



C/43/12

ORIGINAL: English/français/deutsch/español

DATE: October 7, 2009

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Forty-Third Ordinary Session
Geneva, October 22, 2009

REPORTS BY REPRESENTATIVES OF MEMBERS AND OBSERVERS
ON THE LEGISLATIVE, ADMINISTRATIVE AND TECHNICAL FIELDS

Document prepared by the Office of the Union

1. According to the practice introduced on the occasion of the twenty-sixth ordinary session of the Council, 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 XVII: Australia, Belgium, Czech Republic, European Community, Hungary, Latvia, Lithuania, Netherlands, New Zealand, Nicaragua, Poland, Republic of Moldova, Slovenia, Switzerland, Tunisia, Ukraine and Viet Nam

Observers: Annex XVIII: Serbia

3. Reports received after September 30, 2009, will be included as an addendum to this document, which will be published after the Council session.

[Annexes follow]

ANNEX I

AUSTRALIA

The format of this report follows that specified in previous years and briefly records information for the financial year ending 30 June 2009

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 No PBR legislation was enacted or came into force in 2008/2009.

1.2 PBR case law: Progress was made in the long running action *Fleming's Nurseries Pty Ltd v Hannaford* [2008] FCA 591, where the court ordered a split trial – first to establish whether infringement of PBR or breach of commercial non-propagation contact had occurred, and then if necessary, a separate trial in respect of all issues of quantum of damages and/or account of profits. It is noted that the action was concluded shortly after the period of this report (in August 2009) see *Fleming's Nurseries Pty Ltd v Hannaford* [2009] FCA 884 where through consent, the Court found that both the PBR had been infringed and the non-propagation agreement had been breached. The respondents: are permanently restrained from any of the actions requiring the breeder's authorization for the protected varieties; will remove and destroy all the relevant propagating material; will provide information including the identity of the person responsible for the propagation; the amount of the offending material; details of third parties to whom the material has subsequently been supplied and details of any related growing contracts.

2. Cooperation in examination

Arrangements have been reached with Canada and New Zealand regarding the purchase of test reports from those countries. The arrangements have now been in operation for close to twelve months and are functioning well.

3.&4. Situation in administrative and technical fields

The Australian PBR office maintained accreditation for 34 establishments to act as Centralised Test Centre (CTC) for DUS testing for one or more of the following 53 plant types: Potato, Sugar Cane, Canola, Wheat, Oats, Clematis, *Mandevilla*, *Diascia*, *Argyranthemum*, *Pelargonium*, Perennial Ryegrass, Tall Fescue, Tall Wheat Grass, White Clover, Persian Clover, *Bracteantha*, *Aglaonema*, *New Guinea Impatiens*, *Bougainvillea*, *Verbena*, *Agapanthus*, *Camellia*, *Lavandula*, *Osmanthus*, *Ceratopetalum*, *Rosa*, *Euphorbia*, *Linonium*, *Raphiolepis*, *Eriostemon*, *Lonicera*, *Jasminum*, *Angelonia*, *Cuphea*, *Cynodon*, *Zoysia*, *Petunia*, *Calibrachoa*, *Hordeum*, *Leptospermum*, *Rhododendron*, *Osteospermum*, *Antirrhinum*, *Dahlia*, *Anubias*, *Ananas*, *Dianella*, *Plectranthus*, *Zingiber*, *Zantedeschia*, *Prunus*, *Mangifera*, *Vaccinium* and *Kalenchoe*.

IP Australia also maintains and updates weekly a Homepage (www.ipaustralia.gov.au/pbr/index.shtml) that includes PBR information, downloadable

forms; and a searchable database including information on current applications, variety descriptions, images and grants.

Year	Applications Received	Applications Completed	Applications Pending
Ending 30/06/09	324	369	
Total 1988 to 2009*	6,152	4,978	1,174

*= as at 30 June 2009.

The Advisory Council on Intellectual Property (ACIP) launched a review into the enforcement of PBR. The review is wide ranging and will consider possible strategies to assist Australian PBR holders to effectively enforce valid rights. The review also includes a consideration of whether there may be benefits from extending the jurisdiction of the Federal Court to include PBR matters. ACIP has conducted a number of consultations, developed an issues paper and an options paper. It intends to submit its final report and recommendations to the Government in the latter half of 2009. Further information is available from <http://www.acip.gov.au/reviews.html#pbr>.

5. Activities for the promotion of plant variety protection

IP Australia has been involved in the following promotional activities:

1. “*Farm Saved Seed and PVP in Australia*”, International Seminar for Better Understanding of Plant Variety Protection, Tokyo, Japan, 24-25 July 2008.
2. “*Plant Breeder’s Rights*”, Seed Business 2008, Hobart, 23 August 2008.
3. “*Australia – legal framework; relevant laws; jurisprudence and current trends*”, UPOV International Symposium on Contracts in relation to PBR, Geneva, October 2008.
4. “*DUS Testing in Australia*”, East Asia Regional PVP Forum, Workshop on DUS Testing, Indonesia, 4-6 November 2008.
5. “*Plant Variety Protection in Australia*”, APEC International Seminar on Plant Variety Protection Systems, Jakarta, 7 November 2008.
6. “*Breeder Testing Systems*”, Workshop on DUS Testing, Da Lat, Viet Nam, 8-12 December 2008.
7. “*What is a characteristic, and why are they important*”, Workshop on DUS Testing, Da Lat, Viet Nam, 8-12 December 2008.
8. “*Additional Characteristics*”, Workshop on DUS Testing, Da Lat, Viet Nam, 8-12 December 2008.
9. “*Application of license contracts in PVP – Australia experience*”, International Seminar on Plant Variety Protection, Beijing, China, 22 April 2009

10. “*DUS Examination in Australia*” USPTO Global Intellectual Property Academy and UPOV, Train-the-Trainer, Alexandria, Virginia, USA, 18-22 May 2009.
11. “*How to Conduct Breeder Testing, the Australian Experience*”, 2nd Workshop for Cooperation in Harmonisation of Test Guidelines (TGs) and DUS Tests, East Asia Regional PVP Forum, Bangkok, Thailand, 18-20 August 2009.
12. “*Why is PBR important?, How could DUS tests involve me?*”, 2nd Workshop for Cooperation in Harmonisation of Test Guidelines (TGs) and DUS Tests, East Asia Regional PVP Forum, Bangkok, Thailand, 18-20 August 2009.

[Annex II follows]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

Adaptation to the 1991 Act of the Convention

A preliminary draft law on the protection of plant varieties was prepared by the IP Office and was sent to the Ministry for approval and follow-up. This preliminary draft law aims to adapt the plant variety protection regime to the 1991 Act of the UPOV Convention.

Access to plant variety protection under the 1991 Act is nevertheless still possible on Belgian territory, through the Community Plant Variety Office, in accordance with the European regulations in force on the subject.

2. Cooperation in examination

No change.

3. Situation in the administrative field

Changes in the administrative system

No change.

Volume of activities - Situation as at August 31, 2009

Since the entry into force of the legislation on the protection of plant varieties in Belgium, and up to August 31, 2008, 2,247 applications for protection have been registered and 1,800 certificates issued, of which 210 are still in force.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

National catalogues of varieties

Transposition of Directive 2008/83

- Ministerial Order of October 6, 2008 replacing Annexes I and II of the Order of the Walloon Government of May 27, 2004 on testing for the inclusion of varieties of agricultural plant and vegetable species in the national catalogue
- *Ministerieel besluit van 22 oktober 2008 tot wijziging van bijlage I en II van het besluit van de Vlaamse Regering van 27 april 2007 betreffende de kenmerken waartoe het onderzoek van bepaalde rassen van landbouw- en groentegewassen zich ten minste moet uitstrekken, en de minimumeisen voor dat onderzoek*

Updating of Koninklijk Besluit van 8 juli 2001

- *Besluit van de Vlaamse regering van 22 september 2008 betreffende de toelating van de rassen van landbouwgewassen en groentegewassen tot en het behoud ervan op de rassenlijsten van landbouwgewassen en groentegewassen*

Transposition of Directive 2008/62

- *Ministerieel besluit van 2 juni 2009 tot vaststelling van bepaalde afwijkingen voor de toelating van landrassen en rassen in de landbouw die zich op natuurlijke wijze hebben aangepast aan de lokale en regionale omstandigheden en die door genetische erosie worden bedreigd, en voor het in de handel brengen van zaaizaad en pootaardappelen van die landrassen en rassen*

Control of seeds and seedlings – certification

Transposition of Directive 2007/72

- Ministerial Order of September 23, 2008 amending the Order of the Walloon Government of February 9, 2006 on the production and marketing of fodder crops
- *Besluit van de Vlaamse Regering van 5 september 2008 tot wijziging van het besluit van de Vlaamse Regering van 25 maart 2005 houdende de reglementering van de handel in en de keuring van zaaizaad van groenvoedergewassen*
- *Ministerieel besluit van 3 september 2008 tot wijziging van het ministerieel besluit van 21 december 2001 tot vaststelling van een keurings- en certificeringsreglement van zaaizaden van groenvoedergewassen*

Transposition of Directive 2008/90/CE

- Order of the Walloon Government of April 23, 2009 on the marketing of propagating material for fruit crops and fruit crops for the production of fruit.

