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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

**COUNCIL****Thirty-Fifth Ordinary Session****Geneva, October 25, 2001****REPORTS BY REPRESENTATIVES OF STATES AND  
INTERGOVERNMENTAL ORGANIZATIONS ON THE LEGISLATIVE,  
ADMINISTRATIVE AND TECHNICAL FIELDS***Document prepared by the Office of the Union*

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

2. Written reports have been requested by the Office of the Union in the invitation circulars relating to this session and a model format has been proposed for the purpose. The reports submitted by the following States are reproduced in Annexes I to XX (in the alphabetical order of the names of the States in French): South Africa, Germany, Argentina, Austria, Belgium, Croatia, Denmark, Russian Federation, Finland, Israel, Kyrgyz Republic, Norway, New Zealand, Panama, Netherlands, Poland, United Kingdom, Slovenia, Ukraine and Yugoslavia.

[Annex I follows]

## ANNEX I

## SOUTH AFRICA

1. Situation in the Legislative Field

- 1.1 There are still some concerns from the Government regarding the ratification of the 1991 Convention. It is hoped that these will be resolved in the near future and that South Africa's instrument of ratification will be deposited during 2002.
- 1.2 A Court case has just been heard in the Cape Town High Court where the holder of a plant breeder's right sued someone else for exporting rhizomes of the variety 'Phasion' (*Canna*). The defendant claims that the *Canna* variety was common knowledge at the time of the granting of the right and that it should, therefore, not have been awarded the right. The testimonies are now being typed and the Judge will hear arguments from the Advocates on November 19/20, 2001, after which judgment will be given.
- 1.3 Requests for the extension of protection to further genera and species are still received from time to time. During the year under review, protection has been extended to 13 new genera and species and another three are in the process of being protected.

Plant Breeders' Rights fees were increased again in April 2001. This is an annual increase and fees are reviewed every year.

2. Cooperation in Examination

There were no further developments in this regard.

3. Situation in the Administrative Field

- 3.1 From October 1, 2000, to September 30, 2001, 166 applications for plant breeders' rights were received and 124 breeders' rights were granted. As at September 30, 2001, there were 501 applications under consideration and 1,666 plant breeders' rights in force. Further details are given below.

|                                  | Agricultural Crops | Vegetable Crops | Ornamental Plants | Fruit Crops | Total |
|----------------------------------|--------------------|-----------------|-------------------|-------------|-------|
| Applications received            | 40                 | 35              | 59                | 32          | 166   |
| Plant Breeders' Rights Granted   | 54                 | 0               | 64                | 6           | 124   |
| Valid Plant Breeders' Rights     | 530                | 237             | 670               | 229         | 1,666 |
| Applications under consideration | 70                 | 37              | 222               | 172         | 501   |

3.2 South Africa is still experiencing the usual problems:

- Varieties are submitted for PBR which are outside the four- or six-year novelty requirement of UPOV. Applicants always claim that although it seems that the material is too “old,” sales of the variety only started some years after the date on which the rights were granted. It would seem that a simple solution to the problem would be to alter the novelty requirement to a certain number of years after the rights were granted, irrespective of whether sales took place or not, as this would be a fixed date without any arguments. The matter is further complicated by the fact that certain countries allow sales as soon as an application has been submitted. Obtaining proof of commencement of sales is the big problem. It would surely make life a lot easier if this issue could be discussed at UPOV for possible inclusion into the Convention.
- Another fairly new development that we have come across in plant breeders’ rights is that holders of rights are supplying propagating material to people without “selling” the material. The holder remains the owner of the material and the buyer is only allowed to propagate the variety. This is causing a lot of unhappiness as it also affects “breeders’ privilege”, as breeders are not allowed to use such material for breeding purposes. Although we are not quite sure about the whole situation, it seems that this is something that is in direct conflict with the whole concept and principle of plant breeders’ rights.

4. Situation in the Technical Field

Differences between varieties are still South Africa’s biggest problem and because of this more and more problems are encountered annually to distinguish between varieties. This problem is aggravated by the fact that no fees are charged for keeping a variety on the variety list and companies therefore tend to keep varieties on the list even though they are no longer marketed. Certain farming communities that insist on planting “old,” “trustworthy” varieties cause the problem. Some of these varieties have been in existence for many, many years and some seed companies keep on producing seed of them. As they do not belong to anybody, the Department has problems to decide who to hold responsible for the payment of maintenance fees on the variety list.

5. Activities for the Promotion of Plant Variety Protection

Seminars, workshops and courses are still being presented on an ongoing basis throughout the year to people who are interested in plant breeders’ rights. The main topic is still the changes to the new Act and especially Farmers’ Privilege and Farmers’ rights. Discussions are presently being held amongst various groups and the Government to amend the clause in the Act that deals with Farmers’ Privilege, especially as far as vegetatively propagated varieties are concerned. The strategy of the Department is to remove farmers’ privilege from the Plant Breeders’ Rights Act and to include a new section in the Plant Improvement Act which will allow farmers to only harvest seed of varieties which are not protected by means of intellectual property rights or compulsory certification schemes.

Pressure is still being put on the Directorate to include a section on Farmers' Rights in the Plant Breeders' Rights Act or to establish a completely new Act for Farmers' Rights. There seems to be too many differences between the two Acts to include both type of rights into the same Act – a separate Act will, therefore, most probably be established. As soon as the Farmers' Rights Act has been established, attention will be given to certain amendments to the Plant Breeders' Rights Act.

6. Related Fields of Activities

Due to the high costs for printing, stationery and postage the South African Plant Variety Journal as well as our National Variety List is now available on the Internet and it will not be posted any longer.

The Internet address is: [www.nda.agric.za](http://www.nda.agric.za)

[Annex II follows]

1. Situation in the Legislative Field

1.1 Nothing to report.

1.2 Nothing to report.

1.3 Nothing to report.

2. Cooperation in Examination

An agreement with Russia on the forwarding of test results is in preparation.

3. Situation in the Administrative Field

Nothing to report.

