



C/32/16

ORIGINAL: French

DATE: July 18, 2000

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirty-Second Ordinary Session
Geneva, October 28, 1998

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-second ordinary session in Geneva on 28 October 1998 under the chairmanship of Mr. Ryusuke Yoshimura (Japan).
2. The list of participants is given at Annex I hereto.
3. The paragraphs with numbers followed by an asterisk have been taken from the Record of the decisions adopted by the Council at the end of the session (document C/32/15).

Opening of the Session

4. The session was opened by the President, who welcomed the participants. He extended a particular welcome to the Delegations of Bulgaria, the Republic of Moldova, the Russian Federation and Trinidad and Tobago, States that had become members of UPOV since the last ordinary session of the Council.
5. The Delegation of the Republic of Moldova thanked the President for his kind words, together with the representatives of the member States and the officials of the Office of the Union who had given their assistance in drafting the national plant variety protection law.

The authorities of the Republic of Moldova welcomed the accession of their country to UPOV and would do all possible to ensure the efficient operation of the system of protection and its integration within the international system set up under UPOV.

6. The Secretary-General announced to the Council that two Directors of the International Bureau of WIPO – Mr. Ludwig Baeumer and Mr. Joachim Bilger – had been on board Swissair flight 111 that had gone down on Wednesday, 2 September 1998, off the Canadian coast. Mr. Baeumer had been an outstanding figure in intellectual property; Mr. Bilger had also been the Controller for UPOV. Both had been highly thought of in all quarters, both at national and international levels. Their devotion, their loyalty, their uprightness and their courtesy had been exemplary.

Adoption of the Agenda

7. The Council adopted the agenda as given in document C/32/1 after having noted that it was required to examine the laws of Estonia and of the Kyrgyz Republic under item 5.

Adoption of the Report on the Thirty-First Ordinary Session

8.* The Council adopted the report as given in document C/31/17 Prov.

Examination of the Conformity of the Plant Breeders' Rights Act of Zimbabwe with the 1978 Act of the UPOV Convention

9.* Discussions were based on document C/32/12.

10.* The Council noted:

(a) that the examination of the conformity of the Plant Breeders' Rights Act of Zimbabwe with the 1978 Act of the UPOV Convention had been carried out under the expedited procedure decided upon at its thirtieth ordinary session, in October 1996 (see document C/30/17, paragraph 13);

(b) that the Office of the Union had received no comments based upon document C/32/12 from representatives of member States;

(c) that the Council had therefore:

(i) decided that the Plant Breeders' Rights Act of Zimbabwe, after the incorporation of the substance of the changes suggested in document C/32/12, would conform to the 1978 Act of the UPOV Convention;

(ii) requested the Secretary-General to advise the Government of Zimbabwe that after the incorporation into the Act of such suggested changes to the satisfaction of the Office of the Union it would be able, at any time prior to April 24, 1999, to deposit an instrument of accession to the 1978 Act;

(d) that the Secretary-General had communicated the above decision to the Government of Zimbabwe on October 21, 1998.

Examination of the Conformity of the Laws of Any Other State Having Submitted a Request Under Article 34(3) of the 1991 Act of the UPOV Convention

Estonia

11.* Discussions were based on document C/32/13.

12.* The Council decided:

(a) to advise the Government of Estonia that the Act, with the incorporation of suitable amendments, provided the basis for an Act conforming with the Convention;

(b) to request the Office of the Union to offer its assistance to the Government of Estonia in respect of the amendments and the Regulations that were necessary to achieve conformity and the other amendments that improved the effectiveness of the Act;

(c) to further advise the Government of Estonia that

(i) after the adoption of an Act on the revision of the Act in accordance with the suggestions of the Office of the Union, but without other substantial changes, and

(ii) after consultation of the Office of the Union as to whether the amendments to the Act were adequate,

it would be able to deposit an instrument of accession to the 1991 Act of the UPOV Convention.

Kyrgyz Republic

13.* Discussions were based on document C/32/14.

14.* The Council decided:

(a) to advise the Government of the Kyrgyz Republic that the Law provided the basis for a legal system of protection conforming with the Convention and that the Government was able to deposit an instrument of accession to the 1991 Act of the UPOV Convention on the basis of the Law;

(b) to request the Secretary-General to advise the Government of the Kyrgyz Republic of this decision whilst drawing its attention to the discrepancies referred to in paragraph 32 of document C/32/14, and offering the assistance of the Office of the Union in respect of the amendments that ought to be made in the Law to achieve conformity with the Convention without the need to draw upon Article 37 of the Law.

Report by the President on the Work of the Fifty-Fifth and Fifty-Sixth Sessions of the Consultative Committee; Adoption of Recommendations, if Any, Prepared by That Committee

15. The President referred to paragraph 20 of document C/32/3 with respect to the work of the fifty-fifth session of the Consultative Committee held on April 3, 1999. He added that the fifty-sixth session, held on the preceding day, had been essentially devoted to preparing the current session of the Council.

Report by the Secretary-General on the Activities of the Union in 1997; Supplementary Report on Activities During the First Nine Months of 1998

16.* The Council approved the report by the Secretary-General on the activities of the Union in 1997, given in document C/32/2, and noted the report on activities during the first nine months of 1998, given in document C/32/3.

17.* The Council expressed appreciation to the Office of the Union for the work carried out, and also to WIPO for the assistance provided.

Report by the Secretary-General on the Management of the Union During the 1996-97 Biennium and the Financial Situation of the Union at December 31, 1997

18.* The Council unanimously approved the report by the Secretary-General on the management of the Union during the 1996-97 biennium and the financial situation of the Union at December 31, 1997, as given in document C/32/4.

Report on the Auditing of the Accounts of the 1996-97 Biennium

19.* The Council noted the report of the auditors on the accounts of the 1996-97 biennium contained in document C/32/4, Annex B, and expressed its gratitude to the Government of Switzerland for its cooperation in that matter.

Progress of the Work of the Administrative and Legal Committee

20.* The Council noted the work of the Administrative and Legal Committee as described in document C/32/9. It also noted that the agenda of the next session of the Committee would include an item of the notion of "breeder" under the Convention.

