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

**COUNCIL**

**Thirty-Second Ordinary Session**  
**Geneva, October 28, 1998**

REPORTS 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 a model format has been proposed for the purpose. The reports submitted by the following States are reproduced in Annexes I to X (in the alphabetical order of the names of the States in French): Germany, Australia, Spain, Ireland, Italy, Norway, New Zealand, Poland, United Kingdom and Switzerland.

[Ten annexes follow]

ANNEX I

GERMANY

Situation in the Legislative Field

The German Parliament ratified the 1991 Act of the UPOV Convention through the Law of March 25, 1998, on the Text of the International Convention for the Protection of New Varieties of Plants Signed on March 19, 1991. The instrument of ratification was deposited on June 25, 1998.

An ordinance on the amendment of the tariff of fees of the Federal Office of Plant Varieties is in preparation and should enter into force shortly.

Situation in the Administrative Field

Mr. Henning Kunhardt has retired on December 31, 1997. His successor is Mr. Friedrich Laidig.

Activities for the Promotion of Plant Variety Protection

The technical training of staff of the variety offices of the successor States of the Soviet Union and the potential candidates for accession to the European Union has been pursued. Various delegations from non-member States visited the Federal Office of Plant Varieties.

Developments in Related Fields of Activity

Intensive discussions have continued with the competent institutions and interested circles on the simplification of the seed certification system.

[Annex II follows]

ANNEX II

AUSTRALIA

Situation in the Legislative Field

No amendments have been made to the Plant Breeder's Rights Act 1994 or the implementing regulations. However, a substantial number of minor amendments are being drafted for introduction in 1998/99 to improve access to the plant breeder's rights scheme by breeders and rectify some administrative anomalies to improve the efficiency of the PBR Office.

Specifically, the proposed amendments are to:

- allow varieties in different classes of plants to have the same or similar names,
- remove the requirement to hold duplicate copies of the Plant Breeder's Rights Register in each State or Territory,
- remove the fee for providing a copy of an application from the Register,
- limit access to confidential pedigree information that has significant commercial value,
- make the supply of propagating material for testing mandatory,
- withdraw provisional protection as a result of the applicant's neglect of his application,
- allow varieties that became ineligible (for plant breeders' rights) in the transition from the old to the new law to be accommodated under the new law,
- clarify the initiation of infringement actions,
- extend acts of infringement to include harvested material or products obtained from harvested material and the unauthorized use of a variety's synonym,
- extend the time limit allowed to applicants to advise of change of ownership,
- allow for test growings to be undertaken on a cost recovery basis at the request of another member of UPOV,
- allow all costs associated with a test growing for revocation purposes to be recovered from the party in the wrong,
- exempt research and experimentation as acts limiting the eligibility of a variety for PBR,
- extend reasonable public access to protected varieties to include harvested material or products from harvested material,
- correct transcription errors in: prior sale (novelty), Article 14 of the UPOV Convention and revocation of a plant breeder's right.

Case Law

An appeal by Sun World International to the full bench of the Federal Court against the Registrar's decision to refuse the grant of rights in respect of the grape variety 'Sugraone' was

refused. The Registrar's decision had previously been upheld in the Administrative Appeals Tribunal and by a single judge of the Federal Court. The grounds for the rejection were that "sale" had occurred more than six years prior to the application being lodged. The definition of sale was taken to include "letting on hire or exchanging by way of barter." The Federal Court rejected the notion that for the purposes of the Act "sale" could only be in terms of the exchange of goods for money. The court also found that the "sale" of 'Sugraone' vines was not invalidated by the fact that the sale agreements placed additional restrictions on the way the vines could be used.

#### Cooperation in Examination

Cooperative arrangements are being planned with several countries (e.g. New Zealand) following the basic structure of the UPOV Model Agreement. Amendments to Australian legislation (see above) are required to accommodate the payment of fees for services provided. In addition, the question of future access by the testing country to trial data (which under the present agreement becomes the property of the requesting country) is yet to be resolved.

