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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Thirty-Sixth Ordinary Session
Geneva, October 24, 2002**

REPORT

*adopted by the Council*Introduction

- *1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its thirty-sixth ordinary session in Geneva on October 24, 2002, under the Chairmanship of Mr. Karl Olov Öster (Sweden).
2. The list of participants is given in Annex I to this document.

Opening of the Session

- *3. The President extended a warm welcome to the Delegation of Latvia, a State which had become a member of UPOV on August 30, 2002.
4. The Delegation of Latvia made a statement, the text of which is included in Annex II to this document.

* An asterisk next to the paragraph number indicates that the text has been taken from the Record of the Decisions (document C/36/12) adopted by the Council at the end of the session.

Adoption of the Agenda

*5. The Council adopted the agenda as proposed in document C/36/1, with the deletion of item 4 (Examination of the conformity of the legislation or proposed legislation of any State or Organization having submitted a request under Article 34(3) of the 1991 Act of the UPOV Convention) and the following corrections to the Spanish version:

Agenda item 6 to refer to the year 2002 with regard to document C/36/3.

Agenda item 13 (a) to refer to document C/36/11.

Adoption of the Report on the Thirty-Fifth Ordinary Session

*6. The Council adopted the report as given in document C/35/14 Prov.

Report by the President on the Work of the Sixty-Third and Sixty-Fourth Sessions of the Consultative Committee; Adoption of Recommendations, if Any, Prepared by That Committee

7. The President reported that the sixty-third session of the Consultative Committee, held on April 19, 2002, had recommended to grant to Mr. Rolf Jördens an extension of his contract as Vice Secretary-General up to November 30, 2003, in line with the term of office of the Secretary-General and to promote Mr. Jördens to the same level as the Deputy Directors General of the World Intellectual Property Organization (WIPO), as of July 1, 2002. Also at its sixty-third session, the Consultative Committee had considered document C(Extr.)/19/2 "The Notion of Breeder and Common Knowledge in the Plant Variety Protection System Based upon the UPOV Convention" and proposed to the Council that, subject to modification of paragraph 14, it be adopted as a UPOV position paper. Furthermore, the Consultative Committee, having discussed document C(Extr.)/19/3, recommended to the Council that it adopt that document, with the amendments agreed by the Technical Committee (TC) and the Administrative and Legal Committee (CAJ) included in document C(Extr.)/19/3 Add., and amendments proposed to the Spanish version, as document TG/1/3 "General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants." The President noted that all these aforementioned recommendations of the Consultative Committee, to the Council, were adopted by the Council at its nineteenth extraordinary session, held on April 19, 2002. The Consultative Committee, having made certain amendments to documents CC/63/3 and CC/63/3 Add., agreed that the text of the Annex to document CC/63/3 Add. "UPOV Statement at the Sixth Conference of the Parties of the Convention on Biological Diversity, April 7 to 19, 2002, The Hague" might be used as a basis to represent the UPOV position, concerning these matters. He concluded by reporting that the Consultative Committee had also considered a document on developments in the TRIPS Council Concerning the Review of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement").

8. With regard to the sixty-fourth session of the Consultative Committee, held on October 23 2002, the President reported that there had been a preliminary examination of the conformity of the Protection of Plant Varieties and Farmers' Rights Act of India with the 1978 Act of the UPOV Convention. The Consultative Committee had concluded that

clarification concerning the Law of India and its implementing regulations, and a review of any laws pertaining to these clarifications, was required before the Council of UPOV would be able to decide if India could be deemed as to have the legal basis for the protection of new plant varieties in line with the 1978 Act. Pending such clarification, the Consultative Committee had requested the Office of the Union to continue to provide legal and technical assistance to the Government of India in the development of the UPOV system of plant variety protection and to consider those aspects of the Law of India which, although not in direct conflict with the Articles of the 1978 Act, nevertheless might undermine the effectiveness of the plant variety protection system provided by the Law of India. The Consultative Committee had considered the financial situation of the Union and had agreed that the Office of the Union should prepare a document for consideration by the Consultative Committee at its sixty-fifth session. That document would set out options for the level of contributions from members of the Union, ranging from no increase through to an increase of 20%. Those options would be presented with the associated levels of activities. The document would also make proposals for the establishment of a stable budgeting procedure for the future. The Consultative Committee had also considered documents on: Study of the Impact of Plant Breeders' Rights; WIPO-UPOV Symposium on the Co-existence of Patents and Plant Breeders' Rights in the Promotion of Biotechnological Developments; Developments in the Council for TRIPS Concerning the Review of Article 27.3(b) of the TRIPS Agreement; Biodiversity, Plant Genetic Resources and Plant Variety Protection, and had received a presentation on International Developments in Plant Variety Protection by the Office of the Union.

Report by the Secretary-General on the Activities of the Union in 2001; Supplementary Report on Activities During the First Nine Months of 2002

*9. The Council approved the report by the Secretary-General on the activities of the Union in 2001, given in document C/36/2, and noted the report on activities during the first nine months of 2002, given in document C/36/3.

Report by the Secretary-General on the Financial Situation of the Union at December 31, 2001

*10. The Council unanimously approved the report by the Secretary-General on the financial situation of the Union at December 31, 2001, as given in document C/36/4.

Report on the Auditing of the Accounts of the 2000-2001 Biennium

*11. The Council noted the report of the auditor on the accounts of the 2000-2001 biennium, contained in document C/36/4, Annex B, and expressed its gratitude to the Government of Switzerland for its cooperation in this matter.

12. In response to a question from the Delegation of Mexico concerning the recommendation of the auditor in Annex B, paragraph 17, of document C/36/4, Mr. Philippe Favatier, Director, Finance Division, WIPO, reported that the figure used by WIPO for calculating the separation reserve was 1.5% percent of salaries and advised that this would correspond to around 60,000 to 70,000 Swiss francs for UPOV.

*13. The Council noted that the recommendation in Annex B, paragraph 17, of document C/36/4 would be considered by the Consultative Committee at its sixty-fifth session to be held in April 2003.

Progress of the Work of the Administrative and Legal Committee

*14. The Council noted and approved the work of the Administrative and Legal Committee (CAJ), as described in document C/36/9 and in the oral report made by the Chairperson of the CAJ.

15. In her oral report, the Chair of the CAJ, Ms. Nicole Bustin (France), reported on the work of the forty-sixth session of the CAJ, which was held on October 21 and 22, 2002, and which had not been covered by document C/36/9. She reported that the CAJ had concluded its examination of documents relating to the interface between plant breeders' rights and patents. This had given rise to very rich debate which enabled discussion of various hypothetical cases in which the breeders' exemption, being a basic feature of the Convention, could, to a greater or lesser extent, be rendered ineffective. The CAJ looked at hypotheses on the basis of concerns raised within professional circles and, in particular, had looked at this from the strict jurisdiction of UPOV. This review had underscored the fact that the provisions in the 1991 Act of the UPOV Convention, with respect to essentially derived varieties, respected the balance between the necessary reward for plant breeders and access to protected varieties for the purpose of breeding new plant varieties. It had also been noted that a solution to deal with the absence of a breeders' exemption in the patent system, by means of establishing a cross-compulsory license system, would be very difficult. The CAJ also noted the consequences for breeding progress if the breeder's exemption was negated or inhibited through the presence of patented inventions in plant varieties and had drawn the attention of national authorities to the need to consider whether the nature of the research exemption in their patent laws concerning plants might inhibit the breeder's exemption.