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

21.* The Council noted the work of the Technical Committee and the Technical Working Parties as given in document C/32/10 and its addendum, and approved the programs of work for the forthcoming sessions.

22.* The Council unanimously supported the continuation of the work of the Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular. The Delegation of Germany stated that the Working Group should focus on methods that would be of assistance in DUS testing for plant variety protection purposes.

Calendar of Meetings in 1999

23.* The Council established the calendar of meetings in 1999 as reproduced in the Annex to this document. It also noted that a series of meetings would be organized on “the *sui generis* option under Article 27.3(b) of the TRIPS Agreement” and as part of a program of technical assistance to countries introducing a *sui generis* system of protection for plant varieties.

Election of the New Chairman of the Administrative and Legal Committee

24.* The Council elected, for a term of three years ending with the thirty-fifth ordinary session of the Council, in 2001, Mr. John V. Carvill (Ireland) and Ms. Nicole Bustin (France) Chairman and Vice-Chairman, respectively, of the Administrative and Legal Committee.

25.* The Council expressed its appreciation to the outgoing Chairman, Mr. H. Dieter Hoinkes (United States of America), for the work carried out during his term.

Election of the New Chairman of the Technical Committee

26.* The Council elected, for a term of three years, Ms. Elise Buitendag (South Africa) and Mr. Michael Camlin (United Kingdom) Chairman and Vice-Chairman, respectively, of the Technical Committee.

27.* The Council expressed its appreciation to the outgoing Chairman, Mr. Joël Guiard (France), for the work carried out during his term.

Election of the New Chairman of the Technical Working Party for Agricultural Crops

28.* The Council elected, for a term of four years, Mrs. Françoise Blouet (France) Chairman of the Technical Working Party for Agricultural Crops.

29.* The Council expressed its appreciation to the outgoing Chairman, Mr. Aubrey Bould (United Kingdom), for the work carried out during his term and wished him a happy retirement.

Election of the New Chairman of the Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular

30.* The Council elected, for a term of three years, Mr. Michael Camlin (United Kingdom) Chairman of the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular.

31.* The Council expressed its appreciation to the outgoing Chairman, Mr. Joël Guiard (France), for the work carried out during his term.

Reports by Representatives of States (Member States and Observer States) and Intergovernmental Organizations

32. The Council took note of the written reports reproduced in document C/32/11 and its four addenda and of the oral reports given in the session. Those reports are reproduced in Annex III hereto.

Data Assembled by the Office of the Union on the State of Protection in Member States and Cooperation Between Them

33. The Council took note of the information given in documents C/32/5, C/32/6 and C/32/7.

Retirement

34. The Council noted that Mr. Reiner Hron (Austria) was participating for the last time in one of its sessions. It thanked him for the work he had contributed and wished him a long and happy retirement.

35. The Council unanimously adopted this report at its thirty-third ordinary session, on October 20, 1999.

[Three Annexes follow]

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

AFRIQUE DU SUD/SOUTH AFRICA/SÜDAFRIKA/SUDÁFRICA

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Karl FLITTNER, Botschaftsrat I. Klasse, Ständige Vertretung, 28 C, chemin du Petit-Sacconnex, 1209 Genf, Schweiz

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BELGIQUE/BELGIUM/BELGIEN/BÉLGICA

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III. ORGANISATIONS/ORGANIZATIONS/
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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)/
ORGANISATION FÜR WIRTSCHAFTLICHE ZUSAMMENARBEIT UND ENTWICKLUNG (OECD)/
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INTERNATIONALE VEREINIGUNG FÜR GEWERBLICHEN RECHTSSCHUTZ
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ASSOCIATION INTERNATIONALE DES SÉLECTIONNEURS POUR LA PROTECTION
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INTERNATIONAL ASSOCIATION OF PLANT BREEDERS FOR THE PROTECTION OF
PLANT VARIETIES (ASSINSEL)/
INTERNATIONALER VERBAND DER PFLANZENZÜCHTER FÜR DEN SCHUTZ VON
PFLANZENZÜCHTUNGEN (ASSINSEL)/
ASOCIACIÓN INTERNACIONAL DE LOS SELECCIONADORES PARA LA PROTEC-
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COMMUNAUTÉ INTERNATIONALE DES OBTENTEURS DE PLANTES
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ASSOCIATION DES OBTENTEURS DE VARIETES VÉGÉTALES DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE (COMASSO)/
ASSOCIATION OF PLANT BREEDERS OF THE EUROPEAN ECONOMIC COMMUNITY (COMASSO)/
VEREINIGUNG DER PFLANZENZÜCHTER DER EUROPÄISCHEN WIRTSCHAFTSGEMEINSCHAFT (COMASSO)/
ASOCIACIÓN DE OBTENTORES DE VARIEDADES VEGETALES DE LA COMUNIDAD ECONÓMICA EUROPEA (COMASSO)

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IV. BUREAU INTERNATIONAL DE L'OMPI/INTERNATIONAL
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Thomas A.J. KEEFER, Assistant Director General
Marco PAUTASSO, Acting Controller, Office of Internal Oversight and Productivity

V. BUREAU/OFFICERS/VORSITZ/OFICINA

Ryusuke YOSHIMURA, President
Karl Olov ÖSTER, Vice-President

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

Kamil IDRIS, Secretary-General
Barry GREENGRASS, Vice Secretary-General
André HEITZ, Director-Counsellor
Max-Heinrich THIELE-WITTIG, Senior Counsellor
Raimundo LAVIGNOLLE, Senior Program Officer
Sumito YASUOKA, Associate Officer

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

ANNEX II

DATES OF MEETINGS IN 1999

presented in the order of the organs

Council

October 20

Consultative Committee

March 26
October 19

Administrative and Legal Committee

March 25
October 18

Technical Committee

March 22 to 24

Technical Working Party for Agricultural Crops

June 22 to 25, Ottawa, Canada

Technical Working Party on Automation and Computer Programs

June 29 to July 2, Helsinki, Finland

Technical Working Party for Fruit Crops

September 6 to 10, Nitra, Slovakia

Technical Working Party for Ornamental Plants and Forest Trees

September 13 to 18, Pruhonice, Czech Republic

Technical Working Party for Vegetables

July 5 to 9, Hanover, Germany

Working Group on Biochemical and Molecular Techniques, and DNA Profiling in Particular

To be fixed in relation to the dates of the session of the Technical Committee in 2000;
there will be no meeting in 1999.