Legislation on GMO dissemination and market launch

- *Decreet van 3 april 2009 houdende de organisatie van co-existentie van genetisch gemodificeerde gewassen met conventionele gewassen en biologische gewassen*
- Order of the Walloon Government of March 27, 2009 on the coexistence of genetically modified crops with conventional and organic crops.

Legal protection of biotechnology inventions

Other

A preliminary draft law revising the Law on Patents was prepared by the IP Office and sent to the Ministry for approval and follow-up. The main aim of this preliminary draft law is to amend the Act of March 28, 1984 on Patents, in accordance with the requirements under both the Patent Law Treaty (PLT), adopted on June 1, 2000 under the auspices of the World

Intellectual Property Organization (WIPO), and the new European Patent Convention (EPC 2000), adopted by the Diplomatic Conference of the European Patent Office on November 29, 2000.

[Annex III follows]

ANNEX III

EUROPEAN COMMUNITY

Period: October 2008 - October 2009

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

I. PLANT VARIETY PROTECTION

1. Legislation

1.1 General

The Presidency of the European Union was chaired by Slovenia from 1 July 2008 to 31 December 2008, then the Czech Republic from 1 January 2009 to 30 June 2009 and followed by Sweden from 1 July 2009 up until 31 December 2009.

1.2 Amendment of the law and the implementation regulations

Implementing regulations

Commission Regulation (EC) N° 1239/95 establishing implementing rules for the application of Council Regulation (EC) N° 2100/94 as regards proceedings relating to the Community Plant Variety Office will be superseded by a new single Regulation to give greater clarity and transparency to the legislation following many amendments.

1.3 Case law

The Court of First Instance (CFI) of the European Communities ruled on 19 November 2008 in Case T-187/06 *Schröder v Community Plant Variety Office* (CPVO). Object of the ruling of the CFI was an appeal against the decision of the CPVO, as confirmed by its Board of Appeal, that the variety SUMCOL 01 could not be clearly distinguished from a reference variety. For that reason SUMCOL 01 did not qualify for a Community Plant Variety Right.

The main grounds of the appeal against the decision of the CPVO were:

The reference variety from which SUMCOL 01 was considered to be not distinct was SUMCOL 01 itself. The non- distinctness was for that reason not a ground to refuse SUMCOL 01 plant variety protection.

If the reference variety was another variety than SUMCOL 01, it was not a variety of common knowledge. Also for that reason the non-distinctness could not be a reason to refuse SUMCOL 01 protection.

The CFI dismissed the appeal. In its view there were no sufficient grounds to question the CPVO's assessment, based on the results of the technical examination performed by the Bundessortenamt, that SUMCOL 01 and the reference variety constituted two different

varieties. The CPVO's assessment furthermore justified the decision of its Board of Appeal that the reference variety was a matter of common knowledge.

The decision of the CFI is of fundamental importance, where it expresses the opinion that the appraisal of the distinctive character of a plant variety, a major requirement for plant variety protection, is of a scientific and technical complexity such as to justify a limit to the scope of judicial review. However, the scope of judicial review is not limited to establish whether the evidence relied on is factually accurate, reliable and consistent but also whether the evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it. The decision of the CFI has been appealed to the European Court of Justice, which is the last appeal instance.

2. Cooperation in examination

(a) Conclusion of new agreements

The CPVO continues its cooperation with Japan and the Administrative Council of the CPVO has entrusted in the end of 2008 the Japanese examination office in order to allow the CPVO to take over DUS reports for Petunia and Calibrachoa.

(b) Amendment of existing agreements

Thirty-four (34) UPOV countries made use of technical examination reports from the CPVO in order to base decisions for national procedures.

3. Situation in the administrative field

The CPVO will adopt before the end of this year its multiannual Strategic Plan for the period 2009-2014. The strategic plan identifies challenges to be met for the next five years and proposes responses from the office, with performance indicators. The CPVO stakeholders have been invited to participate in its drafting.

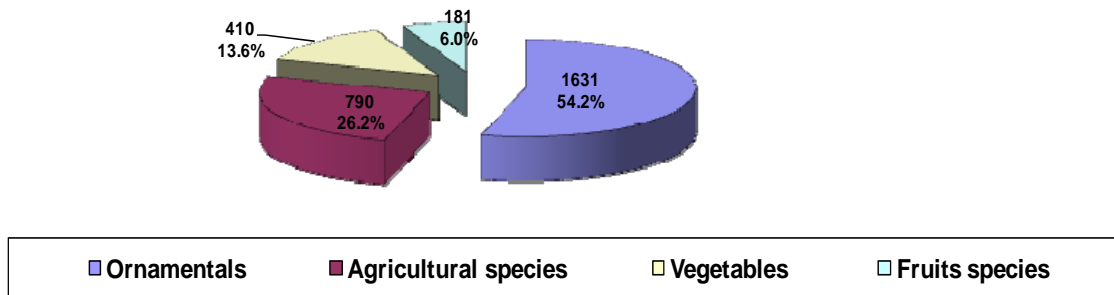
From the beginning of 2009, the following publications will be issued only in electronic format through the CPVO websites (for consultation or download in PDF format): Official Gazette of the Office, the Annex to the Annual Report and the S2 gazette.

Statistics

In 2008, the Office received 3,012 applications for Community plant variety protection. This represents an increase of 1.2 % compared with the previous year. Until 31 August 2009, 1,612 applications were received, representing a drop of about 15% in comparison to the same period last year.

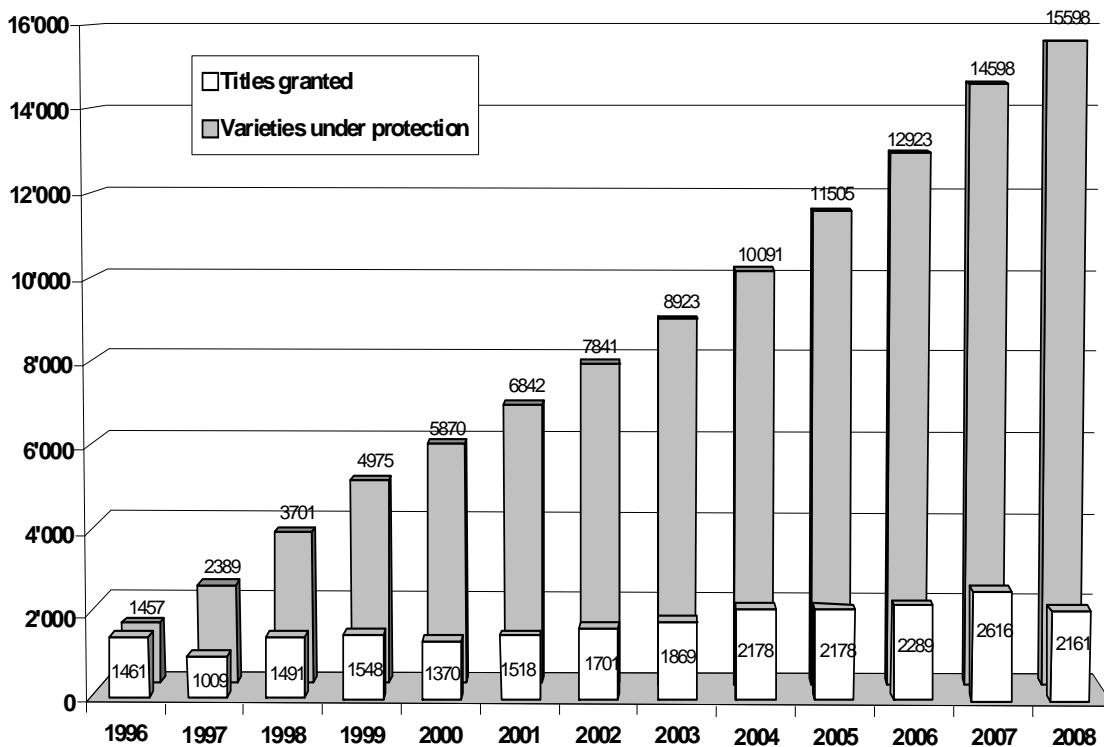
Applications for agricultural and ornamental species decrease by about 20% while the number of application for fruit species remains stable and 10% more applications are registered in the vegetable sector.

The graph below represents shares of the crops sectors in number of applications in 2008.



Grants of protection

In 2008, the Office granted more than 2,200 titles for Community protection. By the end of 2008, there were more than 15,500 Community plant variety rights in force and this figure reached 16,700 at the end of August 2009. The table hereafter shows the number of titles granted for each year from 1996 to 2008 and it illustrates the continuous increase of varieties under protection within the Community system.