16. The CAJ had approved a draft questionnaire which would be sent by the Office of the Union to national authorities and to one intergovernmental organization as part of a study on the administrative, legal and financial issues linked to publication of variety descriptions.

17. The Chair reported that the CAJ had identified certain concerns with regard to the use of materials supplied by plant breeders to distinctness, uniformity and stability (DUS) examination centers and decided to include this matter on its agenda for future work. That item would determine the limits within which UPOV could consider that matter and also the type of document which might be prepared to clarify the situation and to offer reassurance to plant breeders.

18. The CAJ had received a report on the work of the *Ad hoc* Working Group on Variety Denominations and, following that report, had decided to include an item relating to possible improvements of the UPOV-ROM in its future agenda. The CAJ had noted, within the framework of a specific item on the effect of the protection of parent lines on hybrids, that the situation was not absolutely clear in all circumstances in the 1978 Act, but noted that the 1991 Act was clear. Thus, according to the 1991 Act, protection for a parent line would extend to hybrid varieties provided that the protected parent line was used repeatedly for the production of the hybrid variety. It was concluded that it was a matter for the plant breeder to determine whether they wished to rely on the extension of protection from a parent line to the hybrid or to obtain protection for the hybrid itself by making a specific application.

19. The Chair concluded by noting that an agenda item created in response to an issue raised by ornamental plant breeders, relating to the interpretation of the concept of essentially derived varieties, had, due to time constraints, been deferred to the next session.

Progress of the Work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular

20. The UPOV Secretariat made a report concerning document C/36/10. The Council was reminded that, as agreed at its thirty-fifth session held on October 25, 2001, the present document contained the reports of the Technical Working Parties meetings held in year 2001, but not the reports of the meetings in 2002, which, it considered, should first be reported to the Technical Committee. It highlighted the fact that a document for the revised “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties” (document TG/1/3) had been agreed by the TC at its thirty-eighth session, held from April 15 to 17, 2002, and noted that the Council had adopted document TG/1/3 at its nineteenth extraordinary session. The Secretariat further highlighted the adoption of 21 Test Guidelines at its thirty-eighth session.

*21. The Council noted the work of the Technical Committee, the Technical Working Parties and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular, as given in document C/36/10, and approved the programs of work set out in that document.

Calendar of Meetings in 2003

*22. The Council approved the calendar of meetings in 2003 as presented in document C/36/8.

Election of New Chairmen

*23. The Council elected, in each case for a term of three years ending with the thirty-ninth ordinary session of the Council, in 2005:

(a) Mr. Carlos Gómez-Etchebarne (Uruguay), Chairman of the Technical Working Party for Agricultural Crops;

(b) Mr. Uwe Meyer (Germany), Chairman of the Technical Working Party on Automation and Computer Programs;

(c) Mr. Erik Schulte (Germany), Chairman of the Technical Working Party for Fruit Crops;

(d) Mr. Chris Barnaby (New Zealand), Chairman of the Technical Working Party for Ornamental Plants and Forest Trees;

(e) Mr. Kees van Ettehoven (Netherlands), Chairman of the Technical Working Party for Vegetables;

(f) Mr. Gerhard Deneken (Denmark), Chairman of the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular.

Situation in the Legislative, Administrative and Technical Fields

24. The Council was invited to consider documents C/36/5, C/36/6, C/36/7 and C/36/11.

25. The Delegation of Canada reported on the 10-Year Review of Canada's Plant Breeders Rights Act, which had been submitted to the Canadian Parliament. It noted that the main overall findings of the report were that there had been an increase in investment in plant breeding and an improvement in access to foreign varieties in both agricultural and horticultural sectors, since the enactment of Canada's Plant Breeders Rights Act. Plant breeders rights had been found to be one factor which had produced a positive impact on the availability of improved varieties. It reported that one of the concerns of the users of plant breeders' rights had been that amendments to bring Canada's Plant Breeders Rights Act in line with the 1991 Act of the UPOV Convention had not been enacted.

*26. The Council noted that the Czech Republic had deposited, on October 24, 2002, its instrument of accession to the 1991 Act of the UPOV Convention.

27. The Delegation of Austria reported that it had submitted proposals to its Parliament for the accession to the 1991 Act of the UPOV Convention in Summer of 2002. However, it noted that consideration of this proposal had been deferred because of the impending parliamentary elections. It also reported that, as a part of a reorganization, the Plant Variety Protection Office had been incorporated into an agency concerned with food standards.

28. The Delegation of Hungary reported that it had adopted a law in line with the 1991 Act of the UPOV Convention.

29. The Delegation of Chile reported that it was developing legislation in line with the 1991 Act of the UPOV Convention and anticipated that this process would take around two to three years to complete.

30. The Delegation of China added that, in relation to the plant variety protection statistics in the area of forest trees, China had separate offices for agriculture and forest trees. By the end of 2001, the State Forestry Administration of China had received 172 domestic applications and granted protection to 43 varieties. Furthermore, it had published two lists, covering 24 species, for which protection was available.

31. The Delegation of the Republic of Korea noted that it had acceded to the UPOV Convention on January 7, 2002, and reported that, by the end of September 2002, the total number of applications for plant variety protection had been 1,136, and the number of registrations had been 331. The number of variety applications had increased each year. It further reported that, in 2002, 317 variety applications had been made by foreign breeders, these being from Germany, Italy, Japan, Netherlands, New Zealand and the United States of America. Most of these varieties entered by foreign breeders had been for chrysanthemum, dendrobium, hot pepper, impatiens, petunia, poinsettia and rose.

32. With regard to document C/36/5, the Delegation of Croatia advised that it had ratified a bilateral agreement with Hungary, and Hungary was performing DUS testing for alfalfa,

soybean, sunflower and tobacco on behalf of Croatia. Croatia was also developing cooperation with France, which was performing DUS testing for oil pumpkin for Croatia for the time being. In addition, Croatia was performing DUS testing of maize, winter barley and winter wheat on behalf of Slovenia.

33. The Delegation of Italy provided information on the administrative structure in its country.

34. The Delegation of Belgium noted that it would provide the Office of the Union with further information for document C/36/5 concerning, in particular, cooperation for hybrid begonias and cereals.