[World Seed Conference 1999]

September 6 to 8, Cambridge, United Kingdom

[UPOV-WIPO-WTO Roundtable on the *Sui Generis* Option Under Article 27.3(b) of the TRIPS Agreement]

February 15, Geneva

[Annex III follows]

ANNEX III

REPORTS AND STATEMENTS BY REPRESENTATIVES OF STATES AND
ORGANIZATIONS ON THE SITUATION IN THE LEGISLATIVE, ADMINISTRATIVE
AND TECHNICAL FIELDS

I. MEMBER STATES

ARGENTINA

Situation in the Legislative Field

The possibility of making amendments to adapt the national legislation to the 1991 Act of the UPOV Convention is still under consideration.

Cooperation in Examination

The National Seed Institute (INASE) accepts the results of DUS tests for roses from France, Germany and the Netherlands for the purposes of both the National Register of Cultivars and the National Register of Cultivar Ownership.

Situation in the Administrative Field

An agreement on cooperation has been concluded this year with the National Institute of Industrial Property (INPI) in view of the importance of the granting of intellectual property rights in biotechnological inventions that are closely related to both INASE and INPI. It covers the following: provision of information, except where the information must remain secret; technical assistance; mutual information on activities; cooperation in national, provincial and international organisations, when in the common interest; periodical meetings; exchange of information and documents that are of interest to the other party, e.g. data on patents granted, and trademarks and variety denominations registered.

The table below summarizes the volume of activity of INASE with respect to entries in the National Register of Cultivars and grants of titles of ownership.

	1997		1998 (until October 13)	
	Register	Ownership	Register	Ownership
Cereals	96	37	69	27
Oil Crops	79	41	51	28
Industrial Plants	2	1	8	3
Fodder Crops	84	59	39	23
Fruit Crops	51	8	18	9
Vegetables	349	18	168	2
Ornamental Plants	7	7	18	18
Total	668	171	371	110

Recently, objections have been raised to applications, based upon lack of entitlement. The suspension of the registration procedure has been requested pending resolution of the dispute in court.

Situation in the Technical Field

An agreement has been concluded with the University of Morón for the growing-out of the reference collections of wheat, barley, oats, soybean, fodder crops and vegetables, to continue work started in 1993. DUS tests have been sown out for soybean.

Activities for the Promotion of Plant Variety Protection

Technical experts from INASE participated as speakers in the intellectual property seminar organized by the Andes Nursery Association in Santiago de Chile in January 1998.

The INASE participated in the First Central-American Seminar on Intellectual Property and its Relations with Biotechnology and Biodiversity held in San José (Costa Rica) in February.

In June, the Directorate provided a speaker to the training course on plant variety protection for Latin-American countries held in Spain.

Technical experts from the Molecular Markers Laboratory of the Directorate participated as speakers in the International Workshop on Genetic Identification of Vegetatively Propagated Species held in Santiago de Chile on October 14 and 15.

Technical experts from the Directorate lectured on plant variety protection in Argentina and on the release of genetically modified organisms at the XVIth Pan-American Seed Seminar held in Buenos Aires from October 19 to 21.

Developments in Related Field of Activity

Authorizations to import or export seed are a matter within INASE's competence. INASE has been requested to ensure that export is made subject to the express authorization of the cultivar owner, even though the seed may have been released for circulation on the internal market.

Staff members of INASE participated in the fifth extraordinary session of the FAO Commission on Genetic Resources for Food and Agriculture, held in Rome from June 8 to 12, 1998.

The National Commission of Agricultural Biotechnology (CONABIA) authorized the release of a total of 78 genetically modified varieties of alfalfa, maize, potato, soybean, sunflower, tomato and wheat, among others, for the 1997/1998 campaign.

The work on the molecular markers of soybean has been concluded; similar work has started on maize and sunflower.

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) 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.

AUSTRIA

Situation in the Legislative Field

No date has been fixed yet for the adaptation of the Plant Variety Protection Law to the 1991 Act of the Convention.

An extension of protection to 50 taxa is in preparation.

Cooperation in Examination

An agreement has been concluded with France; its extension is in preparation. Another agreement has been concluded with Slovenia. An extension of the agreements with Germany and the United Kingdom has been concluded; it is in preparation for the agreements with Denmark and the Netherlands.

Situation in the Administrative Field

In 1998, up to September 30, a total of 14 applications were filed and 25 titles of protection issued, bringing the total number of titles in force to 178.

Activities for the Promotion of Plant Variety Protection

A delegation from Hungary visited the Austrian Office.

Developments in Related Field of Activity

Seed Law

The implementing regulations to the Seed Law 1997 entered into force on October 10, 1997. Two further regulations entered into force on July 1, 1998.

Genetic Engineering

The Genetic Engineering Law has been amended, in particular in respect of civil liability.

No authorization for release has been given yet in Austria.

BELGIUM

Situation in the Legislative Field

The procedure for amending the current law and the implementing instruments to adapt them to the 1991 Act of the Convention is suspended due to internal constraints within the Service.

Cooperation in Examination

Two agreements are still awaiting signature with Denmark and France.

Situation in the Administrative Field

The computerization of the Plant Variety Protection Service has been completed. That process was conducted in parallel with that of the National Catalogue. As one of the results, Belgium has been participating since 1988 in the UPOV-ROM system.

Since implementation of the plant variety protection legislation and up to August 31, 1998, 2145 applications for protection have been received and 1538 certificates issued.