Graph: Community plant variety rights granted and rights in force (1996-2008)

Technical examinations

In 2008, the CPVO initiated 1,892 technical examinations which were carried out by the different examination offices working on behalf of the Office.

New species

During 2008, the CPVO received applications for varieties of 66 botanical taxa not being to Community plant variety right applications before. In 2009, the CPVO received until the end of August 32 applications for new species.

4. Situation in the technical fields

Information concerning the functioning of the Community Plant Variety Protection

(a) Relation with examination offices

Twelfth annual meeting with the examination offices

The 2008 meeting of the CPVO with its examination offices which is also attended by representatives from the European Commission, the UPOV office as well as the breeders' organizations ESA and CIOPORA took place in December 2008. Main subjects of discussion were:

- Quality assessment of examination offices
- Clarification of the status of documents discussed at the annual meeting of the CPVO and its examination offices
- Maintenance of data stored by the examination offices
- Reporting of examination results
- A modification of the technical verification procedure
- Deadlines for interim reports on technical examinations
- Reduction of duration/costs of technical examinations for fruit crops

The participants were furthermore informed on IT developments regarding on line applications and the web site for Technical Liaison Officers and the introduction of an entry into force date for technical protocols.

(b) Preparation of CPVO protocols

In 2008, experts from the Member States' examination offices were invited to participate in elaborating technical protocols for DUS testing, the following meetings were held:

- Four meetings and telephone conferences with agricultural experts were held throughout the year discussing trial design and uniformity standards in wheat, the revision of the oilseed rape technical protocol and the preparation of technical protocols for *Lolium* and *Festuca* species.
- One fruit expert meeting was held to discuss a revision or creation of the CPVO technical protocol for 5 species, namely Strawberry, Grapevine, Blackcurrant, Sea Buckthorn and Walnut.
- Two vegetable expert meetings were held to discuss the revision or creation of 13 CPVO technical protocols.

- The ornamental experts held one meeting and discussed draft protocols for 6 species (*Impatiens* new Guinea, *Poinsettia*, *Kalanchoe*, *Osteospermum*, *Nemesia*, *Portulaca*).

The administrative Council has approved the following technical protocols:

- Agricultural species: *Beta vulgaris* L., ssp. *vulgaris* var. *conditiva* Alef.
- Ornamental species: *Euphorbia pulcherrima* Willd. Ex Klotzsch and hybrids, *Nemesia* Vent. and *Portulaca oleracea* L. and revised *Kalanchoe blossfeldiana* Poelln. and hybrids, *Osteospermum* L. and hybrids with *Dimorphoteca* Vaill., *Impatiens New Guinea Group*, *Calluna vulgaris* (L.) Hull and *Rosa* L.
- Vegetable species: *Allium schoenoprasum* L., *Pastinaca sativa* L., *Eruca sativa* Mill. and *Diplotaxis tenuifolia* (L.) DC and revised *Phaseolus vulgaris* L., *Allium porrum* L., *Allium cepa* (Cepa Group), *Allium cepa* (Aggregatum Group) and *Allium oschaninii* O. Fedtsch. and hybrids between them and *Lactuca sativa* L.
- Fruit species: *Hippophae rhamnoides* L. and revised *Ribes nigrum* L., *Fragaria x ananassa* Duch and *Vitis* L.

(c) Further development of the centralized database for variety denominations

The CPVO released in July 2005 a web site to test proposals for variety denominations for similarity. The database contains now more than 600,000 denominations from National listing and plant variety rights registers of the EU Member States and UPOV members, including the list of varieties compiled by the OECD and following its schemes. PLANTSCOPE, a commercial register of varieties traded in The Netherlands and managed by the VKC was included at the end of 2007 and is regularly updated since then. The database was initially accessible only to National authorities of European Union Member States, the European Commission and UPOV. Since the beginning of 2007, also applicants and procedural representatives of the Community plant variety right system and applicants of National listing and National plant variety rights in the European Union have access to this web site. The database relies on the UPOV code system and the Office has a project to develop the web site in order to enhance cooperation with other EU member states in the testing on denominations proposed in National procedures. Besides these milestones, the Office continues constantly to update and to improve the quality of data in the database.

(d) Strategic discussion

As a result of the ‘strategic discussion’ about the future of DUS testing, CPVO identified the need to implement formal quality requirements in the entrustment of examination offices. These minimum requirements would be applicable to entities carrying out DUS testing work on behalf of the Office. In September 2008 CPVO established its Quality Audit Service (QAS). QAS subsequently coordinated the drafting of *Entrustment Requirements* and setting up an assessment model in a consultative process involving various stakeholders. CPVO’s Administrative Council approved both the requirements document and the *QAS Procedure Manual* in its meeting in March 2009. It also decided to launch the system by auditing examination offices as from January 2010.

Following that decision, arrangements stipulated in the procedure manual were put in place; namely identifying a group of technical experts participating in the assessments and members of a review body evaluating the QAS operations. At the same time, a series of mock assessments was conducted in order to test the audit approach for its fitness for purpose.

Examination offices interested in maintaining their status as entrusted offices have by now specified their intended scope of operations and will consequently undergo audits in a three year cycle. The first offices to be assessed were identified. After the approval of individuals forming the pool of technical experts by the Administrative Council (AC) in its October meeting, the assessment program will start in January 2010. The AC will also appoint the members of the Audit Advisor Board, which will be in charge of providing advice in the event of an objection by an examination office in relation to any aspect of the audit programme.

5. Activities for the promotion of plant variety protection

Participation in international fairs

- HORTIFAIR in Amsterdam (NL) : October 2008
- IPM in Essen (DE) : January 2009
- SALON DU VEGETAL in Angers (FR) : February 2009

The CPVO has organized in October 2008, in collaboration with Naktuinbouw an “Open Day” for vegetable breeders, attended by numerous representatives of seed companies and examination offices.

The Multi-beneficiary Program on the Participation of EU Candidate Countries in the Community Plant Variety System

Since 2007, the Office manages a program preparing EU candidate countries to participate in the Community Plant Variety Rights system. The program was designed to reach the full spectrum of competent bodies and stakeholders in the CPVR system. In previous years a number of seminars and workshops were conducted in Turkey, Croatia and the former Yugoslav Republic of Macedonia. As from 2009, the program has been extended to the entire western Balkan; Albania and Serbia expressed interest to benefit from the program. After an analysis of the status quo in these two new beneficiary countries workshops will be conducted there to explain the Community plant breeder’s rights’ system in more general terms. For Croatia a special training program for the use of the GAIA evaluation method is scheduled. In addition, all beneficiary countries will be invited to the annual meeting between the CPVO and its examination offices.

Seminars on Enforcement of Plant Varieties Rights

Two seminars on enforcement of plant variety rights were organised by the Community Plant Variety Office and the Bulgarian and Romanian authorities on 30 September 2008 in Sofia, Bulgaria and on 2 October 2009 in Bukarest, Romania. The seminars, held in the two youngest Member States of the European Union, aimed at informing stakeholders in these

countries about the Community system in general and to support breeders in their struggle to enforce their intellectual property rights in respect of plant varieties throughout Europe in particular. The participants such as lawyers, judges, law makers from Member States and the CPVO, and of course breeders were informed by a range of experts about various aspects of the enforcement of varieties protected under Community law as well as under national law.

IT developments

The CPVO is developing a software application in order to provide e-filing facilities to the users of the CPVR system.

During the year 2009 the CPVO continued the implementation of its project for electronic management of documents, which is expected to be concluded in October 2009.

II. RELATED FIELDS OF ACTIVITIES, IF OF INTEREST TO UPOV

1. R & D

- *Development and evaluation of molecular markers linked to disease resistance genes for tomato DUS testing (option 1a)*

The final report of the CPVO two-year project expressed a very positive outcome, with molecular markers showing a very close correlation to physiological tests for all the asterisked disease resistance characteristics included in the study. The three project partners have carried out a ring trial with a set of reference and candidate tomato varieties during 2008 to look in particular at the reliability of the biomolecular tests in relation to the uniformity criteria, and a possible future implementation of such tests for DUS testing in this crop.

The CPVO has analysed the ring tests of the project partners, which signalled that the biomolecular techniques showed promise in the DUS testing for the disease resistances for the nematode *Meloidogyne incognita* and for Tomato Mosaic Virus. The CPVO believes though that there are still some open questions as to whether these biomolecular tests are reliable indicators on the uniformity of candidate varieties for the aforementioned diseases. The financial costs of carrying out such biomolecular tests on a regular basis for DUS testing is also being investigated. Based upon the outcome of such investigations, the CPVO may contemplate proposing to the TWV the inclusion of these techniques in the current revision of the TG/44/11 tomato guideline (for which the CPVO is the leading expert).