35. The representative of the European Community reported that his Organization was developing improved guidelines concerning variety denominations and was also developing a project on the introduction of a centralized database of variety denominations to improve harmonization within the European Union. He emphasized that it was intended to coordinate the development of that database with the Office of the Union. The representative reported that the Administrative Council of the Community Plant Variety Office (CPVO) had adopted 26 technical protocols and was developing a further 43, all of which were based on the UPOV Test Guidelines. He noted that these technical protocols were also applied with respect to variety listing. He also reported that the CPVO granted, in September 2002, the 10,000th plant variety right since its coming into existence in 1996. He noted that 68% of the applications received in the CPVO related to ornamentals, 18% to agricultural crops and 8% to vegetables, with fruit and miscellaneous being responsible for the remainder. He stressed that there were no political or financial reasons why the accession of the European Community to the UPOV Convention was not yet effected. There were legal reasons that formed an impediment for accession in the very short term, but he hoped that those legal impediments would be solved relatively quickly and that next year he would speak as a representative of a member of the Union rather than in an observer status. He remarked that, notwithstanding its current status, the CPVO cooperated intensively with UPOV in its different Committees, and tried to play a constructive role. It had very good contacts with the Secretariat and with the Vice Secretary-General, in particular, and hoped that this close cooperation would continue in the future.

36. The representative of the Food and Agriculture Organization of the United Nations (FAO) presented an oral report of its activities, in advance of a written report to be submitted to the Office of the Union.

37. The representative of the Organization for Economic Co-operation and Development (OECD) presented an oral report on developments concerning the OECD seed schemes, in advance of a written report to be submitted to the Office of the Union.

*38. The Council noted documents C/36/5, C/36/6, C/36/7 and C/36/11, and the oral reports made by Austria, Belgium, Canada, Chile, China, Croatia, Czech Republic, Hungary, Italy, Republic of Korea, FAO, OECD and CPVO.

39. The Council noted that written reports by representatives of States and intergovernmental organizations on the legislative, administrative and technical fields, handed in at the session of the Council, or sent to the Office of the Union, would be included in an addendum to document C/36/11.

40. At the close of the session, the Council adopted document C/36/12 as a Record of the Decisions taken.

Retirement

41. The President noted that Mr. Hans Jørgen Andersen (Denmark) would be retiring before the next session of the Council and thanked him, on behalf of the Council, for his service to the Union.

42. The Council unanimously adopted this report at its thirty-seventh ordinary session, on October 23, 2003.

[Annex I follows]

ANNEXE I / ANNEX I / ANLAGE I / ANEXO I

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(dans l'ordre alphabétique des noms français des États/in the alphabetical order of the names in French of the States/in alphabetischer Reihenfolge der französischen Namen der Staaten/
por orden alfabético de los nombres en francés de los Estados)

I. ÉTATS MEMBRES / MEMBER STATES / VERBANDSSTAATEN /
ESTADOS MIEMBROS

ALLEMAGNE / GERMANY / DEUTSCHLAND / ALEMANIA

Udo VON KRÖCHER, Präsident, Bundessortenamt, Postfach 61 04 40, 30627 Hannover
(tel.: +49 511 9566603 fax: +49 511 956 6904 e-mail:
udo.vonkroecher@bundessortenamt.de)

Michael KÖLLER, Leiter Rechtsreferat, Regierungsdirektor, Bundessortenamt,
Osterfelddamm 80, 30627 Hannover (tel.: +49 511 95 66624 fax: +49 511 56 3362 / 95665
e-mail: michael.koeller@bundessortenamt.de)

ARGENTINE / ARGENTINA / ARGENTINIEN

Marta GABRIELONI (Mme), Conseiller, Mission permanente, 10, route de l'Aéroport,
1215 Genève, Suisse 15 (tel.: +41 22 929 8600 fax: +41 22 929 5995
e-mail: mission.argentina@ties.itu.int)

AUSTRALIE / AUSTRALIA / AUSTRALIEN

Doug WATERHOUSE, Registrar, Plant Breeders' Rights Office, Department of Primary
Industries and Energy, Commonwealth Department of Agriculture, Fisheries and Forestry,
P.O. Box 858, Canberra, ACT 2601 (tel.: +61 2 6272 3888 fax: +61 2 6272 3650
e-mail: doug.waterhouse@affa.gov.au)

AUTRICHE / AUSTRIA / ÖSTERREICH

Heinz-Peter ZACH, Referatsleiter für Saatgut und Sorten, Bundesministerium für Land- und
Forstwirtschaft, Umwelt und Wasserwirtschaft, Stubenring 1, 1010 Wien
(tel.: +43 1 711 002795 fax: +43 1 513 8722 e-mail: Heinz-Peter.Zach@bmlf.gv.at)

Birgit KUSCHER (Frau), Referentin Sortenschutzrecht, Bundesministerium für Land- und
Forstwirtschaft, Umwelt und Wasserwirtschaft, Stubenring 1, 1010 Wien
(tel.: +43 1 71100 6668 fax: +43 1 71100 6503 e-mail: birgit.kuscher@bmlfuw.gv.at)

BELGIQUE / BELGIUM / BELGIEN / BÉLGICA

Camille VANSLEMBROUCK (Mme), Ingénieur, Office de la propriété intellectuelle, Ministère des affaires économiques, 16, blvd Albert II, 1000 Bruxelles (tel.: +32 2 2064818 fax: +32 2 2065750 e-mail: camille.vanslembrouck@mineco.fgov.be)

BOLIVIE / BOLIVIA / BOLIVIEN

Roberto GALLO ARÉBALO, Responsable Técnico, Programa Nacional de Semillas, Ministerio de Agricultura, Ganadería y Desarrollo Rural, Avda. 6 de Agosto 2006, Ed. V Centenario, Piso 1, Casilla 4793, La Paz (tel.: +591 22 441608 fax: +591 22 441153 e-mail: area_tecnica@acelerate.com)

Jorge ROSALES KING, Director, Oficina Regional de Semillas, Ministerio de Agricultura, Ganadería y Desarrollo Rural, Casilla postal 2736, Santa Cruz de la Sierra (tel.: +591 33 523272 fax: +591 33 523056 e-mail: jrosales@unete.com)

Carmelo JUSTINIANO, Jefe, División de Registros, Oficina Regional de Semillas, Ministerio de Agricultura, Ganadería y Desarrollo Rural, Av. Santos Dumont Calle Cap., Casilla postal 2736, Santa Cruz de la Sierra (tel.: +591 33 523272 fax: +591 33 523056 e-mail: cjustiniano@unete.com)

BRÉSIL / BRAZIL / BRASILIEN / BRASIL

Ariete DUARTE FOLLE (Sra.), Chefe, Serviço Nacional de Proteção de Cultivares (SNPC), Secretaria de Desenvolvimento Rural, Ministério da Agricultura e do Abastecimento, Esplanada dos Ministérios, Bloco D, Anexo A, Térreo, Salas 1-12, Brasília, D.F. 70043-900 (tel.: +55 61 218 2163 fax: +55 61 224 2842 e-mail: ariete@agricultura.gov.br)

