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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL**Fiftieth Ordinary Session
Geneva, October 28, 2016****REPORTS BY REPRESENTATIVES OF MEMBERS AND OBSERVERS
ON THE SITUATION IN THE LEGISLATIVE, ADMINISTRATIVE AND TECHNICAL FIELDS***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. According to the practice introduced on the occasion of the twenty-sixth ordinary session of the Council, the reports from the representatives of members and observers on the situation in the legislative, administrative and technical fields of plant variety protection and related areas are requested to be submitted in writing, in advance, to increase the ability of the Council to carry out its tasks effectively.
2. Written reports were requested by the Office of the Union in the invitation circular relating to this session and a model format was proposed. The following reports were submitted (in alphabetical order of the names in French):

Members: Annexes I to XIV: Germany, Belgium, Canada, Georgia, Hungary, Lithuania, New Zealand, Poland, Republic of Moldova, Romania, Serbia, Slovenia, Switzerland and European Union
3. Reports received after September 2, 2016, will be included as an addendum to this document, which will be published after the Council session.

[Annexes follow]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 The Decree on Procedure Before the Federal Plant Varieties Office was amended to reflect the amount of fees to be collected by the Federal Plant Varieties Office as at January 1, 2016.

1.2 Nothing to report.

1.3 Nothing to report.

2. Cooperation in examination

Nothing to report.

3. Situation in the administrative field

Nothing to report.

4. Situation in the technical field

Nothing to report.

5. Activities for the promotion of plant variety protection

During the period under review, a representative of the Federal Plant Varieties Office visited the Ministry of Agriculture, Forestry and Rural Development in Pristina to exchange expertise with the authorities there on the prerequisites and effects of plant variety protection.

As part of a more recent visit to India, in May 2016, representatives of the Federal Plant Varieties Office held discussions with administrative and industrial representatives on the plant variety protection system.

We also received delegations from Ethiopia, Mongolia, Republic of Korea and Turkey at the Federal Plant Varieties Office.

II. RELATED AREAS

Nothing to report.

[Annex II follows]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

- Adaptation to the 1991 Act of the Convention

Belgian law has already been made compliant with the 1991 Act of the Convention. This was achieved by Book XI, 'Title 3. - Plant Breeders' rights' of the Code of Economic Law which entered into force on July 1st, 2015 (*Moniteur Belge*, March 29th, 2013, p. 19975). Currently a legislative proposal is being prepared to proceed with the official ratification of the 1991 Act of the Convention. This proposal will be finalised in the fall of 2016 and is expected to go to parliament in 2017.

- Other amendments, including in respect of fees

On May 12th, 2015 a new Royal Decree was introduced to implement Book XI, 'Title 3. - Plant Breeders' rights' of the Code of Economic Law (*Moniteur Belge.*, June 1st, 2015, p. 30697). This Royal Decree was amended by a Royal Decree of July 1st, 2016 with regard to the annual taxes to be paid for maintaining plant breeders' rights protection in relation to varieties of vines, trees and potatoes (*Moniteur Belge*, July 26th, 2016, p. 45660).

1.2 Extension of protection to further genera and species

Since the entry into force on July 1st, 2015 of Book XI, 'Title 3. - Plant Breeders' rights' of the Code of Economic Law, the protection offered by Belgian Plant Breeders' rights is available for varieties of all botanical genera and species, including in particular their hybrids.

1.3 Case law

To our knowledge there is no case law to be reported.

2. Cooperation in examination

- Conclusion of new agreements

No new agreements on cooperation in examination have been concluded.

- Amendment of existing agreements

No existing agreements on cooperation in examination have been amended.

3. Situation in the administrative field

No changes to be reported.

4. Situation in the technical field

No changes to be reported.

5. Activities for the promotion of plant variety protection

The Belgian Intellectual Property Office did not organise activities to promote plant variety protection.