#### Situation in the Administrative Field

Many new procedures have been introduced to improve the processing rate and cost recovery of the Office. These include accreditation of 12 Centralized Test Centres (CTCs). Australia's "breeder testing" system is now somewhat less controversial as other member States recognize its merits for some specific circumstances. For its part, Australia has recognized the usefulness of centralized testing and has implemented a system to allow institutions, companies or private individuals to be authorized by the PBR Office for DUS testing of specific genera. CTCs are available for the following: *Aglaonema*, *Argyranthemum*, *Bougainvillea*, *Bracteantha*, canola, *Clematis*, Persian clover, white clover, *Diascia*, tall fescue, *Mandevilla*, New Guinea Impatiens, oats, *Pelargonium*, potato, perennial ryegrass, sugar cane, wheat, tall wheatgrass.

In addition, PBR Australia maintains and updates weekly a homepage ([www.dpie.gov.au/agfor/pbr/pbr.html](http://www.dpie.gov.au/agfor/pbr/pbr.html)) that includes PBR information, downloadable forms for electronic filing and a searchable copy of current applications and grants.

Financial Year	Applications received	Applications completed	Applications pending
1997/98	318	290	28
Total 1988 to 1998	2202	1456	746

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

PBR Australia has been involved in the following promotional seminars:

- “PBR ~ Place, Procedures and Potential”. Seed Commercialization in China, Canberra, Australia, August 1997.
- “PBR in Australia”. UPOV Workshop on the Exercise of Plant Variety Protection Rights by Holders of the Rights, Brisbane, Australia, September 1997.
- “Legal Constraints to the Exercise of PBR in Australia”. Seed Industry Association of Australia Conference, Brisbane, Australia, September 1997.
- “Identification of Wheat Varieties and Plant Breeders Rights”. Grains Research Development Corporation Workshop on “DNA Identification of Australian Wheat Varieties,” Sydney, Australia, November 1997.
- “PBR Background and Trends”. Australian Wheat Board, Melbourne, Australia, December 1997.
- “New Varieties ~ The What, Why and Where of Plant Breeders Rights”. Canberra Institute of Technology, Canberra, Australia, April 1998.

[Annex III follows]

ANNEX III

SPAIN

Situation in the Legislative Field

Work on the revision of the Law on the Protection of New Varieties of Plants has continued in the past year. The draft revised Law adapted to the 1991 Act of the Convention and containing aspects treated in the same way as in Regulation No. 2100/94 of the European Union is being considered by the Commission prior to the Council of Ministers.

The fees were not increased in 1998.

It is foreseen to extend protection shortly to tomato and apple rootstocks.

Situation in the Administrative Field

114 applications for protection have been received, the number of titles in force being 1106 on December 31, 1997.

The Spanish Office has continued to actively cooperate with the Community Plant Variety Office with respect to the reception and processing of Community applications and the examination of varieties on behalf of that Office.

Activities for the Promotion of Plant Variety Protection

An intensive activity has been deployed at national level through seminars and technical meetings to provide information to the interested circles on the Community plant variety rights system.

Bilateral cooperation and cooperation with the Office of the Union, to provide assistance in particular to Latin American countries, has been pursued. Training of experts has been continued. A Training Course on the Protection of New Varieties of Plants for Latin-American Countries was held in Madrid, Sevilla and Valencia from June 8 to 24, 1998. It has been organized by UPOV in cooperation with the Ministry of Agriculture, Fisheries and Food of Spain and the World Intellectual Property Organization (WIPO). The participants came from Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

Developments in Related Fields of Activity

The List of Commercial Varieties contains 43 agricultural crops, 48 vegetable species and 15 fruit and rootstock species.

In March 1998, two genetically modified maize varieties were added to the List.

[Annex IV follows]

ANNEX IV

IRELAND

Situation in the Legislative Field

The Plant Variety Rights (Amendment) Bill is before the Dail (Parliament) at present. It is expected that the Bill will be passed in the next few months, thus bringing Irish plant variety rights law fully into line with the 1991 Act of the UPOV Convention.

Situation in the Administrative Field

Since 1981, 486 applications for plant breeders' rights have been received; 365 rights were issued and as of September 30, 1998, 130 rights are in force. While the total number of applications has reduced, applications for ornamental species have increased proportionately.