Alvaro A. NUNES VIANA, Coordenador, Serviço Nacional de Proteção de Cultivares (SNPC), Secretaria de Desenvolvimento Rural, Ministério da Agricultura e do Abastecimento, Esplanada dos Ministerios, Bloco D, Anexo A, Térreo, Salas 1-12, Brasília, D.F. 70043-900 (tel.: +55 61 224 2842 fax: +55 61 224 2842 e-mail: aviana@agricultura.gov.br)

CANADA / KANADA / CANADÁ

Valerie SISSON (Ms.), Commissioner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), Camelot Court, 59, Camelot Drive, Nepean, Ontario K1A OY9 (tel.: +1 613 225 2342 fax: +1 613 228 6629 e-mail: vsisson@inspection.gc.ca)

CHILI / CHILE

Enzo CERDA, Jefe de Registro de Variedades Protegidas, Departamento de Semillas, Servicio Agrícola y Ganadero, Ministerio de Agricultura, Avda. Bulnes 140, piso 2, Casilla 1167-21 Santiago (tel.: +56 2 696 2996 fax: +56 2 697 2179 e-mail: enzo.cerda@sag.gob.cl)

CHINE / CHINA

QIAO Dexi, Director General, Department for International Cooperation, State Intellectual Property Office, P.O. Box 8020, 6, Xitucheng Road, Haidian District, Beijing 100088 (tel.: +86 10 6209 3268 fax: +86 10 6201 9615 e-mail: liyanmei@sipo.gov.cn)

LÜ Bo, Director, DUS Test Division, Development Center for Science and Technology, Ministry of Agriculture, Building 18, Mai Zi Dian Street, Beijing 100026 (tel.: +86 10 6592 5213 fax: +86 10 6592 5213 e-mail: lvbo@agri.gov.cn)

LI Yanmei (Mrs.), Project Administrator, Department for International Cooperation, State Intellectual Property Office (SIPO), P.O. Box 8020, 6, Xitucheng Road, Haidian District, Beijing 100088 (tel.: +86 10 6209 3288 fax: +86 10 6201 9615 e-mail: liyanmei@sipo.gov.cn)

COLOMBIE / COLOMBIA / KOLUMBIEN

Ana Luisa DÍAZ JIMÉNEZ (Sra.), Coordinador Nacional, Derechos de Obtentor de Variedades y Producción de Semillas, Instituto Colombiano Agropecuario (ICA), Calle 37, # 8-43, Piso 4, Bogotá D.F. (tel.: +57 1 232 8643 fax: +57 1 232 4697 ext. 371 e-mail: semillas@ica.gov.co)

Luis G. GUZMAN VALENCIA, Ministro Consejero, Misión Permanente, 17-19, chemin du Champ-d'Anier, 1209 Ginebra, Suiza

CROATIE / CROATIA / KROATIEN / CROACIA

Krunoslava ČERMAK-HORBEC (Ms.), Senior Counsellor, Ministry of Agriculture and Forestry, Ulica grada Vukovara 78, P.P. 1034, 10000 Zagreb (tel.: +385 1 610 6632 fax: +385 1 610 9202)

Ružica ORE (Mrs.), Head of Plant Variety Protection and Registration, Institute for Seeds and Seedlings, Vinkovačka cesta 63c, 31000 Osijek (tel.: +385 31 275206 fax: +385 31 275193 e-mail: r.ore@zsr.hr)

DANEMARK / DENMARK / DÄNEMARK / DINAMARCA

Hans Jørgen ANDERSEN, Head of Division, The Danish Plant Directorate, Ministry of Food, Agriculture and Fisheries, Skovbrynet 20, 2800 Lyngby (tel.: +45 45 263 600
fax: +45 45 263 610 e-mail: hja@pdir.dk)

ESPAGNE / SPAIN / SPANIEN / ESPAÑA

Martín FERNÁNDEZ DE GOROSTIZA YSBERT, Director, Oficina Española de Variedades Vegetales (OEVV), Ministerio de Agricultura, Pesca y Alimentación (MAPA), Avda. de Ciudad de Barcelona No. 6, 28007 Madrid
(tel.: +34 91 3476593 fax: +34 91 347 6703 e-mail: m.gorostiza@mapya.es)

Luis SALAICES, Jefe de Área del Registro de Variedades, Oficina Española de Variedades Vegetales (OEVV), Ministerio de Agricultura, Pesca y Alimentación (MAPA), Avda. de Ciudad de Barcelona No. 6, 28007 Madrid (tel.: +34 91 3476712 fax: +34 91 3476703
e-mail: lsalaice@mapya.es)

ESTONIE / ESTONIA / ESTLAND

Pille ARDEL (Mrs.), Head of Department, Plant Production Inspectorate, Variety Control Department, 71024 Viljandi (tel.: +372 4334 650 fax: +372 4334 650
e-mail: pille.ardel@plant.agri.ee)

ÉTATS-UNIS D'AMÉRIQUE / UNITED STATES OF AMERICA / VEREINIGTE
STAATEN VON AMERIKA / ESTADOS UNIDOS DE AMÉRICA

Karen M. HAUDA (Ms.), Patent Attorney, Office of Legislative and International Affairs, United States Patent and Trademark Office (USPTO), Department of Commerce, Box 4, Washington, D.C. 20231, D.C. (tel.: +1 703 305 9300 fax: +1 703 305 8885
e-mail: karen.hauda@uspto.gov)

Paul M. ZANKOWSKI, Commissioner, Plant Variety Protection Office, Agricultural Marketing Service, United States Department of Agriculture (USDA), Beltsville, MD 20705-2351 (tel.: +1 301 504 5518 fax: +1 301 504 5291 e-mail:
paul.zankowski@usda.gov)

FÉDÉRATION DE RUSSIE / RUSSIAN FEDERATION / RUSSISCHE FÖDERATION /
FEDERACIÓN DE RUSIA

Yuri A. ROGOVSKIY, Deputy Chairman, Chief of Methods Department, State Commission of the Russian Federation for Selection Achievements Test and Protection, Orlikov per., 1/11, Moscow 107139 (tel.: +70 095 208 6775 fax: +70 095 207 8626
e-mail: statecommission@mtu-net.ru)

Madina OUMAROVA (Mrs.), Expert of Methods Department, State Commission of the Russian Federation for Selection Achievements Test and Protection, Orlicov per., 1/11, Moscow 107139 (tel.: +70 095 208 6775 fax: +70 095 207 8626
e-mail: desel@agro.aris.ru)

FINLANDE / FINLAND / FINNLAND / FINLANDIA

Arto VUORI, Director, Plant Variety Rights Office, Ministry of Agriculture and Forestry, Hallituskatu 3 A, P.O. Box 30, 00023 Government (tel.: 9 160 3316 fax: 9 160 52203
e-mail: arto.vuori@mmm.fi)

FRANCE / FRANCE / FRANKREICH / FRANCIA

Bernard MATHON, Chef, Bureau des semences, Ministère de l'agriculture et de la pêche, 3, rue Barbet de Jouy, 75349 Paris 07 SP (tel.: +33 1 4955 4579 fax: +33 1 4955 5075
e-mail: bernard.mathon@agriculture.gouv.fr)