Development in Related Fields of Activity

Control of seeds and seedlings – certification

An interprofessional body for the production of agricultural seed (INTERSEMZA) was approved by Ministerial Decree of July 17, 1998. The interprofessional agreements in this field have thus also been approved. With regard to the production of fruit and ornamental seedlings, a “framework” Royal Decree on the approval of professional bodies is in the process of finalization. The Ministerial Decree approving a professional body (PBB) in this sector should follow in 1999. Quality control (European regulations) and certification

(national regulations) will then be delegated to that body subject to official controls. Nine Royal Decrees for transposing the European Directives 96/18 and 96/72 have resulted in minor amendments to the Royal Decrees regulating trade in seed.

Regulation of the dissemination and marketing of GMOs

The Royal Decree transposing Council Directive 90/220/EEC on the deliberate release into the environment and the marketing of genetically modified organisms or of products containing them is still in the process of finalization.

Regulations on contract seed processing

A Royal Decree setting out the remuneration to be paid with respect to approval as a contract seed processor entered into force in December 1997. This Decree constitutes an extension of the Royal Decree on contract seed processing that entered into force on July 1, 1997, in line with the European Regulation (Basic Regulation 2100/94).

BULGARIA

Situation in the Legislative Field

The national Law on the Protection of New Plant Varieties and Animal Breeds was passed by the National Assembly on September 19, 1996, and published in the State Gazette No. 84 of October 4, 1996; it came into force on January 4, 1997.

On February 5, 1998, the National Assembly ratified the UPOV Convention (the corresponding law was published in the State Gazette No. 21 of February 20, 1998). The instrument of accession was deposited on March 24, 1998. On April 24, 1998, Bulgaria became the 36th member of UPOV and contributed to the entry into force of the 1991 Act of the UPOV Convention.

On February 27, 1998, the National Assembly passed a Law on the Amendment of the Law on the Protection of New Plant Varieties and Animal Breeds (published in the State Gazette No. 27 of March 10, 1998). The amendment concerned the granting of licenses by the Ministry of Agriculture, Forestry and Agrarian Reform in respect of plant variety testing.

New fees were introduced by Decree No. 119 of May 27, 1998 (published in the State Gazette No. 64 of June 5, 1998).

Two lawsuits have been instituted.

Protection has been extended to three further species. An extension to four others is in preparation.

Activities for the Promotion of Plant Variety Protection

Meetings are being organized with the breeding institutes of the Academy of Agriculture and individual breeders. The latest was held in the Ministry of Agriculture, Forestry and Agrarian Reform on October 2, 1998.

Experts from Turkey visited Bulgaria.

CHILE

Situation in the Legislative Field

The adaptation of national legislation to the 1991 Act of the UPOV Convention has not been envisaged yet.

Cooperation in Examination

It is hoped to conclude a cooperation agreement with Argentina, in particular in respect of variety registers and seed and plant certification for fruit crops.

Situation in the Administrative Field

From October 1, 1997, to September 30, 1998, a total of 100 applications (agricultural crops: 27; fruit crops: 62; ornamental plants: 11) were filed and 24 breeders' rights (agricultural crops: 8; fruit crops: 16) were granted.

The number of titles in force currently is 222 (agricultural crops: 103; fruit crops: 86; ornamental plants: 33).

Situation in the Technical Field

An agreement with the Faculty of Chemical and Pharmaceutical Sciences of the University of Chile on the development of techniques for the identification of almond and nectarine varieties through AFLP and capillar electrophoresis was carried out in 1997 and 1998.

Activities for the Promotion of Plant Variety Protection

In February 1998, two technical experts from the Ministry of Agriculture, Livestock and Rural Development of Bolivia were trained in administrative and technical matters in relation to plant variety protection.

Participation was secured at seminars organized by the Federation of Fruit Exporters and attorneys specialized in patents.

Developments in Related Field of Activity

The List of Officially Described Varieties, which includes the varieties of agricultural crops that may be marketed in the country, is now fully in force; it is hoped that a similar system will be established shortly for fruit crops.

Seed certification under the OECD system has increased, to reach a total of 12,300 hectares in 1997/1998.

There is an Interministerial Commission regulating access to genetically modified varieties under the quarantine regime. No commercial genetically modified variety has been created in the country yet. The use of by-products of the multiplication of maize varieties including specific transgenes, for animal consumption, has been authorized. There is to date no authorization in respect of human consumption.

DENMARK

Situation in the Administrative Field

In 1997, a total of 34 applications for plant breeders' rights were received (agricultural crops: 26; vegetables: 1; ornamentals: 7); this is some 36% less than in 1996. The number of titles of protection issued was 32 (agricultural crops: 13; fruit: 1; vegetables: 1; ornamentals: 17).

In the period from January 1 to September 1, 1998, 21 applications for protection were received and 36 titles of protection were issued.

Situation in the Technical Field – Variety Testing on Behalf of the Community Plant Variety Office

Thirty varieties of *Euphorbia pulcherrima* and two varieties of *Euphorbia fulgens* were tested on behalf of the Community Plant Variety Office in 1997.

Developments in Related Fields of Activity

Genetically Modified Plants

Agricultural risk assessments were carried out in 1997 for six applications regarding the placing on the market of genetically modified plants in the European Union. The applications concerned fodder beet, carnation, maize, potato and oilseed rape (two). In the period from January 1 to August 31, 1998, risk assessments were carried out on a further seven applications relating to carnation (two), cotton (two), maize, potato and tomato.

In addition, a total of 257 notifications concerning experimental releases of genetically modified plants in the European Union were reviewed in 1997. A further 230 notifications were reviewed in the period from January 1 to August 31, 1998.

Genetic Resources

The Plant Directorate, Division of Gene Technology and Variety Testing, was represented at the fourth and fifth sessions of the FAO Commission on Genetic Resources for Food and Agriculture held in Rome from December 1 to 5, 1997, and June 8 to 12, 1998, respectively.

FINLAND

Situation in the Legislative Field

The draft law conforming with the 1991 Act of the UPOV Convention was examined by the Council of Ministers on the day of the Council session and was submitted to Parliament soon after afterwards.

Situation in the Administrative Field

From September 17, 1997, to October 8, 1998, 9 applications were received and 14 titles issued.

Developments in Related Fields of Activity

The new implementing regulations to the Seed Law have been published.