4. Situation in the Technical Field

Nothing to report.

5. Activities for the Promotion of Plant Variety Protection

During the period under review the Federal Plant Variety Office received delegations from Contracting States China and Japan and non-Contracting States Egypt and Thailand.

6. Related Fields of Activity

- *List of varieties*

A law to amend the Seed Trade Law is in preparation with a view to effecting alignment on European Community rules.

- *Rulings in the field of genetic engineering*

The Federal Plant Variety Office is currently examining 15 requests for variety approval with a view to approval for release under the Genetic Engineering Law.

[Annex III follows]

ANNEX III

ARGENTINA

1. Situation in the Legislative Field

1.1 Amendments to the Law and Regulations

There have been no changes in the current plant variety protection legislation.

At present the draft amendment of our legislation to align it on the 1991 Act of the UPOV Convention is under consideration by the National Seeds Commission. The Commission is an advisory body reporting to the Secretary of Agriculture, Animal Husbandry, Fisheries and Food.

1.2 Case Law

The Office of the Union has been handed copies of rulings on the subject of the “farmers’ privilege” or “own use,” which are at the disposal of member States.

2. Cooperation in Examination

Work continued on the implementation of the System of Cooperation in Examination for ornamental species (*Rosa L.*).

3. Situation in the Administrative Field

In the course of 2000, breeders’ rights were granted in respect of 116 varieties by the issue of property titles. Of the total number of property titles granted, 33% corresponded to varieties of oleaginous species, 30% to varieties of forage species and 20% to varieties of cereal species. The remaining 17% were for fruit species (9%), ornamental species (3%), industrial crops (3%) and vegetables (2%).

On November 24, 2000, the National Executive disbanded the National Seed Institute (INASE) by Decree N° 1104. From that date onwards the implementing agency of Law N° 20247 on Seed and Phytogenetic Creations and its Implementing Decree N° 2183/91 is the Secretariat of Agriculture, Animal Husbandry, Fisheries and Food, which controls the grant of property titles in plant varieties.

4. Situation in the Technical Field

There have been no changes in this area.

The technical staff responsible for the testing of distinctness, uniformity and stability have continued the work of sowing reference connections for wheat and soya bean species, with a view to testing the descriptions of their varieties, and in the case of soya bean defining the differentiation requirement for undisclosed varieties.

Work continued on the verification in the field of DUS tests conducted by breeders for varieties of soya bean, inbred maize lines and wheat. The maintenance plots for varietal purity for wheat and soya bean were also checked.

5. Activities for the Promotion of Plant Variety Protection

Various national and international gatherings with a bearing on plant variety protection were attended, at which time the essence of the breeders' rights system was made known and the Argentine plant variety protection system explained.

6. Related Fields of Activity of Interest to UPOV

Officials of this agency are taking part in the weekly meeting of the Intellectual Property Group composed of all protection bodies, concerned with patents, copyright and breeders' rights, and also official research centers. The Group is drawing up guidelines for patents, and this agency is contributing everything that has to do with the protection of biotechnological innovations. A great many interpretational doubts have arisen where the protection of patents merges with that of plant varieties (patentability of seed treated with growth agents). Consequently the debates between the various government sectors are of great importance as a means of making known, bringing up to date and reconciling the internal procedures of each one of them.

[Annex IV follows]

ANNEX IV

AUSTRIA

1. Situation in the Legislative Field

1.1 On September 1, 2001, the following laws came into force:

Plant Variety Protection Law 2001, BGBl. I N° 109.  
Plant Protection Fee Schedule 2001, BGBl. II N° 314.  
Species List for Variety Protection 2001, BGBl. II N° 315.

1.2 Work on the implementation of 1991 Act of the Convention were started by the Plant Variety Office and the Federal Ministry for Agriculture and Forestry, Environment and Water. The draft has been completed. The approval stage is scheduled for the autumn or winter of 2001.

2. Cooperation in Examination

Examination agreement with Slovenia.  
Examination agreement with Russia in preparation.

3. Situation in the Administrative Field

Plant Variety Office activities (period from September 1, 2000, to August 31, 2001):

Number of applications: 15  
Number of titles granted: 11  
Number of completions: 15  
Number of current titles: 142

4. Activities for the Promotion of Plant Variety Protection

Visits by delegations from Hungary, Kosovo and Slovakia.

5. Related Fields

Seed: The Agricultural Amending Law 2001 entered into force on September 1, 2001. Article 4 of that Federal Law (BGBl. I N° 109/2001) notifies the amendment of the Plant Material Law 1997 (BGBl. I N° 72/1997) concerning the recognition, authorization and placing on the market of plant material and also variety authorization.

6. Rulings in the Field of Genetic Engineering

No releases have been approved in Austria to date.

[Annex V follows]



1. Situation in the Legislative Field

Adaptation to the 1991 Act of the Convention

The completion of this project is in progress. It is hoped that the new Law will be adopted in the course of 2002.

Access to plant variety protection under the 1991 Act continues to be possible in Belgian territory, by virtue of the applicable European Regulations, through the Community Plant Variety Office.

2. Cooperation in Examination

Two agreements have yet to be ratified with France and Denmark.

Depending on requests for extension of protection to new taxa, new agreements may be concluded or existing agreements modified.

3. Situation in the Administrative Field

– Volume of activity – situation on 31.08.2001

Since the implementation of the legislation on the protection of new plant varieties in Belgium and up to August 31, 2001, 2,209 applications for protection have been registered and 1,758 certificates issued, of which 458 are still in force.

Developments in related fields of activity having an interest for UPOV

– Control of seed and seedlings – certification

*Transposition of European Directives 98/95/EC, 98/96/EC, 1999/8/EC and 1999/54/EC*

Legislation in force as of 19.09.2001

– Royal Decrees on trade in and the verification of propagation material of various groups of agricultural species, including industrial chicory.

Legislation signed and awaiting publication

– Royal Decree on trade in vegetable seeds.

– Royal Decree on the national catalogue of agricultural species.