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ANNEX III

CANADA

PLANT VARIETY PROTECTION

Cooperation in examination

On April 29th, 2016, Canada amended its policy on the acceptance of foreign Distinctness, Uniformity, and Stability (DUS) test results. Canada's Plant Breeders' Rights Office will now accept foreign DUS test reports from any UPOV member for horticulture and ornamental varieties (except *Solanum* species), in lieu of conducting the trials in Canada. Previously, Canada's policy on the acceptance of foreign DUS test results was limited to asexually propagated varieties grown in a controlled greenhouse environment. For seed reproduced agricultural varieties requiring two growing cycles of trials, DUS testing must still be conducted in Canada. However, the applicant is able to replace one of the two growing cycle's by purchasing the foreign test result from another UPOV member.

Further details about Canada's recently amended foreign DUS policy can be found at the following website:
<http://www.inspection.gc.ca/plants/plant-breeders-rights/application-process/foreign-test-results/eng/1383686021643/1383686079045>

[Annex IV follows]

PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 At its twenty-fourth extraordinary session, held in Geneva on March 30, 2007, the Council examined the Law for the Protection of New Varieties of Plants of 2006 of Georgia with the 1991 Act of the UPOV Convention. This Law regulates linked with the legal protection of new varieties of plants and applies to all botanical genera and species. Fee for the registration of new variety of plant and breeds are not applicable yet.

1.2 On October 29, 2008, the Government of Georgia deposited its instrument of accession to the UPOV Convention. The Convention entered into force one month later and Georgia became the sixty-sixth member of UPOV on November 29, 2008.

1.3 According to the request of Ministry of Justice of Georgia, two laws 'Law of Georgia for the Protection of New Varieties of Plant' and 'Law of Georgia for the Protection of new animal breed' has been merged. Legal protection of new varieties of plants and breeds of animals and acquisition of exclusive rights in them occur in Georgia on the basis of the Law of Georgia "On New Breeds of Animals and Varieties of Plants", which entered into force on December 29, 2010.

2. Cooperation in examination

Georgia does not have bilateral agreements of cooperation in the examination of plant varieties.

3. Situation in the administrative field

Procedures and the system of the plant varieties protection are defined by the Law on Plant Variety Protection of Georgia. Along with this, the registration procedure includes:

- Formalities examination - 1 month from date of the filing;
- First publication in the Official Bulletin for the Protection of New Plant Varieties and Animal Breeds;
- Opposition period - 3 months from the first publication;
- Examination for distinctness, uniformity and stability;
- Decision to register the new plant variety;
- Second publication in the Official Bulletin.

In the period from January 1, 2011 to December 31, 2015 142 applications were filed, 62 domestic applications and 80 foreign applications have been received.

By January 1, 2016, in total 119 were in force: domestic – 58; foreign – 61.

It should be noted that for the purpose of availability of bibliographic data and software have created a new MS ACCESS database of new plant varieties (in Unicode format). In near future the new database will be accessible not only from the inner network of the office, but also from the Sakpatenti website. Due to the fact that Georgia acceded to the database of new plant varieties ("PLUTO: Plant Variety Database"), our base has been improved and gradually as needed filled with new fields and data, respectively, with PLUTO Database data. Along with this, special software was developed for generation of bibliographic data (Txt, Xml, Pdf) of new plant varieties and for providing them to the UPOV database according to the relevant standard.

4. Situation in the technical field

The individual Test Guidelines are prepared by Sakpatenti for the DUS examination in Georgian language and are approved by the Ministry of Justice of Georgia. The examination generates a description of the variety, using its relevant characteristics.

5. Activities for the promotion of plant variety protection

The relevant information is published in the Official Bulletin For The Protection of New Plant Varieties and Animal Breeds. Information regarding completed and in progress applications. The exact images of the objects can be viewed in the E-version of Sakpatenti website: www.sakpatenti.org.ge

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)	Comments
Participation in UPOV Technical working party for ornamental plants and forest trees (48 th session)	14-18 Sept. 2015	Cambridge, United Kingdom	UPOV, NIAB DEFRA	Exchange of experience between participants	41 participants from 19 countries	

[Annex V follows]

PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

No changes.