FRANCE

Cooperation in Examination

A protocol of agreement was concluded at the beginning of the year with the Russian Federation. An extension to the agreement concluded with Austria is under preparation.

Activities for the Promotion of Plant Variety Protection

France is cooperating with the Office of the Union with a view to increasing awareness of plant variety protection in the French-speaking countries of Africa.

Developments in Related Fields of Activity

A charter for the protection of genetic resources has been adopted in France.

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 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.

HUNGARY

Situation in the Legislative Field

The preparations for the accession of Hungary to the 1991 Act of the UPOV Convention are in progress.

Cooperation in Examination

A bilateral agreement with the Netherlands is under discussion.

The testing authorities of the Czech Republic, Hungary and Slovakia have started consultations on cooperation in the field of DUS tests for fruit crops.

Situation in the Administrative Field

From January 1 to October 1, 1998, the Hungarian Patent Office received 110 new applications and granted 69 plant patents.

Activities for the Promotion of Plant Variety Protection

Experts from five countries (the Czech Republic, Germany, Hungary, Poland and Slovakia) participated in a session organized in Budapest on June 9 and 10, 1998, on the ring tests on red clover, poppy and ryegrass. The study of the DUS testing methodology for those species was successfully completed. The activity of the expert group will continue in 1999 in respect of oilseed rape.

Hungarian experts attended the session which was held in Brno (Czech Republic) on July 27 and 28, 1998, on the subject of alfalfa and sunflower DUS tests. The study on sunflower will be continued in 2000. In 1999, the session will be devoted to DUS tests of alfalfa and some vegetables.

Developments in Related Fields of Activity

On March 16, 1998, the Parliament approved the Gene Technology Law (No. XXVII of 1998). The law enters into force on January 1, 1999. Implementing regulations containing detailed rules on the testing of genetically modified varieties are expected to enter into force in the second half of 1999 and the first tests should start in 2000.

IRELAND

Situation in the Legislative Field

The Plant Varieties Proprietary Rights (Amendment) Bill has been debated by the Dail (House of Representatives) and is now before the Seanad (Senate). It could be promulgated before Christmas.

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.

ISRAEL

Cooperation in Examination

Two cooperation agreements were signed in 1998: with the Chinese Special Administrative Region of Hong Kong and with Japan.

The volume of purchased examination results has been increased, making it possible to reduce the number of trials carried out at national level and to make savings in time, energy and cost.

Situation in the Administrative Field

From October 1, 1997, to September 30, 1998, the Office received 136 applications for protection (111 foreign and 25 national) and granted 156 titles of protection (107 and 49, respectively).

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).

JAPAN

Situation in the Legislative Field

A Bill for the amendment of the Seeds and Seedlings Law to adapt it to the 1991 Act of the UPOV Convention was passed by the Diet, and published on May 29, 1998. Japan will deposit its instrument of accession before the end of this year, and the revised Law will enter into force on the date on which Japan becomes bound by the 1991 Act.

Cooperation in Examination

Japan has signed bilateral memoranda with the Netherlands and Israel, which came into force on October 1, 1997, and July 1, 1998, respectively, and under which the authorities have agreed to exchange examination reports.

Japan has also communicated with New Zealand on the conclusion of an agreement on cooperation in examination.

Activities for the Promotion of Plant Variety Protection

The Japanese Government has contributed to the UPOV international workshops on plant variety protection for the countries in the Asian region (seven countries) which were held in Australia on September 22, 1997, and in the United Kingdom from June 8 to 19, 1998. The latter had been organized in cooperation with the National Institute of Agricultural Botany (NIAB) of the United Kingdom and the World Intellectual Property Organization (WIPO).

A UPOV regional seminar for the countries in the Asian region will be held in China in April 1999. An international workshop for Asian countries will also be held in the United Kingdom in June 1999 with financial support from the Japanese Government.

The National Center for Seeds and Seedlings has received in October 1998 two officials from the Republic of Korea to assist that country in the development of examination systems for plant varieties.

MEXICO

Situation in the Legislative Field

The implementing regulations to the Federal Law of October 25, 1996, on Plant Varieties have been adopted and published in the Official Journal of the Federation on September 25 of this year.

Situation in the Administrative Field

Since the entry into force of the Law and up to October 15, 1998, a total of 220 applications were received in respect of 27 species, mainly of agricultural crops (80) and ornamentals (80). The six top species were rose (75), maize (50), sorghum (17), strawberry (14), cotton (11) and potato (10). The distribution by country of origin was as follows: Mexico (85), United States of America (72), France (40), Netherlands (12), Italy (6), Canada (2), Cuba (1), Israel (1) and Japan (1).

Situation in the Technical Field

A review of the varieties that will serve as references in the case of certain agricultural crops is being conducted together with experts from universities, research institutes, private sector companies and governmental institutions.

An illustrated guide for the characterization of maize varieties is in the final stages of preparation.

An official of the Registry participated in the training course held in Spain in June under the auspices of UPOV.

Activities for the Promotion of Plant Variety Protection

Various courses, conferences, seminars and workshops have been organized in various parts of the country.

Developments in Related Fields of Activity

The Catalogue of Varieties subject to Certification contains 1856 varieties from 47 species, mainly maize and sorghum. Out of those, 31% are from the National Research Institute for Forestry, Agriculture and Livestock.

NETHERLANDS

Situation in the Legislative Field

As a consequence of the entry into force of the 1991 Act of the UPOV Convention, the Dutch law implementing that Act was put into force on the same date, i.e. on April 24, 1998, by a royal decree. Before that, a general administrative order on the rules concerning the "farmer's privilege" had been published.

Cooperation in Examination

In July 1998, a bilateral administrative agreement between the Netherlands and South Africa was signed in South Africa by the competent authorities of the Netherlands and South Africa. The agreement relates to *Anthurium* Schott, *Gerbera* Cass. and *Lachenalia* Jacq. f. and is based upon the UPOV Model Agreement.

Austria has asked for a bilateral administrative agreement and the Netherlands has responded positively.