Nicole BUSTIN (Mlle), Secrétaire général, Comité de la protection des obtentions végétales (CPOV), Ministère de l'agriculture et de la pêche, 11, rue Jean Nicot, 75007 Paris (tel.: +33 1 4275 9314 fax: +33 1 4275 9425 e-mail: nicole.bustin@geves.fr)

HONGRIE / HUNGARY / UNGARN / HUNGRÍA

Károly NESZMÉLYI, General Director, National Institute for Agricultural Quality Control (NIAQC), Keleti Karoly u. 24, 1024 Budapest (tel.: +36 1 2124711
fax: +36 1 4380698 e-mail: neszmelyik@ommi.hu)

Gusztáv VÉKÁS, President, Hungarian Intellectual Property Protection Council, Hungarian Patent Office, Garibaldi u.2, P.O. Box 552, 1054 Budapest (tel.: +36 1 331 2164
fax: +36 1 474 5975 e-mail: vekas@hpo.hu)

Mária PETZ-STIFTER (Mrs.), Patent Examiner, Hungarian Patent Office, Garibaldi u.2, P.O. Box 552, 1054 Budapest (tel.: +36 1 474 5907 fax: +36 1 479 5899
e-mail: petzne@hpo.hu)

IRLANDE / IRELAND / IRLAND / IRLANDA

John V. CARVILL, Controller of Plant Breeders' Rights, Plant Variety Rights Office,
Department of Agriculture & Food, Backweston, Leixlip, Co. Kildare (tel.: +353 1 630 2902
fax: +353 1 628 0634 e-mail: john.carvill@agriculture.gov.ie)

ISRAËL / ISRAEL

Shalom BERLAND, Legal Advisor of Ministry of Agriculture and Plant Breeders' Registrar,
Plant Breeders' Rights Council, Volcani Centre, P.O. Box 30, Bet-Dagan
(tel.: +972 3 948 5566 fax: +972 3 948 5836)

ITALIE / ITALY / ITALIEN / ITALIA

Bernardo PALESTINI, Dirigente, Direzione Generale della Qualità dei Prodotti
Agroalimentari e dei Servizi, Ministero delle Politiche Agricole e Forestali (MPAF),
Via XX Settembre 20, 00187 Roma (tel.: +39 06 46656069 fax: +39 06 483998)

JAPON / JAPAN / JAPÓN

Toyoharu FUKUDA, Director, Seeds and Seedlings Division, Ministry of Agriculture,
Forestry and Fisheries (MAFF), 1-2-1 Kasumigaseki, Chiyoda-ku, 100-8950 Tokyo
(tel.: +81 3 3591 0524 fax: +81 3 3502 6572 e-mail: toyoharu_fukuda@nm.maff.go.jp)

Jun KOIDE, Deputy Director, International Affairs, Seeds and Seedlings Division, Ministry
of Agriculture, Forestry and Fisheries (MAFF), 1-2-1 Kasumigaseki, Chiyoda-ku,
100-8950 Tokyo (tel.: +81 3 3591 0524 fax: +81 3 3502 6572
e-mail: jun_koide@nm.maff.go.jp)

Masayoshi MIZUNO, First Secretary, Permanent Mission, 3, chemin des Fins,
1211 Grand-Saconnex, Switzerland (tel.: +41 22 717 3111 fax: +41 22 788 3811 e-mail:
mizuno.masayoshi@bluewin.ch)

KENYA / KENIA

Chagema John KEDERA, Managing Director, Kenya Plant Health Inspectorate Service
(KEPHIS), Waiyaki Way, P.O. Box 49592, Nairobi
(tel.: +254 2 4440087 fax: +254 2 4448940 e-mail: kephis@nbnet.co.ke)

Evans O. SIKINYI, Registrar, Plant Breeders' Rights Office, Kenya Plant Health Inspectorate
Service (KEPHIS), Waiyaki Way, P.O. Box 49592, Nairobi (tel.: +254 2 4440087
fax: +254 2 4448940 e-mail: kephis@nbnet.co.ke)

MEXIQUE / MEXICO / MEXIKO / MÉXICO

Enriqueta MOLINA MACÍAS (Sra.), Encargada del Despacho de la Dirección, Servicio Nacional de Inspección y Certificación de Semillas (SNICS), Secretaría de Agricultura, Ganadería y Desarrollo Rural, Av. Presidente Juárez Núm. 13, Col. El Cortijo, 54000 Tlalnepantla, Estado de México (tel.: +52 55 5384 2213 fax: +52 55 5390 1441 e-mail: enriqueta.molina@webtelmex.net.mx)

Karla T. ORNELAS LOERA (Sra.), Tercer Secretaria, Misión Permanente, 16, avenue de Budé, 1202 Ginebra, Suiza (tel.: +41 22 748 0707 fax: +41 22 748 0708 e-mail: kornelas@sre.gob.mx)

NORVÈGE / NORWAY / NORWEGEN / NORUEGA

Kåre SELVIK, Director General, Head of Plant Variety Board, Royal Ministry of Agriculture, Akersgt. 059, P.O. Box 8007 Dep., 0030 Oslo (tel.: +47 2 224 9253 fax: +47 2 224 2753 e-mail: kare.selvik@ld.dep.no)

Haakon SØNJU, Registrar, The Plant Variety Board, P.O. Box 3, 1431 Ås (tel.: +47 64 944400 fax: +47 64 944410 e-mail: haakon.sonju@slt.dep.no)

Veslemøy GUNDERSEN (Ms.), Legal Advisor, Royal Ministry of Agriculture, Akersgt. 059, P.O. Box 8007 Dep., 0030 Oslo (tel.: 47 22 249277 e-mail: veslemoy-susanne.gundersen@ld.dep.no);

PAYS-BAS / NETHERLANDS / NIEDERLANDE / PAÍSES BAJOS

Chris M.M. VAN WINDEN, Manager Propagating Material, Ministry of Agriculture, Nature Management and Fisheries, Postbus 20401, 2500 EK The Hague (tel.: +31 70 3784281 fax: +31 70 3786156 e-mail: c.m.m.van.winden@dl.agro.nl)

Gerard VAN DER LELY, Voorzitter, Board for Plant Breeders' Rights, Postbus 104, 6700 AC Wageningen (tel.: +31 317 478090 fax: +31 317 425867)

Krieno Adriaan FIKKERT, Secretary, Board for Plant Breeders' Rights, Postbus 104, 6700 AC Wageningen (tel.: +31 317 478090 fax: +31 317 425867 e-mail: k.a.fikkert@rkr.agro.nl)

POLOGNE / POLAND / POLEN / POLONIA

Edward S. GACEK, Director General, Research Centre for Cultivar Testing (COBORU),
63-022 Slupia Wielka (tel.: +48 61 2852341 fax: +48 61 2853558
e-mail: e.gacek_coboru@bptnet.pl)

