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

GENEVA

## COUNCIL

## Twenty-seventh Ordinary Session

Geneva, October 29, 1993

**REPORT BY REPRESENTATIVES OF STATES AND ORGANIZATIONS  
ON THE SITUATION IN 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 effectively carry out its tasks.
2. Written reports have been requested by the Office of the Union in the invitation circulars relating to this session and has proposed a model format for the purpose. The reports submitted by the following States are reproduced in annexes I to XII (in the alphabetical order of the names of the States in French): Germany, Austria, Belgium, Denmark, Finland, Ireland, Japan, New Zealand, Netherlands, Poland, Portugal, Sweden. The report of the International Board for Plant Genetic Resources (IBPGR) is reproduced in Annex XIII.
3. Where relevant, the numbering of the paragraphs based upon the model format has been retained; in some instances it is therefore not consecutive.

[13 annexes follow]

## ANNEX I

## GERMANY

By the law of September 23, 1992, amending the Seed Law, a second amendment was made to the Plant Variety Protection Law. The maximum levels of the fees have been repealed. This paved the way for the tariff of fees to be set by way of ordinance.

A first draft for a new Plant Variety Protection Law based on the 1991 Act of the Convention has been discussed with interested circles. Work on this text will be continued.

New bilateral agreements for technical cooperation have been concluded with Finland and Israel. Certain agreements with other States have been extended to further species.

A total of 1,125 applications were received during the reporting period, and 779 breeders' rights were granted.

[Annex II follows]

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## ANNEX II

## AUSTRIA

## PLANT VARIETY PROTECTION

1. The Austrian Variety Protection Law (BGBl. No. 108/1993) entered into force on March 1, 1993; it corresponds to the 1978 Act of the Convention. For Austria to be able to adhere to UPOV, the Convention, in the version of the 1978 Act, has to be approved by the Austrian Government and Parliament; preparatory work with a view to seeking such approval has been done by the Federal Ministry for Foreign Affairs in cooperation with, in particular, the Federal Ministry of Agriculture and Forestry, and is nearly completed.

1.1 The ordinance (BGBl No. 143/1993) fixing the tariff of the application and testing fees also entered into force on March 1, 1993. The tariff is as follows (in schillings):

|   |          |
|---|----------|
| Application fee   | 2,000.-- |
| Testing fee for cereals, maize, potatoes,<br>sugar beet, pea, oil seed rape and sunflower<br>(per year) | 3,500.-- |
| Testing fee for forest trees (per year)   | 500.--   |
| Testing fee for other species (per year)  | 2,500.-- |
| Single fee for the taking over of Austrian<br>(National List) or foreign test results                   | 2,000.-- |

The amount of the annual fees has been set in the law. Furthermore, the notion of "closely related species" has been clarified in respect of cereals in the ordinance published in BGBl No. 144/1993.

Adaptation of legislation to the 1991 Act of Convention has not yet started.

1.3 Austrian industry wishes protection to be extended to several species of course grain legumes and oilseed, fruit and ornamental plants. Since the testing cannot be undertaken in Austria for most of them, the list of protected species will be extended only after conclusion of relevant agreements for cooperation in variety testing with member States.

3. The Federal Institute of Plant Production is entrusted with the administration of the Variety Protection Law as the Variety Protection Office.

Despite shortages in personnel, the Variety Protection Register was opened on May 1, 1993; it currently contains 172 protection titles. They relate to varieties from 29 species which were taken over from the "Breeding Book for Cultivated Plants" and were the subject until April 30, 1993, of a breeder's right under the provisions of the Plant Breeding Law (BGBl No. 34/1947, as last amended and published in BGBl No. 109/1993). The botanical scope of application of the variety protection register is therefore larger than the list of species under the Variety Protection Law.

The forms for the application for protection and the application for a variety denomination and the technical questionnaires have been developed on the basis of the corresponding documents used in the German-speaking member States.

The "Plant Variety Gazette," which is a quarterly publication under the Variety Protection Law, will be issued for the first time in the fourth quarter of this year.

4. Facilities for the examination of distinctness, uniformity and stability ("DUS testing") are available in Austria for the species mentioned in the list under the Variety Protection Law and will be available for *Vicia faba* and *Sambucus nigra* after the extension of the list.