Situation in the Administrative Field

In 1997, the number of applications for plant breeders' rights fell again (to 773) and has not yet stabilized. The number of applications for Community Plant Variety Rights submitted through the Dutch Board was 119.

In 1998, the number of applications was 571 as of September 1 (493 in the same period of last year). The Board received 114 requests from UPOV member States for examination and sent 243 requests to the member States with which a bilateral agreement had been concluded. The total number of reports sent by the Board was 1802. The CPVO asked for 211 examinations.

Situation in the Technical Field

The study on the feasibility of a system of certification regarding DUS examinations, designed to achieve free competition between research institutes, is in progress. Recently, the first results have been discussed with a representative of the European Commission and the CPVO. At European level, there is a policy aiming at specialization in the examination. A system of free competition between research institutes is contrary to that policy. The consequences of this situation are being considered.

Activities for the Promotion of Plant Variety Protection

A Chinese Delegation visited the Dutch Ministry of Agriculture, Nature Management and Fisheries and the CPRO-DLO in Wageningen. The delegation was especially interested in the implementation of the 1991 Act of the UPOV Convention under Dutch law.

A Slovak Delegation also visited the Dutch Ministry of Agriculture, Nature Management and Fisheries, the Board for Plant Breeders' Rights and the CPRO-DLO.

At the CPRO-DLO, a delegation from Cyprus and a delegation from Egypt have been trained in research.

A course on plant variety protection, attended by 10 participants from 9 countries, was organized in May 1998. This course was again very successful. It covered the legal, institutional and technical aspects of plant variety protection and touched upon other intellectual property rights systems for plants.

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.

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.

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.

PORTUGAL

Situation in the Legislative Field

The draft law to amend the plant variety protection law and adapt it to the 1991 Act of the UPOV Convention is near completion.

The protection system currently applies to 88 genera and species.

Situation in the Administrative Field

The introduction of the Community plant variety rights system has led to a large decrease in national applications.

REPUBLIC OF MOLDOVA

Situation in the Legislative Field

The plant variety protection system applies to 15 genera and species. It will be extended to further genera and species in the near future.

Situation in the Administrative and Technical Fields

No title of protection has as yet been granted.

A group of 14 persons from the major research institutes, the State Commission for Variety Examination and Registration and the State Office for the Protection of Intellectual Property attended training courses in variety examination and seed certification at the National Institute of Agricultural Botany in Cambridge, United Kingdom.

RUSSIAN FEDERATION

Situation in the Legislative Field

All measures have been taken to implement the legislation, that now concerns 201 plant species and five animal species. The list will be extended once the examination procedures have been defined.

Situation in the Administrative Field

Thirty-eight examination sites have been set up. During the years 1995 to 1998, 94 specialists from the Office have participated in training courses on plant variety rights and examination procedures in the Czech Republic, France, Germany, Hungary and Poland.

Since implementation of the legislation, in 1994, and up to September 22, 1998, 643 applications for protection have been filed for 73 species; 24 of those applications were of foreign origin.

SLOVAKIA

Situation in the Legislative Field

Preparatory work for the accession to the 1991 Act of the UPOV Convention has started after the adoption of Regulations Nos. 345/1997 and 346/1997 by the National Council on November 10, 1997. The Regulations entered into force on January 1, 1998.

Situation in the Administrative Field

During 1998, 9 Slovakian and 41 foreign applications were received (Austria: 4; Belgium: 3; Canada: 1; Czech Republic: 7; France: 17; Germany: 9).

As a result of the amendment (No. 22/1996 of the Collection of Laws) of the Law No. 132/1989 on the Legal Protection of New Varieties of Plants and Breeds of Animals, which extended protection to all botanical genera and species, applications are now being received for ornamental and special-purpose species which have so far never been tested in Slovakia. The tests will be carried out in cooperation with other UPOV member States.

Cooperation in Examination

An agreement on cooperation with Slovenia is under preparation. The Variety Testing Department of the Central Institute for Inspection and Testing in Agriculture (UKSUP) is already testing dwarf French bean, red clover, cocksfoot, timothy and tomato for the Slovenian Agricultural Institute.

Further cooperation between the Czech Republic, Hungary, Poland, Slovakia and Slovenia in the testing of fruit and vegetables is under discussion.

Activities for the Promotion of Plant Variety Protection

Experts from Slovakia participated in the meetings on the DUS ring tests for grasses, red clover and poppy (Budapest) and alfalfa and sunflower (Czech Republic) in summer 1998 and also in the "ring electrophoretic tests" for sunflower organized by French experts.

Genetic Resources

The new Genebank has now been set up. The UKSUP and the Genebank have prepared an agreement for the conservation and maintenance of the reference collections of protected varieties, example varieties, etc.

SOUTH AFRICA

Situation in the Legislative Field

The revised Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976) came into operation during April 1996. South Africa's instrument of ratification is still in the process of being finalized and should be deposited with UPOV in the near future.

Discussions are presently being held amongst various groups and the Government to amend the clause in the Act which deals with "farmer's privilege," especially as far as vegetatively propagated varieties are concerned. The strategy of the Department is to remove "farmer's privilege" from the Plant Breeders' Rights Act and include a new section in the

Plant Improvement Act which will allow farmers to harvest seed of varieties which are not protected by means of compulsory certification or plant breeders' rights.

Requests for the extension of protection to further genera and species are still received from time to time. During the year under review, protection has been extended to 6 new genera and species and another 5 are in the process of being protected.

Cooperation in Examination

A bilateral agreement with the Netherlands was signed in South Africa on July 20, 1998. There have been no further developments on the request from the Chinese Special Administrative Region of Hong Kong for a bilateral agreement.

Situation in the Administrative Field

From October 1, 1997, to August 31, 1998, 144 applications for plant breeders' rights were received and 138 breeders' rights were granted. As at August 31, 1998, there were 368 applications under consideration and 1359 plant breeders' rights in force. Further details are given below.