– Legislation on the distribution and marketing of GMOs:

A European Directive amending Directive 90/220 has been adopted under N° 2001/18/EC. It will have medium-term repercussions on Belgian legislation, particularly with respect to public information and risk monitoring.

In addition, interim measures have been put in hand to reinforce controls to determine the accidental presence of GMO seed in “classical” consignments, and a draft Community Directive is expected to be proposed by the European Commission soon in order to make such controls official.

The Commission has also tabled two proposals, the one concerning traceability and labelling and the other on the authorization of Novel Food/Feed.

– Legal protection of biotechnological inventions

Transposition of European Parliament and Council Directive 98/44/EC of July 6, 1998, on the protection of biotechnological inventions:

– the draft law amending Law of March 28, 1984, on patents for invention with the respect to the patentability of biotechnological inventions and on the status of representatives is currently awaiting the advice of the Council of State.

[Annex VI follows]

ANNEX VI

CROATIA

The Republic of Croatia appreciates the warm welcome into the UPOV family.

1. Situation in the Legislative Field

1.1 Accession to the 1991 Act of the UPOV Convention

On August 1, 2001, Croatia deposited the instrument of accession to the 1991 Act of the UPOV Convention.

1.2 Amendments of the law and the implementing regulations

The Plant Variety Protection Law had been approved by the Parliament of the Republic of Croatia and published in the "Official Gazette" No. 131/97 on December 5, 1997.

Amendments to the Law, which put the Croatian Plant Variety Protection Law in conformity with the 1991 Act of the UPOV Convention, have been approved by the Parliament of the Republic of Croatia and published in the "Official Gazette" No. 62/00 on June 16, 2000.

Implementing Regulations of the Plant Variety Protection Law and Decree on the (amount of) costs relating to the Plant Variety Protection have been published in the "Official Gazette" No. 63/01 on July 13, 2001.

Regulations for the Maintenance of Variety (Official Gazette No. 73/01) and Regulations for the Variety Testing (Official Gazette No. 62/01) have been published.

The Institute for Seed and Seedlings maintains a Website for general information ([www.zsr.hr](http://www.zsr.hr)); all necessary information and Regulations are included.

1.3 Protection of genera and species

The list of plant genera and species on which protection applies: (*Triticum aestivum* L.) – Wheat, (*Hordeum vulgare* L.) – Barley; (*Avena sativa* L.) - Oats; (*Zea mays* L.) – Maize; (*Helianthus annuus* L.) – Sunflower; (*Glycine max* L.) – Soy bean; (*Brassica napus ssp. oleifera* Metzg.) – Rapeseed; (*Beta vulgaris* L *ssp. vulgaris* var. *altissima* Doell) – Sugar beet; (*Solanum tuberosum* L.) – Potato; (*Medicago sativa* L.) – Lucerne, Alfalfa; (*Pisum sativum* var. *arvense* L.) – Pea; (*Brassica oleracea* L. convar. *acephala* Alef. var. *viridis* L.+) (var. *medullosa* Thell.) – Fodder Kale, (*Pyrus communis* L.) – Pear; (*Populus tremula* L.) – Aspen; (*Salix* L.) – Willow.

2. Cooperation in Examination

Croatia cooperates with Hungary and Slovenia. Hungary is performing DUS testing of soy bean for Croatia. Croatia is performing DUS testing of wheat, barley and maize for Slovenia. A formal request for cooperation with France and few other countries will be initiated by the end of the year.

3. Situation in the Administrative Field

In the year 2001, a total of 16 applications for plant breeder's rights were received but no breeder's rights were granted. All applications received (16) for agricultural crops are under consideration.

4. Situation in the Technical Field

All activities related to plant variety protection are under the responsibility of the Institute for Seed and Seedlings. The Institute for Seed and Seedlings is equipped with necessary equipment and facilities to perform variety testing for plant variety protection and registration of variety. Personnel has been trained by Dutch and English experts and has had great help from Hungarian experts.

5. Activities for the Promotion of Plant Variety Protection

The seminar regarding the plant variety protection was held on December 6, 2000.

The workshop regarding the EU Directives was held on December 12 and 13, 2000.

Participation in the Croatian Symposium on Agriculture with lecture regarding alterations and amendments on legislation on protection of new plant varieties in February 2001.

Participation in the Technical Working Parties on Automation and Computer Programs, for Vegetables and Ring-tests.

During the year 2001, visits have been made to: NIAB – United Kingdom, BFL – Austria, OMMI – Hungary, UKSUP – Slovakia.

Visits from: NIAB – United Kingdom, Plant Variety Protection and Registration Office – Slovenia, NAK and NAK tuinbouw.

6. Technical Assistance

Croatia had technical assistance through the project Seed Industry Development. Project components: assistance to DUS testing, assistance to VCU testing, field inspection, seed certification and seed testing. Training and education by Dutch and English experts in Croatia and in the Netherlands and the United Kingdom.

7. Personnel Change

Ms. Ružica Ore was appointed as Head of Plant Variety Protection and Registration Office in Croatia and is responsible for the duties related to UPOV.

[Annex VII follows]

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ANNEX VII

DENMARK

Situation in the Administrative Field

In 2000, a total of 38 applications for plant breeder's right were received: 35 were agricultural crops and three were ornamental plants. A total of 37 titles of protection were issued: 26 of agricultural crops, one of fruits and ten of ornamentals.

In the period from January 1 to September 1, 2001, 22 applications for protection were received and 33 titles of protection were issued.

[Annex VIII follows]

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ANNEX VIII

RUSSIAN FEDERATION

The Russian Federation is preparing new agreements as to take over DUS reports issued in a number of countries, namely in Denmark, Germany, the Netherlands and the United Kingdom. Agreements with Austria, Belgium, Hungary, Poland, Sweden and the United States of America were requested, but no answers have been received yet.