5. Questions of plant variety protection and DUS testing have been discussed with experts from Hungary (the Institute for Agricultural Qualifications) and Slovenia.

Austria has participated, together with several member States and Romania, in a "ring test" with a view to harmonizing the DUS testing methodologies, and also in a meeting on this subject in Hungary.

A well-attended information meeting on plant variety protection was organized in Austria on March 8, 1993, for Austrian breeders and representatives of the seed industry.

#### **DEVELOPMENTS IN RELATED FIELDS OF ACTIVITIES**

Revision of the Seed Law has been put in hand; the law will also deal with national listing (licensing of varieties for sale) and seed certification. The National List currently comprises two parts: the Breeding Book for Cultivated Plants under the Plant Breeding Law (BGBl No. 34/1947, as last amended and published in BGBl No. 109/1993) and the List of Varieties under the Seed Law (BGBl No. 236/1937, as last amended and published in BGBl No. 195/1964).

A Bill on genetic engineering has been released for comments; the parliamentary procedure is likely to be initiated shortly. The Bill contains provisions on the deliberate release and marketing of genetically modified plants and varieties.

[Annex III follows]

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## ANNEX III

## BELGIUM

1. Situation in the Legislative Field1.1. Amendment of the Law and the Implementing Regulations--Adaptation to the 1991 Act of the Convention

An intensive activity was deployed at the end of 1991 and the first months of 1992 with regard to the preparation of a new plant variety protection law. The finalization of a first official draft now remains suspended only in expectation of the adoption of the Community Regulation on plant variety protection.

1.2 Financing

The redefinition of the financial mechanisms governing not only plant variety protection, but also related matters--plant protection, national lists of varieties, seed certification and control--is close to completion. The law of March 17, 1993, creating a budgetary fund for the production and protection of plants and plant products was published in the Moniteur belge of May 28, 1993. The implementing regulations are likely to be assented to and published still this year, after submission to the Conseil d'Etat for an opinion. It will then belong to a Council established in the framework of this budgetary fund to set the tariff of plant variety protection fees.

1.3. Extension of Protection to Further Genera and Species

Further to the extension of protection to some 120 new taxa under the Royal Decree of March 12, 1991, which entered into force on June 22 of the same year, a new Decree has been submitted to the King for assent. It will contain 16 further taxa.

2. Cooperation in Examination

Since the extension of protection in June 1991, all agreements on bilateral cooperation have been reviewed. A new agreement was concluded on December 11, 1992, with Germany and became effective on January 1, 1993. Furthermore, two agreements--with Denmark and France--are awaiting confirmation.

3. - 4. Situation in the Administrative and Technical FieldsAmount of Activities--Status on August 31, 1993

From the entry into force of the system for the protection of new plant varieties to August 31, 1993, 1,652 applications for protection had been filed and 918 certificates issued, of which 420 were still in force. In 1992, 77 titles of protection were issued.

The certificates were issued in respect of 59 genera and species, out of 290 in total.

The situation has become stable in the field of protection.

Since the extension of the list of protected taxa which took place in 1985, a certain enthusiasm for the protection of ornamental varieties has been noted. This enthusiasm has increased with the publication of the extended list in 1991. Ornamental varieties represent over 53% of the total number of the varieties currently protected, and rose varieties 24.5%.

[Annex IV follows]

## ANNEX IV

**DENMARK****PLANT VARIETY PROTECTION****1. Situation in the Legislative Field****1.1 Extension of Protection to Further Genera and Species**

In 1993, 32 genera and species were included under the plant variety protection Act; their list is given in "Plant Variety Protection" No. 71 (July 1993).

The inclusion of *Ixora* L. and *Leptospermum* J.R. et G. Forst. is expected to take place before the end of October 1993.

**2. Cooperation in Examination**

The new bilateral agreements with Belgium, Israel and Spain were expected to enter into force in 1993. However, a final decision could not be made on the lists of species to be covered by those agreements in view of the possible rearrangement of other agreements.

Meetings have been held with the authorities of France, Germany, the Netherlands, Spain and the United Kingdom to prepare the rearrangement.