- *Management of peach tree reference collections*

This is a collaborative three-year venture project between the CPVO's four examination offices for this species (FR, ES, IT, HU), which aims to create and manage a peach tree database, via the establishment of an EU *Prunus persica* tree collection structured in varietal groups, using a common database containing phenotypic, visual and molecular descriptions. The project commenced in 2008 and is expected to conclude in 2010. A standard for taking pictures was adopted. The maize database was taken as a model for the build-up of a similar database for the peach reference collections. SSR markers were chosen on which to run the molecular markers during the coming year. Ultimately the project aimed to renew completely

the reference collection in each of the peach examination offices. There was common agreement on the way to observe each characteristic in the CPVO protocol (recommendation made to measure each characteristic). Spain was also given responsibility for the low chilling varieties. Italy was given responsibility on the variability of older peach varieties. Hungary was given responsibility for the more continental type varieties. France is utilising its experience of managing a large peach reference collection. An off-spin of the project is the assessment of the phytosanitary status of the peach varieties grown in the Mediterranean area. A coordination meeting took place in July 2009 in Zaragoza during which the project partners exchanged views on the results from the first year of the project. The partners reported good progress and highlighted the usefulness of the work to date on the efficient classification of their reference collections. The project partners have now been asked to address how they would attempt to maintain a common database in the future with details of their peach reference collection, if the project were to be successful when it concludes at the end of 2010 and the techniques identified in the project were to be utilized on a regular basis for carrying out more efficient technical examinations in peach.

– *During the reporting period:*

The Office has received 4 new applications for R&D projects to be (co)financed by the CPVO.

2. Catalogues (seed sector)

The evaluation of the Community legislation on the marketing of seeds and propagating material was finalised in November 2008. The results have been presented and discussed in a stakeholder Conference on 18 March 2009. Main conclusion of the report is that the legislation has served a good purpose in achieving its objectives and still remains useful. There is, however, some room for better harmonisation and for a reduction of administrative burden. An action plan for the review of the Community legislation has been adopted at Commission level and was presented to the Member States in October 2009.

In its conclusions of December 2008, the Council invited the Commission services to carry out an assessment of the impact of possible changes of the legal framework taking into account the conclusions of the evaluation and to present an appropriate proposal that leads to a significant simplification of the legislation on the marketing of seeds and plant propagating material. The Commission services aim to come forward with such a proposal by the end of 2011.

3. Genetic resources

The European Community and its Member States made substantial contributions in the third meeting of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (Tunis, 01-5 June 2009). Good progress was made on a number of issues relating to the implementation of the Treaty, including through the adoption of a Funding Strategy. With regard to farmers' rights, Resolution 6/2009 invites each Contracting Party to consider reviewing and, if necessary, adjusting its national measures affecting the realization of Farmers' Rights as set out in Article 9 of the International Treaty, to protect and promote Farmers' Rights. Another important element is the request to the Secretariat of the

Treaty to convene regional workshops on Farmers' Rights, subject to the agreed priorities of the Work Programme and Budget and to the availability of financial resources.

A proposal for a Commission directive providing for certain derogations for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties has been prepared and was submitted to the Member States for discussion in September 2009.

4. GMOs

Since October 2008, 50 new GM varieties of MON810 maize have been inscribed in the Common Catalogue of varieties of the European Union (bringing the total number to 143) and new GM food and feed have been authorised under European Community legislation. An overview of the GMOs currently authorised in the EU is available through the Community register of GM Food and Feed (http://ec.europa.eu/food/dyna/gm_register/index_en.cfm).

The Commission and Member States of the European Union are still working on measures on co-existence of genetically modified crops with conventional and organic farming crops.

Emergency measures against imports of rice products from some third countries have been maintained.

[Annex IV follows]

ANNEX IV

HUNGARY

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

Hungary became party to the 1991 Act of the UPOV Convention on 1 January 2003. Act XXXIII of 1995 on the Protection of Inventions by Patents (Patent Act) provides for the protection of plant varieties as well (Part V, Articles 105 to 115/C). The provisions of the Patent Act are in full conformity with the UPOV Convention and Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights [Regulation 2100/94 (EC)]. The national system ensures *sui generis* protection for plant varieties. Plant variety protection lasts for 25 years from the date of grant of plant variety protection or, in case of trees and vines, for 30 years from such date. The amendments to the PVP rules of the Patent Act implemented in 2009 can be summarized as follows.

The 1991 Act of the UPOV Convention in its Article 15(2) provides for the so-called *farmer's privilege* as an optional exception to the breeder's right. The provisions concerning the farmer's privilege in the Patent Act have been substantially amended and complemented by Act XXVII of 2009 on the Amendment of Certain Industrial Property Acts with effect from 1 August 2009. Previously, the Patent Act had merely provided for the possibility of exercising the farmer's privilege, but the detailed implementing rules thereof had been determined by way of a simple reference to the relevant Community rules on the same exception relating to the Community plant variety right [namely Article 14 of Regulation 2100/94 (EC)]. As this legislative technique had proved to be ineffective in terms of collecting the equitable remuneration that the breeders are entitled for in exchange for the limitation of their exclusive rights, the amendment mentioned above laid down the detailed rules concerning the farmer's privilege. These provisions envisage a predominantly parallel system to the rules in force relating to the Community plant variety protection, with certain differences which serve a balance of legitimate interests between the breeder and the farmer as well as avoiding the placement of excessive burden on any of the parties.

The new rules can be divided into three groups: 1. *general provisions* defining the contents of the farmer's privilege (including *inter alia* the indication of the plant species where the privilege is applicable, the requirement to pay an appropriate remuneration to the breeder, and the exemption of small farmers from that obligation); 2. provisions concerning the breeders' "*right to information*", i.e. the rules on the methods of gathering data (from public authorities, farmers and seed processors) based on which the amount of the remuneration due may be calculated; 3. provisions ensuring the *effective enforcement* of the right to remuneration (failure to pay amounts to infringement of the plant variety right) and the right to information (a prerequisite of claiming such remuneration).

The general rule is that the amount of remuneration is stipulated in an *agreement between the breeders and the farmers* (or the organisations thereof), but *in the absence of such an agreement the provisions of the Act become applicable*. These provisions make the amount of remuneration dependent on three factors: a) the size of the field where the

harvested seed of the protected plant varieties have been sowed (information on this is to be provided by the farmer); b) the seed quantity recommended by the holder for the propagation of the respective plant variety (based on the information published by the breeder); c) the level of the licence fee included in the price of the sealed seed with the lowest propagation degree of the respective plant variety (50% of this is the basis of the calculations).

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 Patent Office (HPO) took steps to conclude agreements with national and regional offices on sending reports on DUS technical examination from the relevant Office to the HPO.

In the course of the procedure, the HPO sends an official request for DUS report to the relevant Office; the request is conform to the UPOV request form. In this request it is indicated that the relevant Office should send the invoice directly to the applicant. The applicant pays the amount of the fee to the relevant Office. After receipt of the fee the relevant Office sends the DUS report to the HPO with the declaration of the relevant Office's consent to the use of the DUS report in the procedure before the HPO.

The Hungarian Patent 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 (Netherlands).

3. Situation in the administrative field

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

4. Situation in the technical field

Technical examination is carried out by the Central Agricultural Office.

5. Activities for the promotion of plant variety protection

The HPO publishes and distributes leaflets explaining the system of plant variety rights in Hungary and also organises seminars concerning this topic. The Office has a website on which information can be found on PVP issues.

The educational activity of the HPO contributes to the development of Hungarian industrial property culture; the representatives of the HPO deliver lectures on the system of plant variety protection.

The HPO is invited by the breeding institutes to participate in the demonstration of their new variety; and the HPO is also represented at the sensory judgement of the plant variety.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

Nothing to report.

[Annex V follows]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

- 1.1. No changes have been done.
- 1.2. Case law: nothing to report.
- 1.3. No changes have been done.

2. Cooperation in examination

Renewed Agreement with COBORU (Poland).

3. Situation in the administrative field

3.1. Changes in the administrative structure

Changes in the State Plant Protection Service structure: Plant Variety Testing Department integrated into the Seed Control Department.

3.2. Changes in office procedure and systems: no changes.

4. Situation in the technical field

DUS test was carried out for Estonian fruit varieties:

- *Malus domestica* Borkh. – 11 varieties;
- *Prunus domestica* L. -5 varieties;
- *Prunus avium* L. - 15 varieties;
- *Pyrus communis* L - 2 varieties.

DUS test was carried out for Latvia:

- *Rhododendron* L. – 3 varieties;
- *Rosa* L. - 2 varieties;
- *Malus domestica* Borkh. – 6 varieties;
- *Prunus avium* L. - 1 variety;
- *Fragaria* L. - 1 variety;
- *Vaccinium ashei* Reade - 1 variety;
- *Vaccinium vitis-idaea* L. - 1 variety.

ANNEX VI

LITHUANIA

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

There are no amendments of the law and the implementing regulations.

1.2 Extension of protection to further genera and species

The new List of Genera and Species for which Protection is Applicable in the Republic of Lithuania has been approved by the Order No 3D-466 of the Minister of Agriculture of the Republic of Lithuania of June 29, 2009 (Official Journal, 2009, No 80-3353).