[Annex IX follows]

ANNEX IX

FINLAND

1. Situation in the Legislative Field

On June 20, 2001, the Government of Finland deposited its instrument of accession to the 1991 Act of the International Convention for the Protection of New Varieties of Plants with the Secretary-General of UPOV. The 1991 Act entered into force for Finland one month after the deposit of its instrument of accession, i.e. on July 20, 2001. The Finnish Plant Variety Rights law according to the 1991 Act of the Convention entered into force on March 15, 1999.

2. Cooperation in Examination

There were no further developments in this regard.

3. Situation in the Administrative Field

In the period from September 30, 2000, to September 14, 2001, 14 applications for protection were received and five titles of protection were issued.

[Annex X follows]



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ANNEX X

ISRAEL

It is several years now that we are witnessing a steady decline in the number of applications submitted for plant breeders' rights registration. However, the ratio between applications received from foreign breeders and those of local ones remains constant: the bulk of applications is still from foreign breeders.

From October 2000 up to beginning of September 2001, 96 applications were submitted for plant breeders' rights registration, of which 73, mostly ornamentals, are of foreign breeders. The bulk of registrations in this period of time is 56 of foreign breeders, while those of locals came to 14, bringing the total number of registrations to 70.

We are taking full advantage of the cooperation between UPOV member States to purchase test results, whenever possible, thus reducing the load of the number of varieties tested locally.

[Annex XI follows]

ANNEX XI

KYRGYZ REPUBLIC

1. Situation in the Legislative Field

1.1 Amendment of the law and implementing regulations

Adaptation to the 1991 Act of the Convention. The Kyrgyz Republic joined the International Union on July 26, 2000, by acceding to the 1991 Act of the UPOV Convention. At present Kyrgyzpatent is working on amendments of and additions to the law of the Kyrgyz Republic which are to be finished in 2002.

1.2 Case law

There were no precedents with regard to the protection of breeders' rights up to present.

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

Ministry of Agriculture, Water Resources and Processing Industry is planning to prepare for consideration of the Government for 2002-2005 the introduction of more than 50 genera and species in addition to the 16 ones for which variety protection is now available. Protection of new varieties of plants depends on the readiness of the State Commission for testing of new species for DUS e.g. after the familiarization with UPOV method and training of experts. This requires investments in time as well as in finances.

2. Cooperation in Examination for DUS Testing

Conclusion of new agreements achieved, under way or planned.

Amendments of existing agreements.

On March 16, 2001, in Moscow, an Intergovernmental Agreement on Legal Protection of Plant Varieties has been concluded between CIS states, which provides for cooperation in protection of breeders' rights, including cooperation in examination.

3. Situation in Administrative Field

Changes in administrative structure and in office procedures and systems.

The following changes were made in the structure of Kyrgyzpatent. With regard to the Decree of the President of the Kyrgyz Republic of December 28, 2000, "On Reorganization of Central Bodies of Public Administration" and "On Measures on Further Development of Management Structures of Public Bodies of the Kyrgyz Republic for the Purpose of Creation of Conditions for the Development of Scientific Potential of the Republic," functions of the Department of Science and New Technologies of the Ministry of Education, Science and Culture were given to Kyrgyzpatent on March 15, 2001, according to the Regulation of the Kyrgyz Republic Government. From that moment, the provision "On the State Agency of Science and

Intellectual Property under the Government of the Kyrgyz Republic (Kyrgyzpatent)” has been approved. An Examination Center was established in Kyrgyzpatent. Director of the Center as well as Deputy Director of Kyrgyzpatent is Mr. Bedelbaev Askarbek Bedelbaevich.

The Kyrgyzpatent Division on Protection of Plant Varieties has been transformed into an examination sector of selection achievements of the Examination Center, Head of the sector is Mr. Azykov Toktogul Barievich.

Statistics: No amendments.

4. Situation in the Technical Field (see under 3)

At present the State Commission conducts examination for DUS on the following agricultural crops: winter wheat, winter and spring barley, potato and cotton.

5. Activities for the Promotion of Protection of Plant Varieties

→ Meetings, seminars

Kyrgyzpatent employees took part in the following events: seminar on “Protection of Plant Varieties according to UPOV Convention” organized in the United Kingdom in July 1999; seminar conducted by the International Bank for Reconstruction and Development in the framework of a project for supporting secondary agricultural services “Kyrgyz Seed Company and Development of Seed Industry” (December 1999, Bishkek); National Seminar on methods of DUS testing (July 1999, Bishkek); Lecture in a WIPO training course (April 2000, Geneva) “Intellectual Property and Genetic Resources.”

Kyrgyzpatent experts also took actively part in the session of the Technical Working Party on Automation and Computer Programs and the Workshop on Data Handling in Kyiv (June 2000).

In the two-week course in the Netherlands (Wageningen, July 2001) on the topic “Plant Breeding, Biotechnology and Seed Technology” an expert of Kyrgyzpatent took part jointly with a specialist from the State Commission on Variety Testing.

Meetings with breeders are regularly conducted. Practical and methodical aid is rendered in the field of protection of selective achievements.

An Interinstitutional Department under Kyrgyzpatent was established, which organizes lectures on legal protection of intellectual property, including legal protection of selection achievements among institutions of high education. Publications are periodically printed on the above-mentioned issue in the republican press.

→ Visits to and from non-member States: There were no such visits.

- Publications: Publications concerning applications filed, patents granted, amendments in the legislative base including legal protection of selective achievements are issued in the Official Bulletin “Intellectualdyk Menchik” which is distributed among 41 countries included in the exchange of correspondence with Kyrgyzpatent.
- Technical assistance: Within the frames of the project for supporting secondary services ASSP of the International Bank for Reconstruction and Development technical assistance is rendered to the State Commission in the development of testing varieties for DUS. Special small-scale agricultural vehicle have been provided according to the project (selective sowing machine, combine harvester and other vehicles) for field work of DUS testing.

## 6. Related Fields of Activities

Catalogues of varieties authorized for sale; seed certification: According to point 5, Art. 10 of Law of the Kyrgyz Republic “On seeds” (Commercialization of seeds) only the sale of seeds of varieties included in the National Catalogue (“State Register of varieties and hybrids, selected for use within the territory of the Kyrgyz Republic”) is authorized.