Developments in Related Fields of Activity

The scope of activity in the area of genetic resources continues to broaden with projects in forestry being submitted for the first time this year. A total of eight projects relating to plant and animal genetic resources were funded in 1998.

[Annex V follows]

ANNEX V

ITALY

Situation in the Legislative Field

The Italian Parliament passed on March 23, 1998, the Law on the Ratification and Execution of the International Convention for the Protection of New Varieties of Plants Adopted in Paris on December 2, 1961, and Revised in Geneva on November 10, 1972, October 23, 1978, and March 19, 1991. The Law was published in the Official Journal of April 20, 1998.

The power to issue, within the six months following the date of entry into force of the Law, the amendments that are necessary to bring Italian legislation into line with the 1991 Act has been delegated to the Government.

Situation in the Administrative Field

In 1997, 95 applications have been filed (72 by Italians and 23 by foreigners) and 80 plant patents have been issued (55 to Italians and 25 to foreigners). From January to May 1998, 37 applications have been filed (31 by Italians and 6 by foreigners).

[Annex VI follows]



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ANNEX VI

NORWAY

Cooperation in Examination

Norway received 15 DUS reports from other member States.

Situation in the Administrative Field

In 1997, 54 applications were received; 21 titles were issued, as follows:

Alstroemeria	2	Oat	2	Rose	6
Begonia	1	Pelargonium	1	Swede	2
Smooth brome	1	Potato	1	Timothy	1
Cloudberry	4				

112 titles were in force on August 1, 1998.

[Annex VII follows]

ANNEX VII

NEW ZEALAND

Situation in the Legislative Field

It must be reported that there has again been no real progress towards amending the Plant Variety Rights Act 1987 to bring it into conformity with the 1991 Act of the Convention.

On 15 January 1998, the Plant Variety Rights (Grantees' Rights) Order 1998 came into force. The amended Order enables breeders holding plant variety rights for vegetatively propagated vegetable varieties to exercise greater control over the commercialization of their varieties. It gives such breeders the extended rights that breeders of vegetatively propagated ornamental and fruit varieties have enjoyed since 1987.

Case law

The first court action in New Zealand for an infringement under the Plant Variety Rights Act 1987 was concluded during the period. This was a landmark decision which should serve to deter future would-be infringers.

The action was taken by Hodder & Tolley Ltd (now Wrightson Seeds Ltd) against Tod Seeds Ltd for breaching the plant variety right for the ryegrass variety 'Exalta'. Tod Seeds had sold seed which they represented to be 'Exalta' but in fact was of another variety. Hodder & Tolley had to go to considerable steps to gather evidence. This involved applying to the Court for an Anton Pillar order (a type of search warrant) which enabled uplifting of documents from Tod Seeds. Electrophoresis tests were used to demonstrate that the seed in question was not the variety 'Exalta'.

Tod Seeds acknowledged their wrong doing and were ordered to pay NZ\$ 38,000 to Wrightson Seeds.

A fuller account of the case was presented in issue 74 (July 14, 1998) of the New Zealand Plant Variety Rights Journal.

Cooperation in Examination

An administrative testing arrangement with the Chinese Special Administrative Region of Hong Kong was concluded in February 1998. New Zealand agreed to carry out for Hong Kong DUS tests for varieties of a list of indigenous New Zealand taxa.

Discussion is under way on a possible bilateral testing agreement with Japan.

Situation in the Administrative Field

During the financial year ended June 30, 1998, 170 applications were received (5 less than previous year), 131 grants were issued (10 less), 80 grants were terminated (43 more) and 824 grants were renewed (61 more).

Activities for the Promotion of Plant Variety Protection

The Commissioner of Plant Variety Rights is to make a presentation on the subject of the UPOV Convention at a Workshop of the Plant Breeders Association of Kenya to be held in Nairobi on October 15 and 16, 1998.

[Annex VIII follows]

## ANNEX VIII

## POLAND

Situation in the Legislative Field

Poland has legislation based upon the 1991 Act of the UPOV Convention since 1996. Varieties of 302 taxa are eligible for protection.

The work on a draft new Seed Industry Law is in its final stage. The new Law extends protection to all genera and species. The draft implementing decrees of the Minister for Agriculture and Food Economy are in an advanced stage.