The new Draft Amendment of the Law on Plant Variety Protection of the Republic of Lithuania concerning the protection of the whole plant kingdom has been submitted to the Parliament of the Republic of Lithuania.

2. Cooperation in examination

There are no new agreements regarding cooperation in examination.

3. Situation in the administrative field

There are no changes in the administrative field.

4. Situation in the technical field

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

5. Activities for the promotion of plant variety protection

- On February 21, 2008, Lithuania participated at the Extraordinary meeting of the Administrative Council of the Community Plant Variety Office (CPVO) in Brussels, Belgium;
- On March 12 and 13, 2008, Lithuania participated at the meeting of the Administrative Council of the Community Plant Variety Office (CPVO) in Angers, France;
- On October 15 and 16, 2008, Lithuania participated at the meeting of the Administrative Council of the Community Plant Variety Office (CPVO) in Berlin, Germany;

- On October 27 and 28, 2008, Lithuania participated at the session of the Administrative and Legal Committee of the International Union for the Protection of New Varieties of Plants (UPOV) in Geneva, Switzerland;
- On October 29, 2008, Lithuania participated at the session of the Consultative Committee of the International Union for the Protection of New Varieties of Plants (UPOV) in Geneva, Switzerland;
- On October 30, 2008, Lithuania participated at the session of the Council of the International Union for the Protection of New Varieties of Plants (UPOV) in Geneva, Switzerland;
- From April 14 to 18, 2008, Lithuania attended a Study Visit on Legislation of the Community Plant Variety Office (CPVO) organised by the Technical Assistance Information Exchange Instrument of the European Commission (TAIEX) in cooperation with the CPVO;
- The Information Bulletin for Plant Breeder's Rights and National List No 9 of the Lithuanian State Plant Varieties Testing Center was published in January 2008 and No 10 in July 2008.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

Every year the Lithuanian National List of Plant Varieties is approved by the Order of the Director of the Lithuanian State Plant Varieties Testing Center. Propagating material of each variety from each plant species can be certified according to the Mandatory Requirements prepared according to the respective EU directives.

[Annex VII follows]

ANNEX VII

NICARAGUA

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

Nicaragua's Law No. 318, entitled: "Law on the Protection of Plant Varieties" and the Regulations thereunder, contained in Decree 37-2000 are in full force and Nicaragua is a member of UPOV, having acceded to the 1978 Act of the Convention, on September 6, 2001 as member No. 49; in view of the above Nicaragua is the first country in Central America to implement "*sui generis*" legislation in this field.

1.1 Amendments of the law and the implementing regulations

- Adaptation to the 1991 Act of the Convention

The Law in force contains many provisions of the UPOV 1991 Act. Nicaragua, while enjoying this "*sui generis*" system and in view of its international commitments, is revising and tailoring its legislation to the needs for accession to the UPOV 1991 Act, planned for 2010.

1.2 Extension of protection to further genera and species

In Nicaragua plant breeders' rights are applicable to varieties of all plant genera and species, as stipulated under Article 10 of Law No. 318 mentioned above.

1.3 Case law

As there have been no plant variety disputes in Nicaragua, there is no information on this subject.

Note: Legal texts on Sections 1.1 and 1.2 will be notified to the Office of the Union separately, as required by the UPOV Convention.

2. Cooperation in examination

Nicaragua maintains the standard UPOV formats for cooperation in this area, and will use those as and when required; for the moment examinations are carried out in accordance with the procedure provided for under Law 318 mentioned above, with close links between the Ministry for Development, Industry and Commerce (MIFIC), the Ministry of Agriculture and Forestry (MAG-FOR), the Ministry of the Environment (MARENA); the Agrarian University (UNA); the Autonomous University of Nicaragua (UNAN León) and the Institute of Agricultural Technology (INTA).

3. Situation in the administrative field

– Changes to the administrative structure: the following staff changes have occurred:

- The Director of the Registry of Intellectual Property is Mrs. Ivania Carolina Cortes Castro, email: ivaniac@mific.gob.ni; to support plant varieties, Mrs. Zidalia Borge took the online UPOV course and attended the Training Course for Ibero-American and Caribbean Countries in Santa Cruz de la Sierra, Bolivia.

- The Director of the Department for Seeds of the Ministry of Agriculture and Forestry (MAG-FOR), who is also the Chair of the Evaluation Committee for Plant Variety Protection (CCPVV), is Mr. Thomas García Blandón, email: semillas@dgpsa.gob.ni.

– Changes in procedures and systems (administrative)

The automation of the Registry of Plant Varieties has begun and during the next few days, users will be able to file a pre-application via a web page.

4. Situation in the technical field

CCPVV carried out field visits in order to make “*in situ*” observations of the varieties for which protection is sought so as to take decisions on applications and also to verify the maintenance of protected varieties.

5. Activities for the promotion of plant variety protection

Meetings, seminars, etc.

Nicaragua takes advantage of every invitation, meeting, fair, exhibition or seminar to explain the steps to be taken to obtain protection for a plant variety, the following activities are noteworthy:

– Meeting with plant breeders and staff in charge of testing and maintaining the PALO-2 rice variety which has the title of plant breeder of the Experimental Center of the firm Arrocería Altamira S.A (IAASA);

– Advice on Law 318, Protection for Plant Varieties to users, law students, farmers, breeders, legal expert of the Nicaraguan Institute of Agricultural Technology, agents etc.;

– Training program on plant variety protection (legal and technical aspects), aimed at university lecturers, research and administrative staff, of the Agrarian University (UNA) as support for establishing IP policies;

– Meetings of CCPVV to decide on applications for protection and to plan field visits and seminars;

- Celebration of World Intellectual Property Day with a magnificent Intellectual Fair.

Publications

The web page *www.mific.gob.ni* includes important articles on the work carried out by the Directorate of Plant Varieties; there are also other documents, such as the forms used, legal procedures, and the field work of the Evaluation Committee. Constant communication is maintained with the parties concerned by electronic mail: gzelaya@mific.gob.ni, and brochures have been prepared for those requesting information.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

In Law No. 641, Penal Code of the Republic of Nicaragua, Article 254 stipulates crimes against plant breeders' rights.

[Annex VIII follows]

ANNEX VIII

NEW ZEALAND

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

The Plant Variety Rights Amendment Bill has been drafted and is currently on hold. The proposed amendments to the current Act are essentially in conformity with the 1991 Act of the Convention. The Plant Variety Rights Act 1987 remains in force, conforming to the 1978 Act of the Convention.

A review of the Plant Variety Rights Regulations is under consideration for the coming year.

2. Cooperation in examination

An agreement has been reached between New Zealand and Australia regarding the purchase of New Zealand test reports, primarily for varieties of pasture species, for use in Australian testing. The agreement has now been in operation for close to twelve months and is functioning well. The Plant Variety Rights Office and IP Australia continue to consider other possibilities with respect to cooperation in examination.

New Zealand continues to purchase test reports from and supply to member States, for certain species on an as requested basis, under the general provisions of the Convention.

3. Situation in the administrative field

During the financial year ended June 30, 2009, 134 applications for plant variety rights were accepted (22 fewer than the previous year), 94 grants were issued (27 fewer than the previous year) and 149 grants were terminated (55 more than the previous year). At June 30, 2009, there were 1,273 valid grants (69 fewer than the previous year).

A review of Office procedure with respect to accepting applications and the handling of objections after grant has been carried out and improvements put in place.

4. Situation in the technical field

A project has begun, in cooperation with Australia, to harmonise the testing of Australian native genera and New Zealand native genera in Australasia. The longer term objective is for a single trial for a specific species with results utilised by both authorities.

In response to requests from apple breeders, an improved and revised protocol has been drafted detailing the central testing of apple varieties at the Cultivar Centre.

The new testing protocol for fungal endophyte varieties is now in operation and comments from experts and breeders has been positive. The protocol will be reviewed in mid 2010.

5. Activities for the promotion of plant variety protection

A representative from New Zealand participated in the USPTO Global Intellectual Property Academy/UPOV Plant Variety Protection under the UPOV Convention train the trainer programme at USPTO, Virginia USA, May 18-22, 2009.

[Annex IX follows]

NETHERLANDS

I. PLANT VARIETY PROTECTION

Situation in the administrative field

Relocation of office of Plant Variety Board

For many years the Plant Variety Board (and its predecessor, the Board for Plant Breeders' Rights) has been supported in its administration by a governmental office. As from 1 January 2008, the tasks of that office have been transferred to the administrative unit of the Naktuinbouw.

The Naktuinbouw is a private foundation, of which the statutory duties are the implementation of relevant legislation on behalf of the Ministry of Agriculture, like seed inspection and DUS-testing in relation to plant breeders' rights and variety listing.

The Plant Variety Board remains an independent body of administration, responsible for plant breeders' rights and variety listing.