At present 537 varieties, including 25 varieties of winter wheat, 17 of spring barley, 10 of sugar beet, 90 varieties of vegetable crops, berry crops, flowers and decorative plants are included in the State Register of the Kyrgyz Republic. These varieties are mainly from Kyrgyz and Russian selection and from the former USSR. There are also varieties of Dutch selection, represented by the firms: “Agrico” (potato), “Bejo Zaden” (tomato, onion, cucumber, cabbage, carrots), German “Von Borries Eckendorf” (fodder beet), Canadian “Tompson” (bean) French – “Syukden” (feed beet, sugar beet), “Depre” and “Maribo” of Denmark (sugar beet).

According to the Law of the Kyrgyz Republic “On Seeds” a certificate of conformity is granted for seeds. Art. 4 of this Law (Principles of production and certification of the seeds) provides that growing and realization of the seeds protected are carried out only with the consent of the patent owner.

Seeds used for sowing and realization are to be certified on the basis of special provisions of Government of the Kyrgyz Republic.

Standardization of varieties and sowing qualities of the seeds within the territory of the Kyrgyz Republic is conducted in accordance with the adopted normative documents on standardization.

Methods of approbation, field inspection, ground control, method of selection and analysis of seeds and other normative and technical documentation are approved by the public body for administration of agriculture—Ministry of Agriculture and Water Resources.

Estimation of sowing features of exported seeds is carried out according to the rules of the International Seed Testing Association (ISTA) on control of the quality of seeds.

A certificate of conformity is granted for the seeds which comply with certain requirements of public standards.

Exported seeds are accompanied by an international certificate of conformity.

Patents, Competition Law: The following laws are included in the legislation of the Kyrgyz Republic: Patent Law (entered into force on February 4, 1998), which establishes that plant varieties and breed of animals are not considered to be inventions (Art. 5 Terms of patentability of inventions). However, it is emphasized in the law that legal protection of selective achievements is regulated under the Law “On Legal Protection of Selection Achievements” which covers non-traditional intellectual property subject matters.

The Law of the Kyrgyz Republic concerning competition titled as “On Restriction of Monopolistic Activity, Protection and Development of Competition” came into force on April 15, 1994.

Rules and regulations in the field of genetic engineering (release of genetically modified organisms, etc.). There are no rules and regulations in this field at present. However, the Government of the Kyrgyz Republic raised the problem of penetration of the market of products obtained through genetically modified organisms before corresponding ministries and offices have checked their effects.

Research and development in selection: (innovations—new types of varieties, new techniques)

Genetic Resources: The Kyrgyz Republic acceded to the International Convention on Biological Diversity in 1995. The Law of the Kyrgyz Republic “On Protection and Use of Biodiversity” was adopted on May 22, 2001.

According to Art. 7 (Payment for the use of flora objects) and Art. 10 (Way of use of flora objects), the use of flora objects within the territory of the Kyrgyz Republic may be carried out against payment if not provided for otherwise in the Law of the Kyrgyz Republic.

Payment is fixed for both natural and legal entities:

- for granting of rights for the use of flora objects for commercial purposes;
- for the use of flora objects for commercial purposes within established limits, norms and rules.

The amount to be paid is fixed by the Government of the Kyrgyz Republic according to the type, aim and volume of the use of flora objects taking into account location, biotical productivity of the territory and any other ecological factors.

The following ways of use are exempted from the payment:

- (a) forage stocking for livestock breeding needs;

- (b) use of flora objects for the pasture of livestock, apiculture, feeding of silkworm, for hunting and fishing;
- (c) use of flora for forestry, hunting and fishing needs;
- (d) use of flora for scientific and technical purposes, wildlife management, cultural and educational, esthetical purposes.

[Annex XII follows]

ANNEX XII

NORWAY

1. Situation in the Legislative Field

No changes have been done.

2. Cooperation in Examination

Norway received 24 DUS-reports from other member States.

3. Situation in the Administrative Field

From January 1 to December 31, 2000, 26 applications have been received. Twenty-four titles were issued.

Grant of rights by crop kind were as follows:

|                        |   |            |   |                      |   |
|------------------------|---|------------|---|----------------------|---|
| Barley                 | 1 | Potato     | 1 | Rose                 | 3 |
| Black currant          | 1 | Poinsettia | 4 | Sm.-stalked meadowg. | 1 |
| Begonia X tuberhybrida | 1 | Rape       | 1 | Strawberry           | 3 |
| Meadow fescue          | 1 | Raspberry  | 2 | White clover         | 2 |
| Oat                    | 2 | Red fescue | 1 |                      |   |

173 titles were in force as of September 15, 2001.

[Annex XIII follows]

ANNEX XIII

NEW ZEALAND

1. Situation in the Legislative Field

There have been no changes over the period in the legislative field. The New Zealand Plant Variety Rights law has not yet been adapted to the 1991 Act of the Convention.

2. ---

3. Situation in the Administrative Field

During the financial year ending on June 30, 2001, 160 applications for plant variety rights were received (25 less than the previous year), 152 grants were issued (12 less) and 119 grants were terminated (52 more). At June 30, 2001, there were 1,188 valid grants (33 more).

4. Situation in the Technical Field

We have received a total of five applications for varieties of pasture plant endophytes and expect that there will be continuing but small numbers of such applications in the future. Because fungal endophytes are microscopic organisms, it has been necessary to develop DUS testing procedures which differ substantially from normal UPOV testing procedures which have been developed for larger plants. Having gained some experience and developed a better understanding of fungal endophytes, it was decided that the original national test guideline should be further developed and refined. This exercise, involving close cooperation between the PVR Office and endophyte experts, has now been completed.

The revised guideline refers to two stages of testing. Stage 1 will apply in every case and involves evaluation of varieties growing in culture to determine if the candidate is distinct in at least one stable morphological characteristic. Stage 2 will be carried out if distinctness cannot be established on the basis of at least one morphological characteristic identified from the examination in culture. This second stage involves inoculating seedlings of endophyte-free plants with the candidate endophyte and with reference endophytes and then comparing the level of different metabolites produced.