**3. Situation in the Administrative Field**

In 1992, 324 applications for plant breeders' rights were received, as follows:

|                    |     |
|--------------------|-----|
| Agricultural crops | 108 |
| Fruit              | 8   |
| Vegetables         | 2   |
| Ornamentals        | 206 |

In 1992, the number of titles of protection issued was 197:

|                    |     |
|--------------------|-----|
| Agricultural crops | 84  |
| Fruit              | 6   |
| Vegetables         | 2   |
| Ornamentals        | 105 |

In the period from January 1, 1993, to September 14, 1993, 224 applications for protection were received and 203 titles of protection were issued.

**DEVELOPMENTS IN RELATED FIELDS OF ACTIVITIES****Cooperation with Estonia**

Several persons from Estonia have visited the Plant Directorate and have been informed about seed legislation, including the plant variety protection Act.

A project concerning seed legislation and seed marketing has been adopted. Its aim is to bring the variety testing system and the seed testing and certification system into line with the international standards and to develop the seed business in Estonia. The project is mainly financed from the Danish Project Fund.

#### Testing of Agricultural Crops for Variety Listing

Proposals for an improved testing for value for cultivation and use (VCU) of agricultural crops were prepared at the end of 1992. The proposals included a more intensive cooperation between the authorities, the extension services and the breeders. They had to be revised in view of the changes in the requirements relating to the self-financing of variety testing; revision work is currently done. Changes in VCU testing are expected to take place in the autumn of 1994.

[Annex V follows]

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ANNEX V

**FINLAND**

2. Cooperation in Examination

An agreement has been concluded with Germany and covers Rosa L. - Rose.

3. - 4. Situation in the Administrative and Technical Fields (Status on August 31, 1993)

Since the entry into force, on October 15, 1992, of the system for the protection of new plant varieties, 23 applications for protection have been filed; no certificate has been issued so far.

[Annex VI follows]

**IRELAND****1. Situation in the Legislative Field**

1.1 Work is continuing on amending the Plant Varieties (Proprietary Rights) Act, 1980, to take account of the 1991 Act of the Convention. However, like other EC States, we are awaiting the final outcome of the deliberations in Brussels (Regulation on plant breeders' rights) before bringing the revised legislation before the Dail (Parliament).

There has been no increase in fees in 1993. The primary problem in the variety protection area is the reduction in the number of applications received each year.

1.3 Extension of protection to further genera/species.

The Plant Varieties (Proprietary Rights) (Amendment) Regulations SI No. 369 of 1992 extending protection to *Acer platanoides* L., *Dendranthema*, x *Cupressocyparis leylandii*, *Helianthus annuus* L., *Helipterum anthemoides*, *Houttuynia cordata* Thunb., *Osteospermum* L. and *Zea mays* L. came into force on December 4, 1992. SI No. 78 of 1993 extending the duration of the rights for potatoes to 25 years came into force on March 11, 1993.

A Statutory Instrument extending protection to six additional genera/species is now in preparation.

**2. Cooperation in Examination**

A bilateral agreement with the United Kingdom is almost finalized and will be concluded shortly.

[Annex VII follows]

**JAPAN**

**1. Situation in the Legislative Field**

1.1 Adaptation of the legislation to the 1991 Act of the Convention is under way.

1.3 An amendment of the implementing regulations is scheduled to take place in 1993 to protect 30 additional genera and species.

**2. Cooperation in Examination**

Discussions with a view to establishing agreements on cooperation in examination were held with the German and Dutch embassies in Japan. Contacts have been made with the United Kingdom for the same purpose.

**3. Situation in the Administrative Field**

An administrative division was newly set up at the National Center for Seeds and Seedlings and its head was assigned in April 1993.

It is planned to extend the staff of nine examiners by a further one (in charge of ornamental plants) in the course of the 1994 fiscal year.

**4. Activities for the Promotion of Plant Variety Protection**

The Japanese Government actively contributed to the Regional Seminar on the Nature of and Rationale for the Protection of Plant Varieties under the UPOV Convention held in Beijing (China) from September 15 to 17, 1993.