Julia BORYS (Mrs.), Head, DUS Testing Department, Research Centre for Cultivar Testing
(COBORU), 63-022 Slupia Wielka (tel.: +48 61 285 2341 fax: +48 61 285 3558
e-mail: coboru@bptnet.pl)

PORTUGAL

Carlos PEREIRA GODINHO, Chefe, Centro Nacional de Registo de Variedades Protegidas,
Direcção Geral de Protecção das Culturas (DGPC), Ministerio da Agricultura, do
Desenvolvimento Rural e das Pescas, Edificio II, Tapada da Ajuda, 1349-018 Lisboa
(tel.: +351 21 3613216 fax: +351 21 3613222 e-mail: cgodinho@dgpc.min-agricultura.pt)

RÉPUBLIQUE DE CORÉE / REPUBLIC OF KOREA / REPUBLIK KOREA /
REPÚBLICA DE COREA

LEE Byung Muk, Director, Plant Variety Protection Division, National Seed Management
Office, 433 Anyang 6-dong, Anyang-si, 430-016
(tel.: +82 31 467 0150 fax: +82 31 467 0161 e-mail: byungm@seed.go.kr)

CHOI Keun Jin, Examination Officer, Plant Variety Protection Division, National Seed
Management Office, 433 Anyang 6-dong, Anyang-si, 430-016
(tel.: +82 31 4670190 fax: +82 31 4670161 e-mail: kjchoi@seed.go.kr)

RÉPUBLIQUE DE MOLDOVA / REPUBLIC OF MOLDOVA / REPUBLIK MOLDAU /
REPÚBLICA DE MOLDOVA

Dumitru BRINZILA, President, State Commission for Crop Variety Testing and Registration,
Bd. Stefan cel Mare 162, 2004 Chisinau (tel. +373 2 246222 fax: +373 2 246921
e-mail: brinzila@csip.moldova.md)

RÉPUBLIQUE TCHÈQUE / CZECH REPUBLIC / TSCHECHISCHE REPUBLIK /
REPÚBLICA CHECA

Ivan BRANŽOVSKY, Head of Section, Department of Agricultural Production, Ministry of Agriculture, Tesnov 17, 11705 Praha 1 (tel.: +420 2 2181 2693 fax: +420 2 2181 2989 e-mail: branzovsky@mze.cz)

Jirí SOUCEK, Head of Department, Department of Plant Variety Rights and DUS Tests, Central Institute for Supervising and Testing in Agriculture (ÚKZÚZ), Za opravnou 4, 150 06 Praha 5 – Motol (tel.: +420 2 57211755 fax: +420 2 57211752 e-mail: jiri.soucek@ukzuz.cz)

Daniel JUREČKA, Head, Plant Variety Testing Department, Central Institute for Supervising and Testing in Agriculture, Hroznová, 656 06 Brno (tel. +420 5 43217646 fax: +420 5 43212440 e-mail: daniel.jurecka@ukzuz.cz)

Ludmila ŠTĚRBOVÁ (Mrs.), Second Secretary, Permanent Mission, 17, chemin Louis Dunant, 1211 Geneva, Switzerland

ROUMANIE / ROMANIA / RUMÄNIEN / RUMANIA

Adriana PARASCHIV (Mrs.), Head, Light Industry and Agricultural Division, State Office for Inventions and Trademarks (OSIM), 5, Jon Ghica, Sector 3, 70018 Bucharest (tel.: +40 1 3155698 fax: +40 1 3123819 e-mail: adriana.paraschiv@osim.ro)

Mihaela-Rodica CIORA (Mrs.), Expert, State Institute for Variety Testing and Registration, Ministry of Agriculture, Food and Forestry, 61, Marasti, Sector 1, Bucharest (tel.: +402 1223 1425 fax: +402 1222 5605 e-mail: mihaela_ciora@gmx.net)

Ruxandra URUCU (Ms.), Legal Adviser, Legal and International Affairs Division, State Office for Inventions and Trademarks (OSIM), 5, Jon Ghica, Sector 3, P.O. Box 52, 70018 Bucharest (tel.: +40 1 313 2492 fax: +40 1 312 3819 e-mail: ruxandra.urucu@osim.ro)

ROYAUME-UNI / UNITED KINGDOM / VEREINIGTES KÖNIGREICH /
REINO UNIDO

Heather HAMILTON (Mrs.), Controller, Head of Seeds Division, Plant Variety Rights Office and Seeds Division, Department for Environment, Food and Rural Affairs (DEFRA), White House Lane, Huntingdon Road, Cambridge CB3 0LF (tel.: +44 1223 342380 fax: +44 1223 342386 e-mail: heather.hamilton@ defra.gsi.gov.uk)

Michael MILLER, Policy Administrator, Plant Variety Rights Office and Seeds Division, Department for Environment, Food and Rural Affairs (DEFRA), White House Lane, Huntingdon Road, Cambridge CB3 0LF (tel.: +44 1223 342 375 fax: +44 1223 342 386 e-mail: michael.miller@defra.gsi.gov.uk)

SLOVAQUIE / SLOVAKIA / SLOWAKEI / ESLOVAQUIA

Milan MÁJEK, First Secretary, Permanent Mission, 9, chemin de l' Ancienne Route,
1218 Grand-Saconnex, Switzerland (tel.: +41 22 747 7411 fax: +41 22 747 7434
e-mail: milan.majek@ties.itu.int)

SLOVÉNIE / SLOVENIA / SLOWENIEN / ESLOVENIA

Joze ILERSIC, Counsellor, Administration for Plant Protection and Seeds, Ministry of
Agriculture, Forestry and Food (MAFF), Dunajska 58, 1000 Ljubljana (tel.: +386 1 4363344
fax: +386 1 4363312 e-mail: joze.ilersic@gov.si)

SUÈDE / SWEDEN / SCHWEDEN / SUECIA

Karl Olov ÖSTER, Director-General, National Board of Fisheries; President, National Plant
Variety Board, Ekelundsgatan 1, P.O. Box 423, 401 26 Göteborg (tel.: +46 31 7430301
fax: +46 31 7430444 e-mail: karl.olv.oster@fiskeriverket.se)

Eva BERNDTSSON (Ms.), Legal Advisor, Ministry of Agriculture, Food and Fisheries,
10333 Stockholm (tel.: +46 8 4051107 fax: +46 8 206496
e-mail: eva.berndtsson@agriculture.ministry.se)

SUISSE / SWITZERLAND / SCHWEIZ / SUIZA

Pierre Alex MIAUTON, Station fédérale de recherches en production végétale de Changins,
Case postale 254, 1260 Nyon 1 (tel.: +41 22 3634668 fax: +41 22 3615469
e-mail: pierre.miauton@rac.admin.ch)

Manuela BRAND (Frau), Koordinatorin, Büro für Sortenschutz, Bundesamt für
Landwirtschaft, Mattenhofstrasse 5, 3003 Bern (tel.: +41 31 3222524
e-mail: manuela.brand@blw.admin.ch)