5. Related Fields of Activities

The Plant Variety Rights Office has for many years received questions about the relationship between trade marks and plant variety names, especially in cases where trade marks are seemingly being used to identify particular varieties. There is considerable confusion and uncertainty evident among nurserymen and growers. After discussing the problem with trade marks staff of the Intellectual Property Office of



New Zealand, it was decided that both Offices would make efforts to clarify the confusion. The PVR Office has subsequently produced an information leaflet entitled "Trade Marks and Plant Variety Names" which has been distributed widely to those in the nursery and garden industry who may have an interest.

[Annex XIV follows]

ANNEX XIV

PANAMA

1. Situation in the Legislative Field: Background:

Panama acceded to the International Union for the Protection of New Varieties of Plants (UPOV), 1978 Act, on May 23, 1999. Law N° 23 of July 15, 1997, effecting accession to the Marrakesh Agreement which established the World Trade Organization, aligns domestic legislation on the international provisions, and in its Title V enacts provisions on the protection of new plant varieties in Panama.

Executive Decree N° 13 of March 19, 2000, regulates Law N° 23 of July 15, 1997, and in its Article 276 creates the Council for the Protection of New Plant Varieties in Panama.

Ruling N° ALP-025-ADM-01 of April 4, 2001, designates the various members of the Council for the Protection of New Plant Varieties for a term of two years, and its Article 4 provides that they shall draw up its Rules of Procedure.

1.1 Amendments to the Law and Regulations

Adaptation to the 1991 Act of the Convention: At present our legislation, Law N° 23 of July 15, 1997, is the same as when it was approved, together with its implementing text, Executive Decree N° 13 of March 13, 2000.

Expectations: When the Council for the Protection of New Plant Varieties has been formed and the rules governing it have been enacted, a system will be adopted that involves the various sectors of the agricultural field, from producers to seed importers.

1.2 Case law:

There has been no case in Panama on breeders' rights that sets a legal precedent.

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

There is a plan to increase, by means of a Council ruling, the number of genera and species to which protection is afforded, together with the proposal to extend protection to all genera and species if the Council so decides.

2. Cooperation in Examination

The Institute of Agricultural and Livestock Research of Panama is responsible for all agreements relating to technical examination.

3. Situation in the Administrative Field

A Council regulation will propose a radical change in the administrative structure in Panama, which will include all the various members of the Council, organized into committees and directed by the Minister of Agriculture and Livestock Development or a person designated by him, even though the part concerned with the registrability of breeders' rights will remain with the Director General of Industrial Property at the Ministry of Trade and Industry.

Only one application has been filed, so accumulated experience in the registrability of rights is limited, especially in cases where there have been appeals, rejections of applications or claims filed.

4. Situation in the Technical Field

At present we have the cooperation of the Institute of Agricultural and Livestock Research, with staff experienced in everything to do with variety examination, and the Faculty of Agricultural and Livestock Science will be brought in to devise provisions on the subject.

5. Activities for the Promotion of Plant Variety Protection

A "Regional Seminar on the Exercise of Breeders' Rights Under the UPOV Convention," organized by the International Union for the Protection of New Varieties of Plants (UPOV) and the Directorate General of Industrial Property Registration (DIGERPI) of the Ministry of Trade and Industry in cooperation with the Central American Economic Integration Secretariat (SIECA) was held on April 26 and 27, 2001, which was very well received by all sectors and was the occasion for the appointment of the various members of the Council for the Protection of New Plant Varieties. It was attended by representatives of Argentina, Colombia, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, and was honored by the presence of Mr. Raimundo Lavignolle of UPOV.

The Seminar on the UPOV Convention, Obligations Under the TRIPS Agreement and the Effective Implementation of Breeders' Rights was attended in Punta del Este, Uruguay, on November 23 and 24, 2000.

The review of the College of Agricultural Engineers of Panama will in October 2001 publish an article entitled "Breeders' Rights in Panama," in which subjects such as the background to breeders' rights, their importance, the processing of their registration and the present situation in Panama concerning them will be dealt with.

The International Fair of San José de David and the International Fair of Azuero, held in March and April respectively, were attended.

A lecture was given to other organizations and also universities in order to give more public exposure to the question: Why do varieties have to be protected?

The national and international community were given access, on the website of the Ministry of Trade and Industry, <http://www.mici.gob.pa>, via the Trade link, to Law N° 23 of July 15, 1997 and its implementing regulations, the procedure for the processing of registrations of plant breeders' rights in Panama and the cost of registration of those rights in Panama.

Leaflets were distributed on the registrability of breeders' rights in Panama.

6. Related Fields of Activity of Interest to UPOV

– Catalogue of varieties authorized for sale, seed certification

The National Seed Committee periodically publishes a leaflet listing the varieties and hybrids approved and recommended for commercial sowing in Panama.

– Genetically modified organisms

A commission has been set up to evaluate genetically modified organisms, and is awaiting preliminary drafts from various sectors before embarking on a discussion of the procedures that should govern whether or not genetically modified organisms are to be released in Panama.

A Regulation issued by the Council for the Protection of New Plant Varieties will consider whether or not genetically modified organisms should be protected by breeders' rights in Panama.

[Annex XV follows]

NETHERLANDS

1. Situation in the Legislative Field

1.1 Amendments of the Law and Implementing Regulations

Since the entry into force of the UPOV Convention of 1991 in April 1998, there have been no changes in the Dutch law or in Dutch regulations about the plant breeder's right.

The Dutch Government made a proposal about the implementation of the Directive No. 98/44/EC on the legal protection of biotechnological inventions. This proposal regards, among others, paragraphs 42 and 43 of the Seed and Planting Material Act about the compulsory licence. At this moment, the Dutch Parliament has still not yet adopted the proposal.

Recently a proposal was made to increase the fees for obtaining a plant breeder's right with 43%, because the present fees do not sufficiently cover all the costs for the administrative and technical examinations. Unfortunately, this has been the situation for a long period as there has not been any increase of the fees for well up to 10 years.