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

No changes. Pursuant to the rules in force, plant variety protection extends to all plant genera and species.

1.3 Case law

No data.

2. Cooperation in examination

No changes. According to paragraphs (3) and (4) of Article 114/R of the Patent Act the results of experimental testing (DUS examination report) carried out by a competent foreign authority may be taken into consideration with the consent of such authority (...). The costs of experimental testing shall be borne by the applicant. Therefore the Hungarian Intellectual Property Office (HIPO) took steps to conclude agreements with national and regional offices on sending reports on DUS technical examination from the relevant Office to the HIPO.

The Hungarian Intellectual Property Office concluded agreements on sending reports on DUS technical examination with the Community Plant Variety Office (CPVO), with the Bundessortenamt (Germany) as well as with the Board for Plant Breeders' Rights of the Ministry of Agriculture, Nature and Food Quality (Netherlands).

3. Situation in the administrative field

No changes. The HIPO is authorised to grant protection to plant varieties. In the national system the HIPO is responsible for the examination of novelty, denomination and unity as well as for the registration of plant varieties. The National Food Chain Safety Office is responsible for the biological examination (DUS-testing).

4. Situation in the technical field

Technical examination is carried out by the National Food Chain Safety Office.

[Annex VI follows]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations:

- Law on Plant Variety Protection of the Republic of Lithuania amended on 19th of October, 2006 and last amended on 26th of April, 2012;
- Regulation No 1458 of the Government of the Republic of Lithuania of the 15th of December, 2000, regarding Fees Rates;
- Order No A1-50 of the Director of the State Plant Service under the Ministry of Agriculture of the 8th of August, 2010, on the Approval of Application Form for Plant Variety Protection;
- Order No 3 D–371 of the Minister of Agriculture of the Republic of Lithuania of the 23th of June, 2004, regarding remuneration.

1.2 Extension of protection to further genera and species:

According to the amendments of the Law on Plant Variety Protection of the Republic of Lithuania on 26th of April, 2012, varieties of all plant genera and species could be protected in the Republic of Lithuania.

1.3 Case law:

There is no case law relating plant varieties protection in Lithuania in 2015.

2. Cooperation in examination

There are 2 signed agreements regarding the cooperation in examination in Lithuania:

- Bilateral agreement of the 11th of August, 2000, with the Polish Research Centre for Cultivar Testing (COBORU) regarding performing DUS tests, has been amended on 14th of November, 2012, by the Administration agreement No 1/2012/19T-247;
- Agreement No 10 with Federal Office of Plant Varieties (Bundessortenamt), Germany, regarding transmission of the results on technical examination for DUS tests of the 30th of June, 2006, has been amended on the 18th of October, 2010, by the agreement No 19T-98.

3. Situation in the administrative field

- The Plant Variety Division of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania is responsible for plant varieties testing, listing and legal protection as well;
- The Commission for Evaluation of Applications for Variety Protection approved by the Order No. A1-141 of the Director of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania on the 6th of May, 2011, has been amended on 27th of January, 2016, by the Order of the Director of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania No A1-42;
- The granting of the plant variety protection shall be approved by the order of the Director of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania;
- Procedures and the system of the plant varieties protection are defined by the Law on Plant Variety Protection of the Republic of Lithuania.

4. Situation in the technical field

DUS tests are performed by the Polish Research Centre for Cultivar Testing (COBORU) according to an Administration agreement No 1/2012/19T-247, amended 14th of November, 2012, or by the other competent authority of the European Union by the breeders' request.