UKRAINE / UKRAINE / UCRANIA

Valentyna ZAVALEVSKA (Mrs.), First Deputy Chairman, State Service on Right Protection for Plant Varieties, 15, Henerala Rodimtseva vul., Kyiv 03401 (tel.: +380 44 257 9933 fax: +380 44 257 9934 e-mail: vartest@iptelecom.net.ua)

Oksana ZHMURKO (Mrs.), Deputy Head, International Cooperation Department, State Service on Right Protection for Plant Varieties, 15, Henerala Rodimtseva vul., 03041 Kyiv (tel.: +380 44 257 9938 fax: +380 44 257 9934 e-mail: vartest@iptelecom.net.ua)

Mykola BOYKO, Leading Expert, State Service on Right Protection for Plant Varieties, 4, boulevard Lepse, 03067 Kyiv (tel.: +380 44 4907575 fax: +380 44 4904501 e-mail: nikolay.boyko@monsanto.com.ua)

Roman SHMIDT, Deputy State Secretary, Ministry of Agrarian Policy, 24, Khreschatyk str., 0100 Kyiv (tel.: +380 44 2287942 fax: +380 44 2288285)

II. ÉTATS OBSERVATEURS / OBSERVER STATES /
BEOBACHTERSTAATEN / ESTADOS OBSERVADORES

ALGÉRIE / ALGERIA / ALGERIEN / ARGELIA

Abdelkarim OULD RAMOUL, Sous-directeur des homologations, Ministère de l'agriculture et du développement rural (MADR), 12, boulevard Amirouche, Alger (tel.: +213 2171 1712 fax: +213 2142 9349 e-mail: o.ramoul.a@caramail.com)

Amina-Amal BENCHEHIDA, Chef, Responsable, Bureau des homologations des variétés au niveau de la sous-direction des homologations, Ministère de l'agriculture et du développement rural (MADR), 12, boulevard Amirouche, Alger (tel.: 213 21749513)

BÉLARUS / BELARUS / BELARÚS

Alexander M. STAROVOYTOV, Chairman, State Committee for Testing and Protection, 90, Kasintza Str., Minsk 220108 (tel.: +375 172 777051 fax: +375 172 783530)

Irina EGOROVA (Mrs.), First Secretary, Permanent Mission, 15, avenue de la Paix, 1211 Geneva, Switzerland (tel.: +41 22 7482450 fax: +41 22 7482451)

CUBA / KUBA

Lázara SORAVILLA HERNÁNDEZ (Sra.), Jefa, Registro de Variedades Comerciales y Protegidas, Ayuntamiento No. 231 entre Lombillo y San Pedro, Plaza de la Revolución, La Habana (fax: +53 7 8705277 e-mail: semilla@sanidadvegetal.cu)

ÉGYPTE / EGYPT / ÄGYPTEN / EGIPTO

Gamal EISSA ATTYA, Director, Breeders' Rights Department, Central Administration for Seed Testing & Certification (CASC), 8 Gamma Street, P.O. Box 147, Giza, 12211 Cairo (tel.: +20 2 5720839 fax: +20 2 5725998 e-mail: seedcert@brainy1.ie-eg.com)

GRÈCE / GREECE / GRIECHENLAND / GRECIA

Evangelos ZAGILIS, Head, Section of Vegetable and Ornamental Plant Propagating Material, Ministry of Agriculture, 2 Acharnon str., 10176 Athens (tel.: +30 1 2124102 fax: +30 1 2124137 e-mail: ax2u057@minagric.gr)

PHILIPPINES / PHILIPPINEN / FILIPINAS

Lazaro LUPIÑO, Attaché, Permanent Mission, 19, chemin Louis Dunant, 1211 Geneva, Switzerland

THAÏLANDE / THAILAND / TAILANDIA

Pisan LUETONGCHARG, Minister Counsellor, Permanent Mission, ICC-Bâtiment F-G, 20, route de Pré-Bois, C.P. 1848, 1215 Geneva 15, Switzerland (tel.: +41 22 9295200 fax: +41 22 7910166 e-mail: pisan@thaiwto.com)

TUNISIE / TUNISIA / TUNESIEN / TÚNEZ

Mounir BEN REJIBA, Conseiller, Mission permanente, 58, rue de Moillebeau, 1211 Genève, Suisse

TURQUIE / TURKEY / TÜRKEI / TURQUÍA

Kamil YILMAZ, Director, Variety Registration and Seed Certification Centre, Ministry of Agriculture and Rural Affairs, P.O. Box 107, Yenimahalle - Ankara 06172 (tel.: +90 312 315 8959 fax: +90 312 315 0901 e-mail: kamil_yilmaz@ankara.tagem.gov.tr)

YUGOSLAVIE / YUGOSLAVIA / JUGOSLAWIEN / YUGOSLAVIA

Ivana DULIC MARKOVIC (Mrs.), Director, Plant Variety Protection and Registration Department, Federal Institute for Plant and Animal Genetic Resources, Omladinskih brigada 1, 11070 Belgrade (tel.: +381 11 699 920 fax: +381 11 3117591 e-mail: fed.pagri@www.yu)

III. ORGANISATIONS / ORGANIZATIONS /
ORGANISATIONEN / ORGANIZACIONES

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET
L'AGRICULTURE (FAO) / FOOD AND AGRICULTURE ORGANIZATION OF
THE UNITED NATIONS (FAO) / ERNÄHRUNGS- UND LANDWIRTSCHAFTS-
ORGANISATION DER VEREINTEN NATIONEN (FAO) / ORGANIZACIÓN DE LAS
NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACIÓN (FAO)

Nuria URQUÍA FERNÁNDEZ (Ms.), Networking Officer (Plant Genetic Resources), Seed and Plant Genetic Resources Service, Plant Production and Protection Division, Agricultural Department, Viale delle Terme di Caracalla s/n, 00100 Rome (tel.: +39 06 57053751 fax: +39 06 57053152 e-mail: nuria.urquia@fao.org)

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT
ÉCONOMIQUES (OCDE) / ORGANISATION FOR ECONOMIC CO-OPERATION
AND DEVELOPMENT (OECD) / ORGANISATION FÜR WIRTSCHAFTLICHE
ZUSAMMENARBEIT UND ENTWICKLUNG (OECD) / ORGANIZACIÓN DE
COOPERACIÓN Y DESARROLLO ECONÓMICOS (OCDE)

Jean-Marie DEBOIS, Administrateur principal, Codes et systèmes agricoles, Division des échanges et marchés agricoles, Direction de l'alimentation, de l'agriculture et des pêcheries, 75775 Paris Cedex 16 (tel.: +33 1 45249548 fax: +33 1 44306117 e-mail: jean-marie.debois@oecd.org)

COMMUNAUTÉ EUROPÉENNE / EUROPEAN COMMUNITY / EUROPÄISCHE
GEMEINSCHAFT / COMUNIDAD EUROPEA

Bart KIEWIET, President, Community Plant Variety Office (CPVO), 3, boulevard Maréchal Foch, B.P. 2141, 49021 Angers Cedex 02, France (tel.: +33 2 4125 6410 fax: +33 2 4125 6410 e-mail: kiewiet@cpvo.eu.int)

