to make positive recommendations for entrustment to the CPVO Administrative Council.

In November 2023, under the auspices of the IPKey China project, a QAS Team visited the mushroom DUS testing facilities in Shanghai of the Chinese Ministry of Agriculture and Rural Affairs (MARA). The aim was to evaluate the possibility for the CPVO to take over of technical report or organise the technical examination of certain exotic mushroom species with the Chinese authorities. QAS drew up an evaluation report and recommendations for improvement for the Chinese authorities shortly afterwards, with a positive outlook for

future collaboration between CPVO and MARA in these range of crops. As a consequence, it is foreseen that a formal agreement between both parties will be signed before the end of 2024. QAS also provided continuous technical advice to OAPI and its four designated examination offices in Burkina Faso, Cameroon, Ivory Coast and Senegal, in the AfriPI project to improve the management of variety collections in those four countries.

5) Activities for the Promotion of Plant Variety Protection

5.1 International cooperation

The span of the cooperation of the Office considerably extended in the past few years, to keep the pace with the continually evolving policies that embrace the breeding sector.

The CPVO continues providing its expertise through bilateral and multilateral cooperation (with strategic partners, such as the EUIPO, the European Patent Office (EPO) and UPOV, plant variety protection and Examination Offices, sectorial organisations), notwithstanding ongoing bilateral relations with key target countries and regional organizations, such as the long-standing dialogues with China, Japan, OAPI and ARIPO.

The IP Key international cooperation projects are directed by the European Commission and implemented in collaboration with the EUIPO to strengthen IP protection in China, Latin America and ASEAN countries. In addition to IP Key projects, the EUIPO implements on behalf of the European Commission one project in the Caribbean (CarIPI), one in Africa (AfriPI) and one in Mercosur countries (AL-INVEST PI). The activities carried out in the framework of these projects include the organisation of seminars and mutual trainings as well as the provision of studies and legal support to the beneficiary countries.

Below a recap table of the activities carried out:

Date	Country/Organisation	Project/Initiator	Format	Main topic	Title
22/08/2023	LAO PDR	EAPVP	Hybrid	Regional cooperation	EAPVP - 16th Annual meeting
04/09/2023	Chile	TAIEX	Presential	Capacity building	TAIEX DUS training for Chile Officials
16/10/2023	Colombia	TAIEX	Presential	DUS	TAEIX Colombia Study Visit to the Netherlands - focus on cannabis and roses
26/10/2023	AIPH	CPVO	Presential	Institutional meeting	Institutional meeting with AIPH
13/11/2023	NCSS, NARO	TAIEX	Presential	Capacity building	Expert mission on EU-Japan cooperation on plant breeder rights
20/11/2023	China	IPKey China	Online	DUS	DUS Training to Chinese officials
23/11/2023	China	IPKey China	Presential	QAS	Evaluation of the activities of the Mushroom testing institute of Shanghai
27/11/2023	Latin America	IPKey LA	Online	Enforcement	Webinar on enforcement of PVRs
04/12/2023	South East Asia	IPKey SEA	Hybrid	UPOV 1991	Open seminar on the benefits of UPOV 1991 and debunking myths
05/12/2023	Indonesia	IPKey SEA	Presential	UPOV 1991	Closed workshop on PVR System implementation in the framework of UPOV 1991 - Indonesia
07/12/2023	Thailand	IPKey SEA	Presential	UPOV 1991	Closed workshop on PVR System implementation in the framework of UPOV 1991 - Thailand

Date	Country/Organisation	Project/ Initiator	Format	Main topic	Title
12/12/2023	Latin America	AL-INVEST	Online	Licensing	Advanced webinar on Licensing of PVRs for Universities and public institutes
13/05/2024	Colombia	IPKEY LA	Presential	Enforcement	Enforcement Seminar for the Andean Community judges and prosecutors
27/05/2024	International Seed Federation	ISF	Presential	International cooperation	100 th ISF Anniversary congress
19/06/2024	Ghana	ARIPO	Presential	Regional cooperation	Regional workshop on Plant Variety Protection for ARIPO member states. Plant variety protection for sustainable agricultural development and food security in the context of climate change
30/06/2024	Cameroon, Senegal, Côte d'Ivoire, Burkina Faso	AFRIPI	Presential/Online	DUS	Technical support for the reference collections for the Accredited Research and Examination Centres on Plant Varieties in OAPI countries
15/07/2024	China	IPKEY CHINA	Presential	Legislative developments	High level study visit in Europe of a delegation from MARA, NFGA, SPC (Supreme Court)

CarlPI

In 2023, following the initiative of CARICOM, the CPVO and UPOV are cooperating on a project to support the development of a regional seed policy in relation to plant variety protection to cover CARICOM States. The CPVO has no updates on this project.