Communication with the Plant Variety Board as from 1 October 2009

Postal address

Postbus 40
NL – 2370 AA Roelofarendsveen
Netherlands

Visitors address

Binnenhaven 1,
Wageningen
Netherlands

E mail

plantenrassen@naktuinbouw.nl

Website

www.plantenrassen.nl

Telephone

+31 (0) 317 465 440

Fax

+31 (0) 317 411 721

[Annex X follows]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

The Act of June 26, 2003 on the Legal Protection of Plant Varieties (POJ No 137/2003, item 1300) amended by the following two Acts:

- the Act of June 9, 2006 (POJ No 126/2006, item 877), which came into force on September 13, 2006,
- the Act of May 9, 2007 (POJ No 99/2007, item 662), which came into force on June 19, 2007

constitutes the legal base for the national PBR protection.

The Polish Plant Variety Protection Law is based on the 1991 Act of the UPOV Convention. Poland acceded to the 1991 Act of the UPOV Convention as the twenty-fourth State, on August 15, 2003. Since November 1, 2000 all plant genera and species are eligible for PBR protection in Poland.

2. Cooperation in examination

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

We have bilateral agreements on DUS testing with the Czech Republic, Hungary and Slovakia. Unilateral agreements with Latvia, Lithuania, Estonia, Romania and Slovenia are in force. In the reporting period, Poland carried out DUS tests for the Latvian, Lithuanian, Estonian and Romanian authorities. These tests were done for different species of agricultural, vegetable, ornamental and fruit plants.

Furthermore, COBORU carried out technical examinations, on behalf of the CPVO, mainly for varieties of ornamental and agricultural plant species.

As in previous years, COBORU has received the requests from another authorities (mainly: CPVO, Russia, Latvia, Estonia, Romania, Croatia and Lithuania) for the taking over of the technical examination results.

In order to admit two Asparagus varieties to our National List we received, on request, the DUS reports from the Spanish Plant Variety Office.

Poland actively participated in the work on the elaboration of the CPVO protocols during experts meetings in Angers.

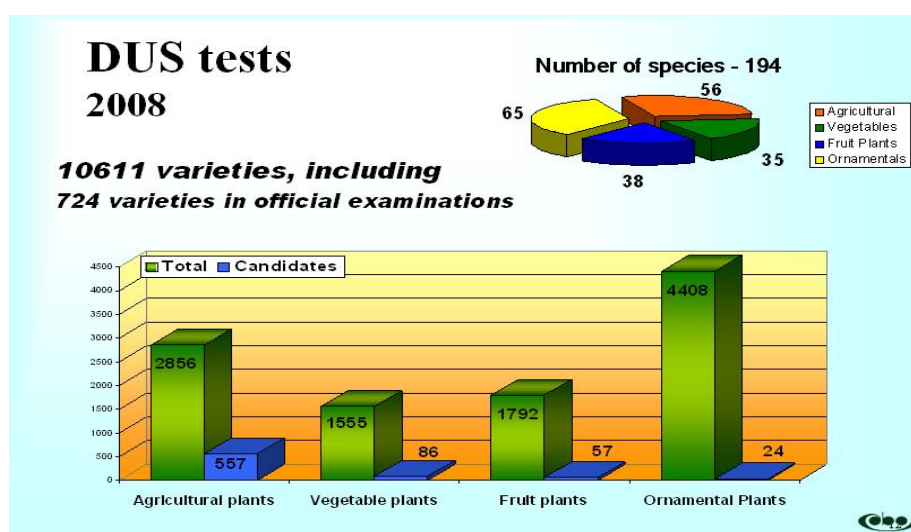
3&4. Situation in the administrative and technical fields

COBORU variety testing activities in the field of DUS are done in 15 Experimental Stations for Variety Testing located all over the country.

In 2008, 10,611 varieties within 194 plant species were tested (which included 9,887 varieties in reference collections and 724 candidate varieties).

The number of varieties tested in Poland is shown on the graph:

Number of varieties in DUS testing in 2008



In 2008, COBORU received 48 applications for national PBR protection in total, which in comparison with the previous year (110 applications) represents a considerable decrease.

From January 1 to September 1, 2009, 40 new applications, including 26 domestic and 14 foreign, were submitted for national PBR. This number is practically identical to the one observed in the previous reporting period (39).

In 2008, COBORU granted 117 titles for national protection. At the end of 2008, there were 1,446 national PBR titles in force.

In the reporting period (from January 1 to September 1, 2009), 67 titles of PBR protection have been granted. In total, 1,388 varieties are protected in Poland (as on Sept. 1, 2009).

Details on statistics are given in the table. In the column “Titles having ceased”, 14 varieties for which –within the reported period– national PBR expired have also been included.

Species	Applications for PBR 1.01. – 01.09.2009			Grants of PBR 1.01. – 01.09.2009			Titles having ceased	Titles in force as on 01.09.2009
	domestic	foreign	together	domestic	foreign	together		
Agricultural	17	1	18	32	-	32	29	649
Vegetables	-	6	6	8	-	8	19	286
Ornamentals	6	7	13	14	-	14	73	323
Fruit trees and berry plants	3	-	3	13	-	13	4	129
Miscellaneous	-	-	-	-	-	-	-	1
Total	26	14	40	67	-	67	125	1388

5. Activities for the promotion of plant variety protection

Poland participates in the sessions of the organs of UPOV e.g. the Council, the Administrative and Legal Committee, the Consultative Committee, the Technical Committee as well as the Technical Working Parties.

Nine specialists from Poland have successfully completed the UPOV Distance Learning Course "Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention".

– *Meetings, seminars, etc.*

Four experts from Poland participated in the seminar which took place in Brno, Czech Republic on May 13, 2009. This seminar was organized by the Central Institute for Supervising and Testing in Agriculture (UKZUZ), in cooperation with the CPVO. The main topics of the meeting were the general information about the Community plant variety protection system, farm saved seed and the enforcement of PBR's as well as the quality requirements to be fulfilled by the Examination Offices.

From June 1 to 5, 2009, COBORU organized a workshop for four experts from the Estonian Plant Production Inspectorate. Its aim was a training in the organization of the official variety assessment and the system of national listing and granting PBR protection in Poland. The Estonian colleagues visited COBORU headquarters in Słupia Wielka, three Experimental Stations and the Research Institute of Pomology and Floriculture in Skierniewice. The future cooperation, especially in the field of performance by COBORU the DUS tests for the Estonian Variety Office, was discussed.

From June 9 to 11, 2009, the Polish delegation took part in the Regional Seminar on Plant Variety Protection under the UPOV Convention for Certain Countries in the Eurasian Region (Eurasian PVP Training) in Chisinau, Republic of Moldova. The lecture on "National PBR system to be operative in Poland" was given by the COBORU Director General. As a result of the great demand for consultations and training courses on PVP matters and DUS testing, the COBORU has been proposed to serve as the UPOV training centre for countries from this region.

– *Visits*

From September 16 to 18, 2008, the expert from the CPVO was hosted by us. He inspected DUS tests and scrutinized the reference collection with fruit and berry plants in the Research Institute of Pomology and Floriculture in Skierniewice and in two COBORU Experimental Stations (Masłowice and Zybiszów). The problems connected with the issue of DUS testing and the guidelines for testing were discussed.

From December 14 to 17, 2008, the Polish delegation visited the Executive Agency of Variety Testing, Field Inspection and Seed Control in Sofia, Bulgaria (IASAS). The purpose of the visit was to discuss the organizational and legal status of this institution as well as the possibility of the future cooperation in the official variety assessment (DUS, VCU) and variety registration between IASAS and COBORU.

The visit of the Hungarian delegation, composed of two specialists from the Central Agricultural Office, Budapest, took place from June 30 to July 1, 2009. The visitors inspected DUS experiments in three COBORU Experimental Stations, namely Śrem, Słupia Wielka and Zybiszów. Guidelines for DUS testing for ornamental and fruit plant species as well as cooperation in the range of DUS testing of cereals, particularly Triticale and Hemp, were discussed.

On July 29, 2009, twelve Chinese candidates for a Master's degree studying at the Poznań University of Life Sciences visited COBORU and the Experimental Station in Słupia Wielka. In the form of the presentations, they were informed on the COBORU organization, with the special reference to the varietal examinations of horticultural plants.

– *Publications*

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

The list of varieties protected by national Plant Breeders' Rights (including provisional PBR's), valid as on June 30, 2009, was published in the third number of the *Polish Gazette for Plant Breeders' Rights and National List* /No 3(92)2009/.

In addition, the Research Centre for Cultivar Testing maintains and updates every two weeks a Homepage www.coboru.pl, that contains official information on PVP matters in Poland.

II. RELATED FIELDS OF ACTIVITIES

The Polish National List of Agricultural Plant Varieties and the Polish National List of Vegetable Plant Varieties as well as the Polish National List of Fruit Plant Varieties were issued in April and May 2009. Updated lists are also available on www.coboru.pl.