José M. ELENA ROSSELLÓ, Vice-President, Community Plant Variety Office (CPVO), 3, boulevard Maréchal Foch, B.P. 2141, 49021 Angers Cedex 02, France (tel.: +33 2 4125 6414 fax: +33 2 4125 6410 e-mail: elena@cpvo.eu.int)

ASSOCIATION INTERNATIONALE D'ESSAIS DE SEMENCES (ISTA) /
INTERNATIONAL SEED TESTING ASSOCIATION (ISTA) /
INTERNATIONALE VEREINIGUNG FÜR SAATGUTPRÜFUNG (ISTA) /
ASOCIACIÓN INTERNACIONAL PARA EL ENSAYO DE SEMILLAS (ISTA)

Bettina KAHLERT (Ms.), International Seed Testing Association (ISTA),
Zürichstrasse 50, P.O. Box 308, 8303 Bassersdorf, Switzerland (tel.: +41 1 838 6000
fax: +41 1 838 6001 e-mail: ista.office@ista.ch)

COMMUNAUTÉ INTERNATIONALE DES OBTENTEURS DE PLANTES
ORNAMENTALES ET FRUITIÈRES DE REPRODUCTION ASEXUÉE
(CIOPORA) / INTERNATIONAL COMMUNITY OF BREEDERS OF
ASEXUALLY REPRODUCED ORNAMENTAL AND FRUIT-TREE VARIETIES
(CIOPORA) / INTERNATIONALE GEMEINSCHAFT DER ZÜCHTER
VEGETATIV VERMEHRBARER ZIER- UND OBSTPFLANZEN (CIOPORA) /
COMUNIDAD INTERNACIONAL DE OBTENTORES DE VARIEDADES
ORNAMENTALES Y FRUTALES DE REPRODUCCIÓN ASEXUADA

René ROYON, Secrétaire général, 128, square du Golf, 06250 Mougins, France
(tel.: +33 493900850 fax: +33 493900409 e-mail: royon@club-internet.fr)

AGENCE EUROPÉENNE DES SEMENCES (ESA) / EUROPEAN SEED
ASSOCIATION (ESA)

Joachim WINTER, Secretary General, European Seed Association (ESA),
11, avenue Michel-Ange, 1000 Brussels, Belgium (tel.: +32 2 743 2860 fax: +32 2 743 2869
e-mail: euroseeds@skynet.be)

Garlich VON ESSEN, Director, European Seed Association (ESA),
11, avenue Michel-Ange, 1000 Brussels, Belgium (tel.: +32 2 7402860 fax: +32 2 743 2869
e-mail: euroseeds@skynet.be)

FÉDÉRATION INTERNATIONALE DES SEMENCES (ISF) / INTERNATIONAL
SEED FEDERATION (ISF) / INTERNATIONALER SAATGUTVERBAND (ISF) /
FEDERACIÓN INTERNACIONAL DE SEMILLAS (ISF)

Bernard LE BUANEC, Secretary General, 7, chemin du Reposoir, 1260 Nyon, Switzerland
(tel.: +41 22 365 4420 fax: +41 22 365 4421 e-mail: fis@worldseed.org)

Richard CROWDER, American Seed Trade Association, 225 Reinekers Lane, Suite 650,
Alexandria, VA 22314-2875, United States of America (tel.: +1 703 837 8140
fax: +1 703 837 9365 e-mail: rcrowder@amseed.org)

Pierre ROGER, Directeur de la propriété intellectuelle, Groupe Limagrain Holding,
Rue Limagrain, Boîte postale 1, 63720 Chappes, France (tel.: +33 4 7363 4069
fax: +33 4 7364 6737 e-mail: pierre.roger@limagrain.com)

FEDERACIÓN LATINOAMERICANA DE ASOCIACIONES DE SEMILLISTAS
(FELAS)

Juan Carlos MARTÍNEZ, Responsable de la Comunicación Externa, Paseo Pamplona 2,
Esc. 1 - 4º A, 50004 Zaragoza, España (tel.: +34 976 212197 fax: +34 976 226410
e-mail: exterior@felas.org)

IV. BUREAU / OFFICER / VORSITZ / OFICINA

Karl Olov ÖSTER, President

V. BUREAU DE L'OMPI / OFFICE OF WIPO /
BÜRO DER WIPO / OFICINA DE LA OMPI

Philippe FAVATIER, Director, Administrative Support Services and External Relations,
Finance Division, World Intellectual Property Organization

VI. BUREAU DE L'UPOV / OFFICE OF UPOV /
BÜRO DER UPOV / OFICINA DE LA UPOV

Rolf JÖRDENS, Vice Secretary-General
Peter BUTTON, Technical Director
Raimundo LAVIGNOLLE, Senior Counsellor
Makoto TABATA, Senior Counsellor
Yolanda HUERTA (Mrs.), Senior Legal Officer
Paul Therence SENGHOR, Senior Program Officer
Vladimir DERBENSKIY, Consultant

[L'annexe II suit/
Annex II follows/
Anlage II folgt/
Sigue el Anexo I]

ANNEX II

Declaration Made by the Delegation of Latvia

Mr. President,
Ladies and Gentlemen,

On behalf of the Government of the Republic of Latvia, on behalf of the Ministry of Agriculture, Latvia appreciates the warm welcome into the UPOV family. We are very honored to be a member of UPOV.

On July 30, 2002, Latvia deposited its instrument of accession to the UPOV Convention (1991 Act). On August 30, 2002, Latvia became the fifty-first member of UPOV.

The Law on the Protection of Plant Varieties was adopted on April 6, 1993, and amended in 1995 and 1999.

On February 22, 2001, Latvia requested the Council of UPOV to examine the conformity of the Law with provisions of the 1991 Act. According to proposals of the Office of the Union and executing body of the Law in Latvia, the new Plant Variety Protection Law was adopted by the Parliament of the Republic of Latvia on May 2, 2002. The Law was published in the official newsletter of Latvia "Latvijas Vēstnesis" on May 17, 2002 (No. 74 (2649)), and entered into force on May 31, 2002.

Plant breeders' rights in Latvia are guided by the State Plant Protection Service. This institution has the necessary staff and equipment for granting and protection of plant breeders' rights. The staff had good training in Denmark and other countries relating to plant breeders' rights.

Latvia has cooperation in DUS test with Estonia, Lithuania and Poland. Latvia is performing DUS tests for fruit plants and certain species of ornamental plants. Other species are sent to Estonia or Poland.

I would like to emphasize the assistance offered by UPOV, especially by Mr. Rolf Jördens, Vice Secretary-General, for preparing the new Plant Varieties Protection Law of Latvia.

Also I would like to convey thanks to experts from Finland (Mr. Arto Vuori) and Estonia and from other national institutions of UPOV member States for their help and cooperation.

Thank you!

[End of Annex II and of document]