Under the **AfriPI** project and the activities concerning the reference collection of accredited centres and examination centres in OAPI Countries continued (Cameroon, Senegal, Côte d'Ivoire, Burkina Faso). The activities were concluded on 30 June 2024.

Other TAIEX initiatives are expected to be approved in 2024 and will be carried out during the year, the countries involved are: Bosnia and Herzegovina and potentially Turkey. Colombia, follow up activities from 2022 missions to Chile and interest was expressed as well by Egypt, Albania and Serbia for support and capacity building activities.

Other activities are foreseen for the rest of 2024.

EAPVP

Participation to the EAPVP Forum is foreseen for August 2024. The EAPVP forum annual meeting serves the purpose of reporting on the previous year's activities and to plan future cooperation initiatives, including updates on the EAPVP Pilot project on establishing an e-PVP platform.

UPOV meetings

The EU (including CPVO) attended the meetings of the UPOV Council, the Consultative Committee, the Legal and Administrative Committee, the Technical Committee as well as all TWPs. Furthermore the EU attended and contributed to working groups on the electronic application form, on DUS support (WG-DUS), on harvested material and unauthorised use of propagating material (WG-HRV), on guidance concerning smallholder farmers in relation to private and non-commercial use (WG-SHF), as well as on Essentially Derived Varieties (WG-EDV).

CPVO – European Patent Office (EPO)

The CPVO and the EPO signed in 2016 a first Administrative Arrangement, in force until 2022, and a second Administrative Arrangement signed in March 2022, which will be in force until 2027. The current Administrative Arrangement includes as an annex a first implementation plan containing a number of cooperation activities, including joint workshops and seminars on plant patenting practices and plant variety protection for relevant EPO and CPVO staff and the organisation of regular meetings between examiners from both sides to debrief on developments of mutual interest.

Under this umbrella, a joint seminar was organised in 2023 focused on the use of CPVO information contained in Plant variety descriptions and non-confidential information of technical questionnaires by EPO. A technical exchange meeting was also organized in 2023 between EPO, CPVO and Euroseeds as an open forum for discussion between the three organizations. In particular, principles applied for assessing patentability of specific types of claims were presented by EPO, including genes claims, selected and random markers claims.

In 2024 the work program includes two joint seminars to exchange information. The first one took place in April 2024. A new joint seminar will take place on 20 November 2024 focused on the use of variety finder as well as latest updates in both organizations.

During the seminar held in March 2024 EPO informed that currently cooperation with CPVO is included in the EPO strategic plan. EPO presented the legal framework for consideration of patent protection of plants or plant material and methods to obtain such plants. They referred to Rule 28(2) of the European Patent Convention, of July 1st, 2017, which reads: “European patents shall not be granted in respect of plants exclusively obtained by means of an essential biological process” and subsequently to Decision of the Board of Appeal G 3/19 published in 2020 which reads: “Product claims to plants or plant material are not allowed if the claimed product is exclusively obtained by essentially biological process. This does not apply to European patents granted and European patent applications filed before 1 July 2017.”

For EPO, there are three types of living plant material subject to patentability:

Conventional plants: Obtained by essentially biological process. Patentable before July 1st, 2017.

Technical mutants: Obtained by technical means, but conceivably also by essentially biological process. Patentable before July 1st, 2017. After July 1st 2017, patentable only with a disclaimer at the end of the claim with the following text: “with the proviso that the plant is not exclusively obtained by an essentially biological process.” Plants obtained by directed mutation for example, including NGT type 1 plants would be included in this group.

Transgenic plants: Obtained by technical means not conceivably obtained by essentially biological process. These plants might include NGT type 2 and other type of transgenic plants not using NGT technologies. These plants are patentable.

The main issue with patents on technical mutants is that such patents may be difficult to enforce, due to the difficulty to find analytical methods to distinguish between engineered plants and plants obtained through conventional breeding, and therefore the burden of proof will be key. Case law will prove extremely useful to find out whether such claims are actually enforceable, yet this kind of patents are very new and no case law is yet available. It was also pointed out by EPO that until then only one patent had been granted on a technical mutant plant with the disclaimer.