[Annex VIII follows]

## ANNEX VIII

## NEW ZEALAND

**Legislation**

There have been no legislative amendments in the reporting period. Further actual progress towards adapting the Plant Variety Rights Act 1987 to the 1991 Act of the Convention will only occur when the Government agrees to include the relevant Amendment Bill in its legislative programme.

**Administration**

The plant variety rights scheme in New Zealand is now operating, as required by the Government, with full recovery through fees of its operational costs. It is pleasing that this has been achieved without any increase in fees since April 1991.

**Promotion of plant variety protection**

During 1993 the New Zealand Ministry of Foreign Affairs and Trade, on behalf of the Plant Variety Rights Office, distributed information packs on plant variety protection within the South Pacific region. A low-key approach was adopted for the distribution. The packs, which included information on UPOV were sent to the governments of the 13 independent island nations in the South Pacific and to two regional intergovernmental organisations, the South Pacific Forum and the South Pacific Commission.

[Annex IX follows]

## ANNEX IX

## NETHERLANDS

**1. Situation in the Legislative Field**Adaptation of Legislation to the 1991 Act of the Convention

It was reported last year that the Minister for Agriculture, Nature Management and Fisheries had initially planned to adapt the Seed and Planting Material Act to the 1991 Act as soon as the EEC Regulation on Plant Variety Rights was adopted; and that, if the adoption of the Regulation was to be delayed, he might decide to start the implementation of the 1991 Act without waiting further. This decision was actually taken in May 1993, when the Minister sent a draft law amending the Seed and Planting Material Act to a number of organizations involved in plant breeding and intellectual property. The comments of those organizations led to some minor changes; the draft law will be presented to the Dutch Council of Ministers as soon as possible. It is likely to be sent to Parliament in 1994.

Other Amendments

The annual maintenance fees were raised substantially on March 1, 1993; the current tariff has been published in "Plant Variety Protection" No. 71 (July 1993).

**2. Cooperation in Examination**

No new agreements have been concluded; no existing agreement has been amended.

**3. Situation in the Administrative Field**

The Minister for Agriculture, Nature Management and Fisheries wishes to come to a simpler and more effective system of plant variety protection and marketing authorization. In the future, a strict division will be made between these areas. In the meantime, the Ministry has declared its preference for a model with two separate boards, but one common secretariat. Partly due to the question of what role the secretariat of the Raad voor het Kwekersrecht might have, the efficiency of the administrative structures and office procedures is currently being investigated.

**4. Situation in the Technical Field**

Especially in the case of vegetables, rationalization of the examination is being aimed at in the Netherlands by making greater use of the results of examinations carried out by the NAKG (Dutch General Inspection Service for Vegetables) for the purposes of admission of new vegetable varieties (B-list). Since the beginning of 1993, the results of B-list examinations are being included in the examination for plant variety protection, where the variety is the subject of both an application for plant variety protection and a request for inclusion in the B-list. As a result, the examination for plant variety protection could be shortened by one year, which again resulted in a time-saving of one year and--because only one additional testing year needs to be

carried out--to a halving of the total examination costs. This new construction is thought to meet the call for further rationalization and cost-saving in the examination of vegetables, without prejudice to the independence and quality of the examination.

[Annex X follows]

## ANNEX X

## POLAND

**PLANT VARIETY PROTECTION****1. Situation in the Legislative field****1.1 Amendment of the Law and the Implementing Regulations**

A new Seed Industry Law is under preparation. In its part concerning plant variety protection, it will take into consideration the provisions of the 1991 Act of the Convention. This part has been translated into English and sent to the Office of the Union for comments. It is expected that the Law will pass Polish Parliament in 1994.

The amounts of fees for protection are revised twice a year. They are based on the price of rye fixed for farm rents. The current amounts have been submitted to the Office of the Union.

**1.3 Extension of Protection to Further Genera and Species**

By Decree of the Minister for Agriculture and Food Economy of November 6, 1992 (Official Journal of the Polish Republic No. 83, item 424) some changes have been made concerning the taxa protected in Poland. A new taxon has been included into the list: Agaricus - Mushroom. Prunus mahaleb L., P. cerasifera var. divaricata Led. and P. insititia L. have been deleted from the list, and Prunus L. has been added. Within this taxon, new varieties of rootstocks for fruit trees can be protected.