5. Activities for the promotion of plant variety protection

Title of activity	Date	Location	Organizer (s)	Purpose of activity	Participating countries/ organizations (number of participants from each)
1. European Commission meeting	21 of January, 2015	Brussels, Belgium	European Commission	To discuss main questions regarding plant variety protection and patent systems	European Commission, CPVO and member states – 28 at all
2. Administrative Council of the CPVO meeting	10–11 of March, 2015	Angers, France	CPVO	To discuss main questions regarding plant variety protection	European Commission, CPVO, UPOV, observers and member states – 41 at all
3. European Council meeting	26 of March, 2015	Geneva, Switzerland	European Council	To coordinate activities before the UPOV meetings	Commission, CPVO and member states – 33 at all
4. UPOV Administrative and Legal committee meeting	26-27 of March, 2015	Geneva, Switzerland	UPOV	To discuss main questions regarding plant variety protection in the administrative and legal fields	Members (44), observers (2), organisations (9), UPOV (6) – 61 at all
5. Seminar on patents and plant breeder's rights systems	24 of June, 2015	Brussels, Belgium	CPVO	To discuss main questions regarding patents and plant breeder's rights systems	25 members states and other interested participants
6. Administrative Council of the CPVO meeting	30 of September - 2 of October, 2015	Angers, France	CPVO	To discuss main questions regarding plant variety protection	European Commission, CPVO, UPOV, observers and member states – 46 at all
7. UPOV Administrative and Legal, Consultative committees as well as the Council meetings	26-29 of October, 2015	Geneva, Switzerland	UPOV	To discuss main questions regarding plant variety protection in the administrative and legal fields	Members (46), observers (4), organisations (6), UPOV (8) – 64 at all
8. European Council meeting	28 of October, 2015	Geneva, Switzerland	European Council	To coordinate activities before the UPOV meetings	Commission, CPVO and member states – 26 at all
9. CPVO meeting with the examination institutions	2-3 of December, 2015	Angers, France	CPVO	To discuss questions regarding plant varieties DUS testing and protection	Commission, CPVO and member states – 43 at all

Information Bulletin on Plant Breeder's Rights and National List of Plant Varieties No 1 (23) of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania was published on the 23th of January, 2015, and No 2 (24) – on the 15th of June, 2015.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

The Lithuanian National List of Plant Varieties 2015 has been approved by the order No A1-52 of the Director of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania on the 6th of February, 2015. Propagating material of each registered variety from each plant species can be certified according to the Mandatory Requirements, prepared respectively by the EU directives.

[Annex VII follows]

ANNEX VII

NEW ZEALAND

PLANT VARIETY PROTECTION

1. Situation in the legislative field

The Intellectual Property Chapter of the Trans-Pacific Partnership (TPP) requires New Zealand to either accede to UPOV 91 or implement a plant variety rights system that gives effect to UPOV 91 within three years of entry into force of TPP (TPP Annex 18 – A).

Implementing New Zealand's TPP obligations in relation to plant variety rights will require amendment to New Zealand's current legislation the Plant Variety Rights Act 1987. A review of the Act is expected to commence in late 2016 or early 2017.

The Plant Variety Rights Act 1987 remains in force, conforming to the 1978 Act of the Convention.

2. Cooperation in examination

New Zealand continues to purchase test reports from member states, for certain species on an as required basis, under the general provisions of the Convention.

The Plant Variety Rights Office (the Office) and Intellectual Property Division, Food Industry Bureau of the Ministry of Agriculture, Forestry and Fisheries, Japan agreed to a Memorandum of Cooperation on the Examination of Varieties in March 2016. The Memorandum makes available the results of examination in one state for use in the other, at no charge.

3. Situation in the administrative field

During the financial year ended 30 June 2016, 119 applications for plant variety rights were accepted (11% decrease on the previous year), 115 grants were issued (12% decrease on the previous year) and 115 grants were terminated (15% increase on the previous year). At 30 June 2016 there were 1326 valid grants, the same number as the previous year. Application numbers are at similar levels to that of 2011 to 2013.

A new policy regarding the Ownership of DUS Plant Material and DNA Profiles supplied to the Office has been drafted and circulated to breeders for comment. The basic principle is for plant material and profile ownership to remain with the variety owner and the authority to act as custodian of that material. The material can be used for any official purpose, but for any other usage, the permission of the variety owner is required.