	Agricultural Crops	Vegetable Crops	Ornamental Plants	Fruit Crops	Total
Applications Received	35	33	65	11	144
Plant Breeders' Rights Granted	41	29	54	14	138
Valid Plant Breeders' Rights	419	214	523	203	1,359
Applications Under Consideration	79	44	145	100	368

Activities for the Promotion of Plant Variety Protection

Seminars, workshops and courses have been presented during the year to various groups of people having interests in plant breeders' rights. The main topic is still the changes to the new Act and especially "farmer's privilege."

Tremendous pressure is being put on the Directorate to include a section on "farmers' rights" in the Plant Breeders' Rights Act.

Developments in Related Fields of Activity

The Genetically Modified Organisms Act (GMO Act) has been approved by Parliament and ratified by the President of South Africa. The Regulations to the Act have nearly been completed.

The South African Committee for Genetic Experimentation (SAGENE) is currently responsible for the provision of control measures and risk analyses in cooperation with the National Department of Agriculture and Health. SAGENE is a national advisory body

consisting of private citizens appointed, nominated or invited to serve on a voluntary basis by virtue of their affiliations, skill or experience.

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.

SWEDEN

Situation in the Legislative Field

As reported last year, the provisions under Council Regulation (EC) No. 2100/94 on the use of farm-saved seed have been incorporated into the new Swedish Plant Variety Protection Act. A revised agreement has been concluded between the farmers' organization and the seed industry. It relates to varieties of cereals, field beans, field pea, oilseed rape, turnip rape and linseed; on average, the royalty level is 52% of the normal license fee.

Situation in the Administrative Field

During the last years, a strong decrease has been noted in applications and grants. The reduction, which is especially pronounced in ornamentals, is mainly the result of the introduction of the Community plant variety rights system.

Number of applications received

1997	68	(57 agricultural, 9 fruit, 2 ornamentals)
1998 (up to October 1)	39	(37 agricultural, 1 fruit, 1 ornamental)
July 1992 to June 1995	120	annually on average
July 1995 to June 1998	56	annually on average

Number of titles of protection issued

1995	80	(17 agricultural, 1 vegetable, 2 fruit, 60 ornamentals)
1996	57	(30 agricultural, 4 fruit, 19 ornamental, 4 trees)
1997	39	(21 agricultural, 5 fruit, 13 ornamentals)

Number of grants valid as per July 1

1996	434	(190 agricultural, 3 vegetables, 25 fruit, 203 ornamentals, 13 trees)
1997	326	(201 agricultural, 3 vegetables, 30 fruit, 89 ornamentals, 3 trees)

Developments in Related Fields of Activity

At present, applications are pending for seven genetically modified potato varieties, all with modified starch. The decision on the first application is awaiting an EU decision on market release.

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 period 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.

UKRAINE

Situation in the Legislative Field

The draft of the Law Amending the Law on the Protection of Plant Variety Rights has been adopted in the first reading by the Supreme Soviet of Ukraine; the preparation of the second reading is in progress.

Situation in the Administrative Field

During 1997, 16 applications for plant variety rights were received. No rights have been issued yet.

Activities for the Promotion of Plant Variety Protection

During 1998, representatives of the State Committee of Ukraine for Plant Variety Testing and Protection participated in the following:

(a) practical training on the principles and organization of varietal seed certification in France, organized by the *Groupement national interprofessionnel des semences et plants* (GNIS) (France, April-July 1998);

(b) seminar of the European Patent Office (EPO) on "Examination in the field of plant varieties," held in Munich on April 20 to 24, 1998;

(c) international conference on "Community Plant Variety Rights, the European Approach," held in Angers on May 18, 1998;

(d) visit of experts from the Community Plant Variety Office to give legal and technical information about the Community plant variety rights system, October 21 to 23, 1998.

Developments in Other Fields of Activity

The Government of Ukraine has decided to become a member of the International Seed Testing Association (ISTA).

The question of the admission of Ukraine to the OECD Schemes for the Varietal Certification of Seed Moving in International Trade is under the discussion.

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.

UNITED STATES OF AMERICA

The Senate approved ratification of the 1991 Act and it now remains to obtain the President's signature, which will be soon forthcoming.

II. NON-MEMBER STATES

BOLIVIA

Situation in the Legislative Field

It is hoped that Bolivia will deposit its instrument of accession to the 1978 Act of the UPOV Convention at the beginning of November 1998. The Ministry of Agriculture, Livestock and Rural Development (MAGDR) has made the corresponding request to the Chancellery.

There was a first experience of dispute. A seed producer who refused to recognize the right of the breeder of a protected maize variety could not get his seed certified. He eventually had no choice but to enter into a contract with the breeder; there was no judicial follow-up.

Protection is currently available for cotton, maize, roses and soybean. It is planned to extend protection shortly to wheat and at a later stage to various vegetables.

Situation in the Administrative Field

There has been no change in the administrative structure, but MAGDR has requested that the National Seed Program (PNS) be decentralized in order to guarantee the continuity of its work. It is hoped that the change will be effected by January 1999.

As a result of the promotional activities described below, there has been an increasing interest for plant variety protection from private breeders.

Situation in the Technical Field

The first official DUS tests have been sown out in the Departments of Santa Cruz and Cochabamba (vegetables); further tests will probably be laid out in Chuquisaca.

Activities for the Promotion of Plant Variety Protection

A seminar on plant variety protection was organized in La Paz in April 1998, in cooperation with the Inventors' Association of Bolivia. A course directed at researchers took place at Santa Cruz in September 1998; a similar course is planned to be held in Cochabamba in November.

Two technical experts from the PNS participated in the training course offered by UPOV and the Spanish Government in Spain in June 1998.

Two technical experts from the PNS visited the Agriculture and Livestock Service of Chile to be trained on the spot and get acquainted with its working procedures. They visited Santiago, Temuco, Osorno and Puerto Mont (in January 1998).

The official in charge of plant variety protection has been appointed as a member of the National Biosecurity Committee, which is attached to the Ministry of Sustainable Development and Environment.

EGYPT

Provisions are currently being taken to introduce a plant variety protection system in conformity with the 1991 Act of the Convention and it is hoped that it will soon be possible to initiate the procedure for accession to UPOV.