Furthermore, there are plans for a complete revision and modernization of the Seed and Planting Material Act, which originates from 1967. This revision will concentrate itself upon the Dutch procedures for accepting plant varieties and for granting a plant breeder's right. The present Dutch procedures are felt to be unnecessarily complicated. Of course, all changes made will be in accordance with the UPOV-treaty of 1991.

1.2 Case Law

For the very first time, a conflict between a variety denomination and a trademark was brought into court. Although the holder of the trademark for the word 'Flair' objected to the proposed denomination 'Red Flair' for a tulip variety, that denomination was approved by the Board for Plant Breeders' Rights. Following an appeal, it was decided in court that, since 'Flair' had been the denomination of an earlier tulip variety, the trademark has no discerning ability whatsoever, at least not with respect to tulips. Apart from that the court judged that the word 'Flair' has very little discerning ability. The court concluded that the use of the variety denomination 'Red Flair' gives no risk of confusion about the quality or origin of the goods.

2. Cooperation in Examination

A request was received from the Russian Federation to conclude an agreement in order to exchange reports on varieties, which have been tested or are being tested in the

Netherlands. Anticipating the formal conclusion of that agreement the Board for Plant Breeders' Rights is prepared to furnish reports (and descriptions) along the lines of the Russian proposal.

3. Situation in the Administrative Field

The total number of applications in 2000 was 752. In 2001, the number of applications was 602 (per September). In 2000, 154 tests were placed with UPOV partners. The Board sent 483 final examination reports to foreign authorities (376 to the CPVO and 107 to UPOV member States).

4. ---

5. Activities for the Promotion of Plant Variety Protection

Like in the previous years, a course on plant variety protection was held in Wageningen in the summer of 2001. The course, attended by participants mostly from non-UPOV members, covered the legal, institutional and technical aspects of plant variety protection. In the margin of the course, a delegation of the Federal Institute for Plant and Animal Genetic Resources from the Federal Republic of Yugoslavia paid a visit to the Dutch Ministry of Agriculture, Nature Management and Fisheries in The Hague in order to discuss particular details of plant variety protection and variety listing.

[Annex XVI follows]

ANNEX XVI

POLAND

1. Situation in the Legislative Field

Polish legislation of Plant Breeders' Rights, is a part of Polish Seed Industry Law. From 1996, it is based on the 1991 Act of the UPOV Convention.

The amendments to the Polish Seed Industry Law entered into force on November 1, 2000. In its part concerning National Listing and seed production, the Law adopts the existing agreements in the European Union.

In the scope of Plant Breeders' Rights, the amended Law provides, *inter alia*,

- ♣ extension of protection to all plant genera and species,
- ♣ duration of Plant Breeders' Rights: for varieties of grape-wine and trees 30 years; for varieties of remaining taxa 25 years,
- ♣ the breeder who has submitted the application for PBR enjoys the provisional PBR as of its submission date,
- ♣ limitation of farmer's privilege to two hectare of agricultural varieties; the taxa (14), covered by the farmer's privilege provisions, will be defined in a decree of the Minister for Agriculture and Rural Development,
- ♣ the Polish Plant Breeders' Rights Gazette is published every two months.

Implementing regulations to the amended Law are expected to enter into force not later than November 2001. There will be:

- ♣ Decree of the Minister for Agriculture and Rural Development concerning listing of varieties, grant of Plant Breeders' Rights protection, production and inspection of seed material,
- ♣ Decree of the Minister for Agriculture and Rural Development concerning some fees and remuneration applied to seed industry.

2. Cooperation in Examination

Poland has concluded bilateral agreements on cooperation in variety examination with Czech Republic, Hungary and Slovakia.

Unilateral agreements have been signed with Latvia and Lithuania. Poland shall carry out DUS testing on request of Latvia and Lithuania authorities.

Poland, with other countries, participates actively in works on ring test system. This year, the discussion meeting, on the ring test results, was held in Tordas and Budapest (HU) on July 23 and 24.

### 3. Situation in the Administrative Field

From January 1 to September 15, 2001, 304 applications for PBR were filed in Poland. On September 15, 2001, there were 1,700 protection titles in force.

Details on statistics are given below.

| Crops                              | Applications for PBR<br>1.01. – 15.09.2001 |            |            | Grant of PBR<br>1.01. – 15.09.2001 |            |            | Titles<br>having<br>ceased | Titles in<br>force at<br>15.9.<br>2001 |
|------------------------------------|--|------------|------------|------------------------------------|------------|------------|----------------------------|--|
|                                    | domestic                                   | foreign    | together   | domestic                           | foreign    | together   |                            |  |
| Agriculture                        | 40   | 29         | 69         | 47                                 | 33         | 80         | 2                          | 456                                    |
| Vegetables                         | 11   | -          | 11         | 21                                 | -          | 21         | -                          | 200                                    |
| Ornamental                         | 37   | 166        | 203        | 21                                 | 194        | 215        | 12                         | 977                                    |
| Fruit trees<br>and berry<br>plants | 9  | 12         | 21         | 2                                  | 5          | 7          | -                          | 67                                     |
| <b>Total</b>                       | <b>97</b>                                  | <b>207</b> | <b>304</b> | <b>91</b>                          | <b>232</b> | <b>323</b> | <b>14</b>                  | <b>1,700</b>                           |

### 4. Related Fields of Activities

50 years of Polish Official Cultivar Testing: This year we celebrated the anniversary of

- ♣ 50 years of Polish Official Cultivar Testing,
- ♣ 35 years of the Research Centre for Cultivar Testing (COBORU) activity.

The special solemn conference, on the occasion was held on June 22, 2001, and many prominent persons both from Poland and abroad were invited.

We issued a special, occasional publication, rich illustrated. The publication contains, *inter alia*, information about

- ♣ history and current state of variety testing system in Poland,
- ♣ seed industry legislation after the World War Two (1945),
- ♣ organization and tasks of COBORU as a body responsible for Plant Breeders' Rights protection, National Listing, variety examination and providing an advisory service on varieties,
- ♣ network of Experimental Stations for Cultivar Testing, subordinated to COBORU, engaged in DUS and VCU (for National Listing purposes) testing.