The process of accession to the 1991 Act of the UPOV Convention is in progress.

Cooperation in Examination

Poland has signed bilateral agreements on cooperation in examination with the Czech Republic, Hungary and Slovakia. In addition, a number of varieties have been examined for Latvia.

Poland has participated in two ring tests. The first one involves the Czech Republic, Germany, Hungary, Poland and Slovakia and concerns the examination of red clover, poppy and perennial ryegrass; next year, the activities will continue on red clover and begin on rape. The second group (Czech Republic, France, Hungary, Poland and Slovenia) has been engaged in lucerne and sunflower.

Situation in the Administrative Field

From January 1, 1998, to October 1, 1998, 263 applications were received and 299 titles of protection were granted. On October 1, 1998, there were 957 titles in force. Details are given below.

Group	Applications			Grants			Titles having ceased	Titles in force at 01.10.98
	domestic	foreign	total	domestic	foreign	total		
Agricultural crops	27	28	55	20	22	42	4	266
Vegetables	6	2	8	38	1	39	-	162
Ornamental Plants	12	175	187	7	197	204	11	482
Fruit Trees and Berry Plants	11	2	13	12	2	14	-	47
Total	56	207	263	77	222	299	15	957

Activities for the Promotion of Plant Variety Protection

From November 1997 to August 1998, seven training courses were organized by COBORU. Most courses were destined to staff of plant breeding and seed production companies and Polish representatives of foreign breeders. In total, 220 persons participated.

The thirty-second session of the UPOV Technical Working Party for Vegetables was held in COBORU from June 29 to July 3, 1998.

The Sixth Seminar on Statistical Methods in Variety Testing was organized by COBORU in Zakopane from June 2 to 6, 1998.

[Annex IX follows]

ANNEX IX

UNITED KINGDOM

Situation in the Legislative Field

The Plant Varieties Act 1997, which came into force on May 8, 1998, brought the United Kingdom law fully into line with the 1991 Act of the UPOV Convention. It is expected that the 1991 Act will be ratified shortly.

There was an increase of 3.5% in fees for plant breeders' rights in respect of application, test, grant and renewal, except for roses where the fees were increased to reflect improved testing arrangements.

Cooperation in Examination

The United Kingdom has signed a bilateral agreement with the Chinese Special Administration Region of Hong Kong which came into effect on March 1, 1998.

Situation in the Administrative Field

During the year ended March 31, 1998, 335 applications were received (30.9% increase over previous year), 140 grants were issued (47% decrease), 308 grants were terminated (25.4% decrease) and 1783 grants were renewed (3.8% decrease) out of which 21 were renewed as suspended rights whilst a Community right operates.

Community Plant Variety Rights

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

Activities for the Promotion of Plant Variety Protection

The United Kingdom received visitors from the Czech Republic, Japan, Malaysia, the Republic of Moldova, Thailand and Uruguay wishing to learn more about the United Kingdom (and UPOV) system of plant variety protection.

The United Kingdom, together with the National Institute of Agricultural Botany (NIAB), the Ministry of Agriculture, Forestry and Fisheries of Japan and the World Intellectual Property Organization (WIPO), also contributed to the Briefing Workshop on Plant Variety Protection under the UPOV Convention for Countries in Asia held in Cambridge.

The Controller of Plant Variety Rights and an official from the Department of Agriculture for Northern Ireland were a speaker at the UPOV Seminar on the Protection of Plant Varieties Under the UPOV Convention held in Port-of-Spain (Trinidad and Tobago) from April 29 to May 1, 1998.

[Annex X follows]

ANNEX X

SWITZERLAND

Situation in the Legislative Field

The amendment of the law with a view to its adaptation to the 1991 Act of the UPOV Convention is currently the subject of consultations at the level of the Government departments. The new law might thus enter into force in the periode from the end of 1999 to the middle of 2000; protection is already available in respect of practically all genera and species.

The work on the implementing regulations to the revised law will be taken up by the Committee of Variety Protection Experts at the beginning of 1999.

Situation in the Administrative Field

From January 1 to September 30, 1998, 61 applications were filed and 58 titles of protection issued; 753 titles were in force at the latter date.

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