In the case of methods to obtain plants, art. 53(b) of the European Patent Convention would apply, rendering essentially biological process for the production of plants not patentable. EPO also clarified that if conventional breeding was part of the method for obtaining the plant, even if there were other technical steps involved, the method would not be patentable. While guidelines to assess patentability of those methods were clear for patent examiners, the question remained opened for random mutagenesis, for which some patents were appealed on grounds that there might be a “hidden” breeding step involved. It could be argued, for example, that implicit crossing and selection of interesting mutants would be required after the mutagenesis had taken place. EPO indicated that no decision has been taken yet on such cases.

EPO also presented the state-of-the-art statistics on number of patents indicating that 1172 patents have been granted on plants in 40 years over a total universe of some 200.000 patents. It was noteworthy that although EPO is taking a very clear policy of not granting patents on conventional plants since July 2017, applications for patenting such plants are still received at a range of more than 100 per year. It was also indicated that for those patents on conventional plants filed before July 2017, 23% of them had been granted, 35% withdrawn

or refused and 42% were still pending (some 600 patent applications). It was to be noted that such patents would also need validation at national level before they could take effect.

EPO also made an analysis of the type of patent holders of transgenic plants, whether they were companies (66%), universities (11.5%), research centers (8%) or other. Of such companies, 52% had 250 staff members or less, (SMES). Yet the remaining 48% hold 2/3 of all patents for transgenic plants. As to the origin, 44% of the companies were based in the US, 35% in Europe, 12% in Japan, 1% in South Korea and 1% in China.

A basic search based on keywords and classification codes in PATENTSCOPE carried out by CPVO indicated that the number of Chinese applications for NGT based patents had exponentially increased, in contrast to the very low number of patents held by China on transgenic plants, and that US applicants were far more frequent than Europeans. This trend was confirmed by EPO who did not present statistics as only classification codes had been used to produce the analysis, and such search could not discriminate the used technologies.

5.2 Training

During the year 2023-2024 the CPVO resumed some presential events, but continued as well to deliver online presentations, webinars and master classes for different educational establishments and stakeholders:

- Participation in the panel 'Plant Variety Protection: Into the Weeds' in the AIPPI International Congress in Istanbul on the 23 October 2023.
- Training to Carabinieri Forestali in Almeria (Spain) on the 15 May 2024.
- Presentation of the Community Plant Variety Rights system within the Magister Lvcentinvs (IP LLM) of the University of Alicante on the 16 May 2024.
- Presentation to the Colegio Oficial de Agentes de la Propiedad Industrial (COAPI) online on the 6 June 2024.
- Participation in the Round table on plant variety protection, part of the LL.M. on IP Law and Management of the Centre d'Etudes Internationales de la Propriété Intellectuelle on 16 February 2024

5.3 Meetings with Stakeholder organisations

The CPVO attended the Euroseeds Annual meeting in Malta in October 2023

The CPVO also met the breeders' organisations on a bilateral basis:

- Euroseeds & Plantum 11/03/2024,
- CIOPORA 06/05/2024.

The CPVO met also with representatives of AIPH on 26/10/2023.

In addition, study visits in EU Member States have been conducted by the CPVO President since 2021, with visits during the reporting period to Denmark and Spain.

5.4 Participation in international fairs and open days

From 23 to 26 January 2024, the Office attended the IPM Essen (DE) jointly with the Bundessortenamt (DE), COBORU, (PL), GEVES (FR) and Naktuinbouw (NL). During the "Salon Sival" in Angers (FR), the CPVO presented the CPVR system in the forum area. The CPVO also visited the Fruitlogistica in February 2024 in Berlin-Germany. The Office also actively participated in the MACFRUT International Fruit and Vegetable Fair in Rimini in Italy from 8 to 10 May 2024 including giving presentations at the International Symposium on Rootstocks and at the Table Grape Symposium.

5.5 IT developments

The CPVO is participating in an IT project whereby the CPVO will make available the purchase of roughly forty thousand DUS reports via UPOV's "DUS Exchange module".

The CPVO has also focused on improving internal processes and procedures. CPVO has undertaken Lean and Business Process Model and Notation (BPMN) training, and a significant revamp of all internal applications is underway. The objectives are to align technologies with the front-facing applications, ensuring the same level of security, ease of evolution, and consistent visual identity and enhancing the interface with other business areas.