It is expected that the list of protected taxa will be slightly extended next year, after the entry into force of the new law.

**2. Cooperation in Examination**

Until now, Poland has not entered into any bilateral agreement concerning the mutual recognition of DUS testing results indispensable to the granting of protection.

In 1991, under a multilateral agreement, Austria, the Czech Republic, Germany, Hungary, Poland and Slovakia decided to conduct a "ring test." In 1993, Romania joined those countries. The objective of the ring test is to establish the magnitude of the differences in the assessment of the individual plant characteristics depending on the testing country. The tests are made in each country following the same methodology based on the UPOV Test Guidelines. So far, six varieties from each country (two winter wheats, two spring barleys and two peas) were tested in each country. In future, only one variety from each of the said species and from each country will be tested. As from 1993, electrophoresis testing of proteins will be carried out on the cereal varieties. The results will be worked out in the Czech Republic.

**4. Situation in the Technical Field**

The General Statistical Package GENSTAT has been bought and brought into practice.

## 5. Activities for the Promotion of Plant Variety Protection

(i) Training courses for variety testing specialists from the new Republics.

The program of the courses included inter alia:

- DUS testing: theoretical rules and practical procedures;
- legal principles and technical procedures for the granting of plant variety protection.

Two courses were held in COBORU:

- the first from September 21 to October 3, 1992, for 12 participants from Belarus and Lithuania, and
- the second from November 16 to 28, 1992, for 12 participants from Estonia, Latvia and Ukraine.

(ii) Practical instruction was given to four specialists from Belarus from June 26 to July 3, 1993, in COBORU. The participants acquainted themselves with the practical aspects and the procedures of DUS testing in Poland.

During the same period, the President of the State Commission for Variety Testing of Belarus, Mr. N.S. Karako, stayed in COBORU. He acquainted himself with the activities of COBORU and had discussions on various aspects of future cooperation.

(iii) The Director of COBORU, Prof. E. Bilski, visited Belarus from July 5 to 8, 1993, and Ukraine from July 19 to 22, 1993. He discussed problems concerning future cooperation, in particular, in the field of DUS testing.

(iv) A working visit of two experts from Romania is expected for the period September 7 to 11, 1993. They are interested in electrophoresis and statistical methods.

(v) The head of the State Variety Testing Commission of Romania, Mr. N. Pirvu, and the head of the State Commission for the Testing and Protection of Plant Varieties of Ukraine, Mr. V.V. Volkodav, are expected to visit COBORU from October 1 to 6, 1993.

### **DEVELOPMENTS IN RELATED FIELDS OF ACTIVITIES**

As from 1993, the Polish Plant Breeders' Rights Gazette and the Register of Cultivars are published four times a year (until 1993, they were published twice a year).

Every year, COBORU publishes four lists of varieties covering agricultural crops, vegetables, ornamental plants, and top and soft fruit, respectively. The lists are official documents giving information on varieties being the subject of an application for protection or entry in the Register of Cultivars and accepted for testing, and on varieties that are protected or entered into the Register. Both the Gazette and the lists are sent in two copies to all UPOV member States.

## ANNEX XI

## PORTUGAL

**1. Situation in the Legislative Field**

The current plant variety protection law dates back to June 1990. Slight changes are being considered, namely in respect of provisional protection, to adapt it to some of the orientations proposed by the 1991 Act of the Convention.

A change in the fees charged by CENARVE is also being considered to harmonize them with the fees charged for identical services of the same State department.

At the beginning of 1993, the number of protected species in Portugal was increased from 34 to 43.

**2. Cooperation in Examination**

Although it has still not been formalized, cooperation with the national services of Spain is continuing in respect of strawberries.

**3. Situation in the Administrative Field**

In the first half of 1993, the CENARVE underwent some structural changes as a consequence of similar changes in the Ministry of Agriculture. CENARVE now is a service of CNPPA, which, among other activities, is in charge of elaborating and maintaining the National Catalogue of Plant Varieties.

Since the last session of the Council, 14 applications were received, six titles were granted and six applications were rejected for lack of innovation of the variety.