[Annex XI follows]

REPUBLIC OF MOLDOVA
(2007-2008)

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments to the Law and the implementing regulations

In order to fulfill the Republic of Moldova's commitment under the Partnership and Cooperation Agreement between the Republic of Moldova (RM) and the European Union (EU), and for purpose of harmonization of the national system in the field of plant varieties protection according to the European legislation provisions, in the period under review, a new Law on the Protection of Plant Varieties in compliance with the UPOV Convention and European directives and regulations in the field has been elaborated.

On February 29th 2008, the Parliament of the Republic of Moldova adopted the Law No.39-XVI/2008 on the Protection of Plant Varieties, which entered into force on September 6th 2008.

Also, in the period under review, a new Regulation for the implementation of the Law No. 39-XVI/2008 on the Protection of Plant Varieties has been elaborated, with further approval by the Republic of Moldova Governmental Decision No. 295 of 16.04.2009.

1.2 Extension of protection to further genera and species

According to the Republic of Moldova Governmental Decision of 03.07.07, the protection is extended to varieties of all botanical genera and species, including hybrids between genera and species.

1.3 Case Law

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

2. Cooperation in examination

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

3. Situation in the administrative field

No changes.

Changes in the Procedural and Protection System:

No changes.

Statistics:

In the period from September 1, 2007, to September 1, 2008:

- 32 national and 2 foreign applications have been received, as follows: Apple - 3; Sugar Beet - 3; Tomato - 3; Maize - 20; Sunflower - 2; Lucerne - 1; Wheat - 2.
- 14 patents for plant varieties have been granted, as follows: Tomato - 3; Wheat - 4; Sunflower - 1; Barley - 1, Grapevine - 3; Cucumber - 2.

At present, 23 patents for plant varieties are in force.

4. Situation in the technical field

No changes.

5. Activities for the promotion of plant variety protection

Meetings, seminars

In the period under review, for implementation purpose of the provisions and requirements of the Law No.39-XVI/2008 on the protection of plant varieties of the Republic of Moldova, the AGEPI continued to organize seminars and workshops for representatives in industrial property, interested persons, including scientists and breeders, held within the AGEPI library, the Agricultural University of Moldova as well as in the territory.

In September 2007, with the support of TACIS Project “Support to PCA and WTO Implementation and to EU/Moldova European Neighborhood Policy Action Plan” and participation of the EU Short Term Local Expert, a practical course for experts, breeders, interested persons, dedicated to the European practice on carrying out the examination of applications, and DUS tests has been organized.

In September 2008, the AGEPI organized a National Seminar dedicated to the plant variety protection system and the 10-th anniversary of accession of the Republic of Moldova to the UPOV Convention, with the participation of Mr. R. Jördens, Vice Secretary-General of UPOV.

Publications

The AGEPI maintains the web site www.agepi.md, including the national legislation in the field of plant varieties protection, the application form for a plant variety patent, useful information for applicants and breeders, available in Romanian, Russian and English languages.

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

[Annex XII follows]

ANNEX XII

CZECH REPUBLIC

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

Act No. 408/2000 Coll., on the Protection of Plant Variety Rights was amended by Act No. 227/2009 Coll., amending certain laws in relation to the adoption of the basic registers act. Act No. 227/2009 Coll., entered into effect on 24. July 2009; in respect to the Act No. 408/2000 Coll. will enter into effect on 1 July 2010.

As regards the substance, the only formal amendment is based on change of the words “identification number” into “personal identification number”.

2. Cooperation in examination

The bilateral agreement on cooperation in examination with Slovenia was amended.

3. Situation in the administrative field

Within the period from September 1, 2008, to August 28, 2009, 86 applications for protection were received and 54 titles were issued. At the latter date, 669 titles were in force and 166 applications pending.

4. Activities for the promotion of plant variety protection

Three specialists from National Plant Variety Office have successfully completed the UPOV Distance Learning Course “Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention”.

[Annex XIII follows]

ANNEX XIII

SLOVENIA

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

No new development.

2. Cooperation in examination

We continue co-operation in the field of DUS examination with Austria, Czech Republic, Croatia, Hungary, Netherlands and Slovakia. New cooperation has been established with Italy. New bilateral agreement has been signed with Slovakia and amendments have been signed with Croatia and the Czech Republic.

3. Situation in the administrative field

From September 2008 to September 2009: 1 new application was filed and 1 new title of protection issued.

Total number of titles in force is 23 (agricultural crops: 17; vegetables: 5; fruit crops: 1).

II. RELATED FIELDS OF ACTIVITIES

- New National List of Varieties, including the list of protected varieties, was published in August 2009.
- Second version of descriptive list of maize varieties was published in August 2009.
- Four new issues of Slovenian Plant Breeder's Rights and Variety Registration Gazette have been published since September 2008.

[Annex XIV follows]

ANNEX XIV

SWITZERLAND

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments to the Act and to the implementation provisions

Since October 2008 there has been no change in the legal resources concerning plant variety protection.

1.2 Case Law

To our knowledge, no court decisions have been given in the past year in connection with plant variety protection.

1.3 Extension of protection to additional genera and species

All genera and species can be protected.

2. Cooperation in examination

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

3. Situation in the administrative field

The Swiss databank has been adapted to the UPOV GENIE databank.

4. Situation in the technical field

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

5. Activities for the promotion of plant variety protection

In the past year, Mr. Hojjat KHADEMI (Islamic Republic of Iran) visited the Plant Variety Protection Office.

[Annex XV follows]

ANNEX XV

TUNISIA

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

A study to revise the text of the law relating to the registration of varieties, the protection of plant varieties and the inspection and certification of seeds and seedlings, and its implementing regulations was undertaken and led to a series of recommendations for the updating of these regulations and their adaptation to international rules. The draft text of amendments is ongoing and will probably be finalized in the course of 2010.

2. Cooperation in examination

The competent services of the Directorate General for the Protection and Inspection of Quality of Agricultural Products have thus far not concluded any examination agreements, but requests for UPOV-type DUS studies have, however, been made to the Community Plant Variety Office.

3. Situation in the administrative field

A new Director General was appointed to the service and there have been no changes in the administrative structure.

The volume of activities relating to the protection of plant varieties as of August 2009 is as follows:

- Total number of protection applications received: 124 applications
- Total number of breeder's certificates issued: 62 certificates

4. Situation in the technical field (see 3)

The DUS study, with a view to awarding a plant breeder's certificate, has been carried out on 23 species out of a total of 77 species acceptable for protection. There has also been a very significant increase in the number of applications for protection of cereal species over the course of 2008.

5. Activities for the promotion of plant variety protection

Meetings and seminars:

During 2008 and 2009, technical experts responsible for protection of plant varieties participated in working group meetings, seminars on plant variety protection and training courses on the identification of varieties. These included:

- The first concerned a regional seminar and workshop (North Africa and the Middle East) on the protection of plant varieties, in June 2008 in Tunisia, organized by the Ministry of Agriculture and Hydraulic Resources and in collaboration with UPOV.
- The second concerned the meeting of the working group on molecular and biochemical techniques BMT (UPOV), which was held in Madrid in September 2008.
- The third concerned a regional workshop on the protection of plant varieties, organized by ICARDA in Syria in March 2009.
- The fourth was organized by the *APFLT TUNISIE* project (which supports fruit and vegetable production in Tunisia) in the framework of Tunisian-Italian cooperation, concerning identification of varieties for seedling certification and was held in Italy in July 2009.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

- As of December 31, 2008, the service responsible for the protection and registration of plant varieties had received a total of 825 applications for registration of varieties and had entered 387 varieties in the Official Catalogue of Plant Varieties.
- As regards the regulation of genetic engineering, a draft law on the use of GMOs is being studied by Parliament.
- As part of the application of the recommendations of the Convention relating to genetic resources (Convention on Biological Diversity - CBD), the National Gene Bank (BNG), created in 2007, is carrying out an exhaustive study on all Tunisian plant genetic resources.

[Annex XVI follows]

ANNEX XVI

UKRAINE

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field1.1 Changes in legislation and application of legal provisions

There were no changes introduced to the legislation of Ukraine for the reported period.

1.2. Distribution of right protection for following genera and species

According to the Law of Ukraine “On Right Protection for Plant Varieties”, all the genera and species are protected in Ukraine (UPOV 1991 Act).

1.3 Case Law

Ukraine has Romano-German system of law and, subsequently, there is no such element in Ukraine as the Case Law.

2. Cooperation in examination

Until and during 2008 agreements were concluded between Ukraine and France, Poland, the Russian Federation, Germany, the Kyrgyz Republic, the Republic of Belarus, the Republic of Azerbaijan, the Socialist People’s Libyan Arab Jamahiriya, the Republic of Bulgaria and the Netherlands. Information on cooperation in examination, in particular, the list of taxons, is provided below:

Botanical Taxons on which information on the results of DUS field trials was exchanged in 2008
“Cooperation in Examination”

Taxon			Agreement on Cooperation in Examination		Utilizations of available reports	
Latin	Ukrainian	English	Proposing Authority	Authorities receiving Examination Reports	Utilizing Authority (Country)	Providing Authority / Examination Office (Country)
1			2	3	4	5
Zea mays L	Кукурудза	Corn, Maize			RU	UA
Zea mays L	Кукурудза	Corn, Maize			RU	UA
Zea mays L	Кукурудза	Corn, Maize			RU	UA
x Triticosecale Wittmack	Тритикале яре	Triticale			RU	UA
Helianthus annuus L.	Соняшник	Sunflower			RU	UA
Helianthus annuus L.	Соняшник	Sunflower			RU	UA

3. Situation in the administrative field

Essential changes did not occur.