6. R & D

6.1 IMODDUS ad hoc working group

As part of the R&D strategy of the CPVO, the Administrative Council has set up in 2016, and confirmed in 2021, the CPVO ad hoc working group on biomolecular techniques. This working group is named IMODDUS which stands for “Integration of Molecular Data into DUS testing”. The aim of the group is to follow and discuss the development of biomolecular techniques and to assess R&D projects for the application of these techniques in DUS tests of all the crop sectors where they could contribute to improve efficiency and quality.

The group is composed of BMT experts from interested examination offices and breeders’ organisations. The participation is limited to experts that can actively contribute in terms of preparing documents and presentations. Experts from laboratories, universities, the industry, etc. can also be invited by the Chairman of the group.

In May 2024, an online meeting was organized. The agenda covered presentations and discussions on the following items:

- Finalised and ongoing IMODDUS R&D projects
- New programs on barley and raspberry in the UK
- Challenges of molecular DUS databases for the future
- Molecular work with EU projects INVITE and INNOVAR (focus on marker-based evaluation of D and U)

In 2024, IMODDUS contributed to the evaluation of one new R&D project proposal on lettuce: “International harmonization and validation of a SNP set for the management of lettuce reference collection”.

One R&D project previously evaluated positively by IMODDUS and granted co-financing was finalised:

Tomato

“International validation of a SNP set to determine genetic distances for the management of tomato reference collection”

Hydrangea

“Harnessing molecular data to support DUS testing in ornamentals: a case study on Hydrangea”.
This project has just ended and the final report is scheduled for end of September 2024.

Two other R&D projects validated by IMODDUS made steady progress during the period:

Tomato – Pepper – Melon

“Updating DUS resistance tests according to pests’ evolution:

- Setting up resistance tests to ToBRFV for tomato and pepper
- Improvement of resistance test ‘melon/Aphis gossypii’”.

Rapeseed III (SNPsNap)

“SNP markers for guiding DUS testing in winter oilseed rape: Validating the new model”.

6.2 INVITE

INVITE stands for “INnovations in plant Variety Testing in Europe to foster the introduction of new varieties better adapted to varying biotic and abiotic conditions and to more sustainable crop management practices”. INVITE is one of the two laureate projects of the call SFS-29-2018 “Innovations in plant variety testing” of the Horizon 2020 program. It aims at improving efficiency of variety testing and availability of information to stakeholders on variety performances under diversified production conditions and on biotic and abiotic stresses for 10 crops (7 “model” crops: maize, wheat, rye grass, sunflower, potato, tomato, apple and 3 “application crops”: lucerne, soybean, rapeseed). It addresses DUS and performance testing in a balanced way and intends to maximize synergies between them through related activities based on phenotyping, genotyping, modelling and database management. The 29 partners were granted about 8 million euros for a period of 5 years extended by 6 months (July 2019 - Dec 2024). CPVO did not receive any funding.

CPVO is in charge of managing all issues related to the access to historical data and reference materials held by the examination offices. It participates to technical meetings, co-leads the work package 5 dedicated to the

testing and the validation of the new tools developed by all work packages and is a member of the executive committee of the project.

During the period July 2023-July 2024, work made steady progress in all work packages. In 2024, an amendment to the agreement on historical data was signed by all partners to allow the publication of scientific articles in journals with high impact factors (requiring access to original data) and the maintenance of INVITE's database by Naktuinbouw for five years after the end of the project (allowing potential follow-up actions, always conditioned to the breeders' consents).

The 5th annual meeting of the project took place in Italy in June 2024 at the CREA-DC station of Impruneta (IT). During the meeting, discussions were organised via 3 focus groups (Genotyping, Phenotyping and VCUS optimisation) to start identifying key messages to deliver to stakeholders on the outputs of the project and define a dissemination plan with the support of Arcadia and Euroseeds. It was decided to prepare thematic and crop reports, to organize dissemination events for targeted stakeholders (examination offices, breeders) and to conclude by a final conference open to all actors of the seed chain on 10 December 2024 in Brussels. INVITE's final conference will propose analyses and recommendations covering his 10 crops according to a thematic perspective. In parallel, INVITE's results on wheat will be integrated into the agenda of another EU projects INNOVAR's final conference on 28 Nov 2024, in Brussels as well.

6.3 Other R&D projects

Harmorescoll

"Setting up an EU system for harmonized collections of reference isolates, control and differentials to facilitate disease resistance testing". The project just ended and the final report is scheduled for end of September 2024.

ⁱ This report uses the terminology of the United Nations.