### 5. Polish Law on Genetically Modified Organisms (GMO)

Genetically Modified Organism Law of June 22, 2001, has been passed by Parliament and signed by the President of the Republic of Poland. The Law will enter into force on October 26, 2001.



The Law regulates:

- ♣ closed using of genetically modified organism (GMO),
- ♣ deliberate release into the environment of genetically modified organisms for others than commercial purposes,
- ♣ introduction for marketing of GMO products,
- ♣ transportation to other countries and transit of GMO products,
- ♣ competence of government administration agencies, responsible for GMO.

Governmental organ responsible for GMO is the Minister for Environment. Implementing regulations to the Law will have come into force by the end of July 2002.

[Annex XVII follows]

ANNEX XVII

UNITED KINGDOM

1. Situation in the Legislative Field

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

There has been no annual increase in the fees for Plant Breeders' Rights in respect of application, test, grant and renewal fees because of a continued delay arising from the introduction of devolution arrangements in the United Kingdom.

2. Cooperation in Examination

The United Kingdom continues to play an active role in the testing of various species for a number of countries and the EU Community Plant Variety Office (CPVO).

3. Situation in the Administrative Field

Mike Wray has this year taken up the post of Technical Manager at the Plant Variety Rights' Office and Seeds Division (PVRO). The old Ministry of Agriculture, Fisheries and Food has been replaced by a new Department, the Department for Environment, Food and Rural Affairs, of which PVRO in Cambridge is now a part.

4. Trends in UK Applications and Grants for Protection

During the year ended 31 March 2001:

|                                |                                  |
|--------------------------------|----------------------------------|
| 249 applications were received | (12.45% decrease over last year) |
| 138 grants were issued         | (22.9% decrease over last year)  |
| 242 grants were terminated     | (13.08% increase over last year) |
| 1,522 grants were renewed      | (6.63% decrease over last year)  |

5. European Plant Breeders' Rights

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

6. Activities for the Promotion of Plant Variety Protection

The United Kingdom continues to receive visitors from overseas wishing to learn more about plant breeders' rights and sees this as a positive development in international cooperation.

7. Related Fields of Activities of Interest to UPOV

The United Kingdom has reviewed its legislation on National Listing (NL), and new NL regulations are due to come into force later in the year.

[Annex XVIII follows]

ANNEX XVIII

SLOVENIA

1. Situation in the Legislative Field

There have not been any changes of the Law or sub-law regulations.

2. Cooperation in Examination

The agreements concerning the exchange of DUS reports have been revised with Germany and France. The bilateral agreement of cooperation with the Czech Republic and Slovakia is under preparation.

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

3. Situation in the Administrative Field

From September 2000 up to September 2001, 11 applications were filed and 7 titles of protection issued. Total number of titles in force is 60 (agricultural crops: 28; vegetables: 4; fruit crops: 2; ornamentals: 26).

4. Developments in Related Fields of Activities

New National List of Varieties, including the list of protected varieties, was published in July 2001.

Two new issues of Slovenian Plant Breeder's Rights and Variety Registration Gazette were published since September 2000.

[Annex XIX follows]

ANNEX XIX

UKRAINE

1. Situation in the Legislative Field

The draft law on the amendment of the Law on the Protection of Plant Variety Rights is under consideration in Supreme Council. The draft law conforms to the 1991 Act of the UPOV Convention.

2. ---

3. Situation in the Administrative Field

During 2000, 11 applications were received: Barley 2, Wheat 6, Maize 2, Rye 1.

No rights have been granted yet.

4. Developments in other Fields of Activity

In June 2001, in Kyiv, an international scientific seminar on “Trade-related aspects of plant variety use, as intellectual property, in terms of implementation of agricultural reform” was organized.

[Annex XX follows]

ANNEX XX

YUGOSLAVIA

1. Situation in the Legislative Field

- 1.1 The Law on Protecting Agricultural and Forest Plant Cultivars (hereinafter referred to as “the Law”) was adopted by the National Parliament of the Federal Republic of Yugoslavia, on June 30, 2000 in Belgrade.

After official visit of UPOV representatives (Dr. Rolf Jördens, Vice Secretary-General, and Mr. Saranin, Consultant) to the Federal Republic of Yugoslavia, the Federal Institute for Plant and Animal Genetic Resources sent the Law to the UPOV Office in Geneva. From the UPOV Office we received the examination of the conformity of the Law of Yugoslavia with the 1991 Act of the UPOV Convention.

We accepted the amendments of the Law and now, it is in the procedure of conformation by the National Parliament of Federal Republic of Yugoslavia.

- 1.2 ---

- 1.3 At this moment there is no extension of protection to further genera and species.

2. Cooperation in Examination

The Federal Republic of Yugoslavia will organize DUS testing in the Yugoslav institutes, and cooperation will include the surrounding countries with similar climate.

3. Situation in the Administrative Field

The Yugoslav Federal Ministry of Agriculture disbanded on July 27, 2001. The Federal Institute for Plant and Animal Genetic Resources kept all previous authorities and cooperation with UPOV and other organizations.

4. ---

5. Activities for the Promotion of Plant Variety Protection

Three representatives of FR Yugoslavia from Federal Institute for Plant and Animal Genetic Resources participated on Plant Variety Protection Course in Wageningen at the International Agricultural Center in June 2001.

6. Related Fields of Activities

The following publications are available, on request:

I. Catalogues of varieties authorized for sale:

1. The book with The List of agricultural and forest plant varieties and hybrids of Yugoslavia (until 1999).
2. The List of agricultural and forest plant varieties and hybrids of Yugoslavia (from 1999-2001).

II. Rules and regulations in the field of genetic engineering (GMO Law).

III. Short abstract about Genetic resources in Federal Republic of Yugoslavia.

[End of Annex XX and of document]