**5. Activities for the Promotion of Plant Variety Protection**

This year, a technical member of CENARVE visited the autonomous region of Madeira to explain the plant breeders' rights legislation to the local authorities. This meeting resulted in the drafting of a protocol with the agricultural services of the region on the conduct of DUS tests for tropical and subtropical species, beginning with Annona.

Concerning Portugal's accession to UPOV, the matter has already received approval from the Ministry of Agriculture; it is now with the Ministry for Foreign Affairs which will contact the Office of the Union in relation to the formal presentation of a request for accession.

[Annex XII follows]

**SWEDEN****PLANT VARIETY PROTECTION****1. Situation in the Legislative Field****1.1 Amendment of the Law and the Implementing Regulations**

Sweden has not yet adapted its legislation to the 1991 Act of the Convention.

Preparations are being made for legislation providing stronger legal remedies against infringements of intellectual property rights, including plant breeders' rights.

**1.3 Extension of Protection to Further Genera and Species**

By virtue of Law SFS 1992:1960, protection was extended to 11 genera of ornamental plants and trees with effect from January 1, 1993. Furthermore, protection was extended to varieties of hybrids between genera or species mentioned in the list of protected taxa.

The National Plant Variety Board has suggested extension of protection to nine further genera and species: *Crocoshia* spp., *Daucus carota* L., *Ficus* spp., *Impatiens* spp., *Lactuca sativa* L., *Petunia* spp., *Scaevola* spp., *Tulipa* L. and *Verbena* spp.

**2. Cooperation in Examination**

The agreement with the Netherlands has been extended to carrot and lettuce.

Amendments to the agreements with France and Germany are under discussion.

**DEVELOPMENTS IN RELATED FIELDS OF ACTIVITIES**

The Report of a Governmental Commission on Gene Technology has been delivered to the Government. The report contains proposals concerning guidelines and legislation in the genetic field relevant to both plants and animals.

Another Governmental Commission has proposed a new Environmental Code (SOU 1993:27) containing provisions on, inter alia, genetically modified plants.

[Annex XIII follows]

## ANNEX XIII

## IBPGR

IBPGR, as one of the centers of the Consultative Group on International Agricultural Research (CGIAR), has been actively involved in the preparation of a CGIAR Discussion Document on Intellectual Property, Biosafety and Plant Genetic Resources. This document has been widely circulated for comments and is presently being finalized.

The Inter-Center Working Group on Plant Genetic Resources of the CGIAR recommended the following elements as a basis for CGIAR policy on IPR relating to the germplasm collections held in trust:

- The plant genetic resources maintained in genebanks of the CG Centers are held in trust for the world community.
- The CG Centers adhere to the principle of unrestricted availability of the plant genetic resources they hold in trust, including related information.
- The CG Centers will not protect the plant genetic resources they hold in trust by any form of intellectual property protection.
- The CG Centers are opposed to the application of patent legislation to plant genetic resources (genotypes and/or genes) held in trust.
- Plant genetic resources held in trust by the Centers, will be made available on the understanding that the recipients will take no steps which restrict their further availability to other interested parties.

Based on the above elements several of the CGIAR Commodity Centers, which hold large collections of germplasm, have developed their own policies on Intellectual Property Protection.

The CGIAR Centers and FAO are negotiating a basic agreement to bring the international collections under the auspices of FAO within the framework of the International Network of ex situ Base Collections. In this agreement the Centre agrees to hold the designated germplasm as trustee for the benefit of the international community, in particular developing countries, in accordance with the International Undertaking on Plant Genetic Resources.

IBPGR is involved in a project which aims at studying the potential impact of recent trends in IPR on plant genetic resources and plant breeding. The project brings together diverse viewpoints in a Working Group which is seeking consensus where possible, and explaining and exploring differences of opinion where they exist. The Working Group comprises participants from North and South, representing a wide cross-section of opinions, interests and expertise. The Group includes legal experts, national agricultural research systems, the CGIAR, non-governmental Organizations, UN organizations and the private sector.

IBPGR and the CGIAR Secretariat are conducting a study to look into the use of material transfer agreements in the distribution and reception of germplasm to and from cooperating national research organizations and private sector institutions.

[End of Document]