4. Situation in the technical field

Essential changes did not occur.

5. Activities for the promotion of plant variety protection

- The meeting with the representatives of the company “Pioneer” with the purpose of discussing the GMO matters, the seed import, variety identifications new methods implementation;
- The meeting with representatives of GNIS concerning the intention of Ukraine to join the OECD Seed certification Schemes;
- Visit of the representative of SOC (the State Service for control and seed certification of France) and GNIS (the National Inter-professional Union on seed and plants) to the Kirovogradskaya Variety Examination Station of the State System on Right Protection for Plant Varieties in frames of evaluation mission of readiness of Ukraine to join the OECD Seed certification Schemes for cereals, maize and sorghum;
- The discussion of varieties and lines registration, seed material identity control with representatives of the company “Euralis”;
- Visit of representatives of State Commission of Republic Azerbaijan to the State Variety Service;
- Meetings with representatives of foreign companies to discuss the matters on lines registration, the order of the seed samples supply, the facilitation of the samples supply;
- The participation in the training course “Train the Trainer”, organized by UPOV (USA, city of Alexandria);
- The participation in the National seminar on the right protection for plant varieties (Kazakhstan, city of Alma-Ata);
- The participation in the forty-first session of the UPOV Technical working party for ornamental plants and forest trees (Netherlands);
- The learning course on matter on right protection for plant varieties in Europe for specialists of Azerbaijan, Kazakhstan and Kyrgyzstan (Switzerland, France)
- The participation in the forty-second session of the UPOV Technical working party for vegetables (Poland, city of Krakow);
- The participation in the thirty-seventh session of the Technical working party for agricultural crops (UPOV) (Southern African Republic);
- Visit with the purpose of organization and technical aspects of implementation of maize seed production control learning (France);

- The participation in first meeting of Ukrainian-Russian group on seed-growing matters (Russia, city of Moscow);
- The participation in consultations between Ukraine and EU on GMO and conformity with normative-legal acts in the sphere of plant biotechnologies (Belgium, city of Brussels);
- The participation in the Fourth Western-Centralasian Regional Seminar on right protection for plant varieties in the frames of UPOV Convention (Republic of Turkey, city of Antalya);
- The participation in learning course on DUS –Test in GEVES (France);
- The cooperation visit of the State Service on Right Protection for Plant Varieties to the State Inspection for Examination and Protection of Plants Varieties of the Republic of Byelorussia (Republic of Byelorussia);
- The participation in the discussion of the candidature of Ukraine to join the Seed certification Schemes of the Organization for Economic Co-operation and Development (OECD) (France).

Publications of the State Variety Service

The following publications were issued in the year of 2008:

- State Register of Plant Varieties Suitable for Dissemination in Ukraine in 2008;
- Current information regarding applications for a plant variety, changes in variety denominations, decisions on the applications, issuance of the Certificates of the Copyright, licences, Certificates of Title and Proprietary Right of the Variety Owner Validity, as well as National Guidelines for Conduct of Examination for Zea mays, morphological characteristics, translation into Ukrainian language of the Plant Variety Descriptions, list of the variety maintainers, are published in the Bulletin. 4 Bulletins were issued in 2008.

II. RELATED FIELDS OF ACTIVITIES OF INTEREST TO UPOV

In 2008 Ukraine failed the Application for its accession to the Seed Schemes for Varietal Certification of the Organisation for Economical Cooperation and Development (OECD).

[Annex XVII follows]

ANNEX XVII

VIET NAM

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

On June 2009, National Assembly Parliament has approved the revised and amendments of some articles of IP Law include Part 4 of Plant Variety Protection. The new Law which adding and clarify some articles of the old IPLaw.

Now we are drafting the Decrees to instruct the implementation of the revised and clarified some articles of the IP Law. According to the plan, the Decrees need to finish in this year.

1.2 Extension of protection to further genera and species

On 10th June, Ministry of Agriculture and Rural Development (MARD) of Viet Nam has extended 11 species and genus of plant to the List of protected species in Viet Nam. Those are:

1. *Clerodendrum kaempferi* (jacq) Siebold, ex Hassk
2. *Bauhinia* sp.
3. *Moringa oleifera* L.
4. *Anthurium* Schott.
5. *Phalaenopsis* Blume.
6. *Persea americana* Mill.
7. *Begoniaceae*
8. *Kalanchoe blossfeldiana* Poelln.
9. *Bougainvillea*
10. *Calathea*
11. *Lactus* sp.

2. Cooperation in examination

Viet Nam and Japan had signed MOU on the exchanging the DUS Test Reports between two countries since 2007. Now we are going to implement the MOU with negotiation of the administrative procedures between two countries for exchanging the Reports in this year.

At present we are discussing with some other Members for example the United States of America and the Netherlands on the MOU like the one which we had signed with Japan.

3. Situation in the technical field

Viet Nam is re-organizing the Technical System for the demand.

4. Activities for the promotion of plant variety protection

In the scope of East Asia Plant Variety Protection Forum (EAPVP Forum), on Dec. 2008, a Seminar on PVP has organized in Hochiminh city with the participation of around 80 participants (50 Viet Nameese and approximate 30 foreigners from countries in the region).

On October 2008, by the cooperation with Public Intellectual Property Resource for Agriculture (PIPRA) and National Office of Intellectual Property (NOIP), Ministry of Agriculture and Rural Development co-organized a workshop on IP general for the Public Agriculture Institutions in the North and the South of Viet Nam.

A book on the role of Farmer in PVP system is publicized by the fund from Ministry of Agriculture, Natural and Food Products of the Netherlands. Also in April, 2009 a survey on the situation of research and development of flowers in the North of Viet Nam had been conducted by the assistance from Netherlands.

Technical assistance: an In-country Training Course is organized in Dalat, Viet Nam by the cooperation between PVPO of Viet Nam, Japan and Australia in the scope of EAPVP Forum. The contents of the course are basic knowledge of DUS Test for the participants from public and private sector who are plant breeders and DUS Testors.

[Annex XVIII follows]

ANNEX XVIII

SERBIA

(September 2008 - September 2009)

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

- 1.1. The Parliament of the Republic of Serbia adopted a new Law on Protection of Plant Breeder's Rights, on May 29, 2009.
- 1.2. Extension of protection to further genera and species: nothing to report.
- 1.3. Case law: nothing to report.

2. Cooperation in examination: nothing to report.

3. Situation in the administrative field

Since November 2008, a new unit responsible for plant breeders right –Division for Plant Variety Protection, Plant Genetic Resources and Biosafety– was established, as a part of the Ministry of Agriculture, Forestry and Water Management, the Plant Protection Directorate.

4. Situation in the technical field: nothing to report.

5. Activities for the promotion of plant variety protection

- Representatives of the Ministry of Agriculture, Forestry and Water Management, the Plant Protection Directorate attended the Regional Seminar on Enforcement of Plant Variety Rights organized by the CPVO and the Executive Agency of Variety Testing, Field Inspection and Seed Control, in Sofia, Bulgaria on September 30, 2008. The aim of the Seminar was to support the development of plant variety protection and to improve the knowledge of plant breeder's rights.
- Representatives of the Ministry of Agriculture, Forestry and Water Management, Plant Protection Directorate took part in the forty-second ordinary session of the Council of UPOV, held in Geneva on October 30, 2008, and in the Symposium on contracts in relation to plant breeders' rights on October 31, 2008.
- On April 1, 2009, as part of the Twinning Project, a presentation about plant variety protection system in the Republic of Slovenia was presented by Mr. Jozse Ilerscic.

- In May 2009, a representative of the Ministry of Agriculture, Forestry and Water Management, Plant Protection Directorate, successfully finished the UPOV Distance Learning course DL-205 “Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention”.
- A “Seminar on Protection of Intellectual Property in the Republic of Serbia” was organized on May 19, 2009, aimed at raising awareness about the importance of protection of intellectual property and plant breeders’ rights and to present the new Law on the Protection of Plant Breeders’ Rights.
- Starting from September 2009, the Republic of Serbia will take part in the part 1 of the Multi-beneficiary program of CPVO, as an introduction to the Community Plant Variety Rights system and administrative procedures regarding plant variety protection in the European Union.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

The Catalogue of Varieties (Register of Plant Varieties) is available on the web site of the Ministry of Agriculture, Forestry and Water Management of the Republic of Serbia (www.minpolj.gov.rs and www.sorte.minpolj.gov.rs), as well as information regarding the procedures for registration of plant varieties, results of variety testing, forms and other regulations.

[End of Annex XVIII and of document]