ESTONIA

Situation in the Legislative Field

The new Plant Variety Rights Act of the Estonian Republic was passed by Parliament on March 25, 1998, and entered into force on July 1, 1998. It is adapted to the 1991 Act of the UPOV Convention.

Implementing regulations have been drafted and submitted to the Government for approval. The variety protection fees were increased when the new Act entered into force.

The Law of the Ratification of the International Convention for the Protection of New Varieties of Plants has been drafted and is waiting for the advice of the Council on the conformity of the Plant Variety Rights Act with the Convention.

Cooperation in Examination

Estonia is looking for possibilities for cooperation in examination and exchange of DUS reports.

Situation in the Administrative Field

The Estonian Plant Production Inspectorate was established at the end of 1997. The Inspectorate is a State body and has seven departments:

- Plant Protection Products Registration Department
- Department for the Monitoring of Use of Plant Protection Products
- Department for the Monitoring of Use of Fertilizers and Feeding Material
- Plant Product Control Department
- Seed Certification Department
- Variety Control Department
- Plant Health and Propagating Material Control Department

The Variety Control Department is responsible for plant variety protection and variety listing. It is setting up a computer system for variety registration and networking with other departments.

A senior officer from the Department followed the Second International Course on Plant Variety Protection organized by the CPRO-DLO of the Netherlands in Wageningen in May 1998.

There are 27 titles of protection issued and 38 applications at different stages of examination.

Developments in Related Fields of Activity

The Seed and Propagating Material Act was passed by Parliament on May 13, 1998, and entered into force on July 1, 1998.

On October 23, 1997, the Council of OECD decided to admit Estonia to the OECD schemes for varietal certification of herbage, oil seed, cereals and vegetable seed moving in the international trade.

The legislation on genetically modified organisms has been drafted and submitted to Parliament for approval.

GABON

Gabon hopes soon to be able to accede to UPOV on the basis of a plant variety protection system set up within the framework of the African Intellectual Property Organization.

GREECE

The situation is unchanged. Information is being obtained on the new situation resulting from application of the Community plant variety protection system and proposals will then be made to the Government.

INDONESIA

Indonesia is currently harmonizing its domestic legislation with the UPOV Convention. The advice and technical assistance of the Office of the Union would be welcome.

KENYA

Kenya is preparing its instrument of accession to the 1978 Act of the Convention and hopes that it can be deposited in the very near future. Kenya is also looking at amendments to its national legislation to adapt it to the 1991 Act.

A plant breeders' association has been established.

TUNISIA

Tunisia possesses legislation on seed and seedlings and on plant protection; it is currently drafting a law on plant variety protection. Tunisia wishes to accede to UPOV.

III. INTERNATIONAL ORGANIZATIONS

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

The participation of Estonia in the OECD seed certification schemes became effective in December 1997 and that of Egypt is imminent. The requests for accession of Albania, Costa Rica and Ukraine are being examined. Brazil and Lithuania have recently submitted requests.

In the technical field, discussions continue on herbage seed and the various varietal types of oilseed rape. The issue of genetically modified varieties has also been discussed to the extent that it may be required that their nature be mentioned in the course of trade. Various States are introducing new rules for the marketing of ecotypes and landraces and the question is also being dealt with at OECD.

Discussion continues with respect to accreditation, that is to say the possibility of delegating a part of the seed certification process, for certain generations and certain acts such as labeling, sampling and testing, to non-official inspection services or even to undertakings.

EUROPEAN COMMUNITY AND COMMUNITY PLANT VARIETY OFFICE (EC)

Situation in the Legislative Field

The details of accession by the European Community to UPOV are being studied by the Commission and the member States.

A regulation to implement Regulation 2100/94 with regard to the level of the royalty to be paid by a farmer who avails himself of the farmer's exception (produces farm-saved seed) in the absence of agreement is in the process of adoption.

July 1998 saw the entry into force of the European Parliament and Council Directive on the Legal Protection of Biotechnological Inventions. That Directive affects Community plant variety protection. In particular, it provides for a system of licenses and cross-licenses aimed at facilitating the use of varieties protected by plant variety rights and one or more patents where the owners of the various rights have been unable to agree and where an important technical advance of considerable economic interest is involved. The need to amend Regulation 2100/94 is under study; if necessary, a proposal will be made to the Council of the European Union.

Situation in the Administrative Field

From October 1997 to October 1998, the Community Plant Variety Office received 1770 applications. For the period from January 1 to October 15, 1998, there has been an increase of 20 per cent over the corresponding period of the preceding year.

In all (since April 1995), 7408 applications have been filed, of which 87 are from member States of the European Union and 13 per cent from non-member States. The breakdown is as follows:

Ornamentals	55%
Agricultural plants	26.7%
Vegetables	12%
Fruit trees	6%
Miscellaneous	0.3%

In 1997, 1014 rights were granted and from January to October 1998, 1236 rights. In all, since April 1995, 3323 rights have been granted.

The Office now has a web site.

The Office will provide data for the UPOV-ROM, in the required format, as soon as it has changed the software used for the management of applications.

The aid of five national European Offices has been enlisted for the examination of variety denominations.

Activities for the Promotion of Plant Variety Protection

In May 1998, the Office organized a conference on the Community plant variety rights system in Angers, France.

INTERNATIONAL SEED TRADE ASSOCIATION (ISTA)

ISTA held its triennial congress in Pretoria, South Africa, in April of this year.

Bolivia has become a member of ISTA and Ukraine has recently submitted an application for membership. The number of private sector members has considerably increased.

At the present time, the most important task facing ISTA is the reaccreditation of all the seed testing stations under the ISTA quality assurance scheme. It is hoped that it will be completed by the end of the year 2000.

ASSOCIATION OF PLANT BREEDERS OF THE EUROPEAN ECONOMIC COMMUNITY (COMASSO)

COMASSO wishes to make known its position on the draft Regulation for implementing Regulation 2100/94 and setting the level of the royalty to be paid by a farmer who avails himself of the farmer's exception (farm-saved seed) in the absence of agreement: in the view of the breeders within the European Economic Community, the amount of the royalty is part of the exercise of the right granted to the breeder and the draft Regulation constitutes interference in a private right.

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