The Office achieved certification under the new ISO 9001:2015 standard in July 2016. The Office is following a programme of continuous improvement for the case management system with 95% of applications now filed on line. In addition, the Office continues with a project to document Office practices and processes, with the objective of clear records and guidance for all key functions.

4. Situation in the technical field

New Zealand has completed drafting the test guideline for *Cordyline* in the TWO and is the leading drafter for the test guideline for Hybrid Pear species in the TWF.

Recent research has raised questions regarding the current policy for the requirement to supply fungal endophyte free seed for the testing of varieties in certain grass species. A revised policy, removing the current endophyte free requirement, is in the drafting stage and will be circulated to grass breeders for comment.

The significant disruption in recent years to the testing of kiwifruit varieties, due to the arrival in New Zealand of the disease *Pseudomonas syringae pv actinidiae* (PSA), has now reduced as a result of changes to trial requirements and wider industry practice. Variety evaluation resumed in 2015 and the first grant for a kiwifruit variety, since 2011, was made in 2016.

There has been a steady increase in the number of applications for foreign bred *Rubus* and *Vaccinium* varieties in recent years. Access to plant material for testing for these varieties is subject to delays due to a significant shortage of space in designated quarantine facilities for these genera. The difficulties experienced by applicants have been formally reported to PVRO and has initiated a review of plant material requirements for examination and testing time frames. Breeders have highlighted the increased usage of foreign test reports as a possible solution.

5. Activities for the promotion of plant variety protection

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)	Comments
Technical Assistance and Training	17-20 May 2016	Republic of Korea	Korean International Cooperation Agency / Korean Seed and Variety Service	Plant Variety Protection and DUS Testing International Training Course	Costa Rica, Ghana, Guatemala, Peru, Republic of Moldova, Sudan 11 participants	NZ as Technical Advisor and drafting Test Guideline expert

[Annex VIII follows]

ANNEX VIII

POLAND

(Period: September 1, 2015 – August 31, 2016)

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

There were no amendments to our PBR legislation in the reporting period.

The Act of June 26, 2003 on the Legal Protection of Plant Varieties (POJ No 137/2003, item 1300; as amended) constitutes the legal basis for the national PBR protection system in Poland.

The Polish Plant Variety Protection Law is based on the 1991 Act of the UPOV Convention. Poland acceded to the 1991 Act of the UPOV Convention as the twenty-fourth State, on August 15, 2003.

Since November 1, 2000 all plant genera and species are eligible for PBR protection in Poland.

2. Cooperation in examination

The Research Centre for Cultivar Testing (COBORU) in Słupia Wielka continues its cooperation in the field of DUS examination with different countries.

We have signed bilateral agreements on DUS testing with the Czech Republic, Hungary and Slovakia. Unilateral agreements with Latvia, Lithuania, Estonia, Romania, Belarus, Slovenia, Russian Federation and Ukraine are in force.

In the reporting period, Poland carried out DUS tests for the Lithuanian (56 varieties), Czech (33 varieties), Estonian (33 varieties), Hungarian (19 varieties), Latvian (10 varieties), Croatian (4 varieties), Swedish (4 varieties), Finnish (2 varieties), Austrian (1 variety), Slovak (1 variety) authorities as well as for the CPVO (21 varieties).

These tests were done for different species of agricultural (107 varieties), vegetable (20 varieties), ornamental (16 varieties) and fruit (41 varieties) plants. Altogether, 184 varieties were tested as a commissioned work for the above mentioned authorities.

As in previous years, some authorities, namely: the CPVO, Austria, Brazil, Bulgaria, Estonia, Finland, France, United Kingdom, Latvia, Lithuania, Romania, Russian Federation, Serbia, Slovenia, Turkey and Ukraine took the technical examination results over from COBORU, in order to base their decisions for their own procedures.

Poland actively participated in the work on the elaboration of the technical protocols during the meetings organized by the CPVO.

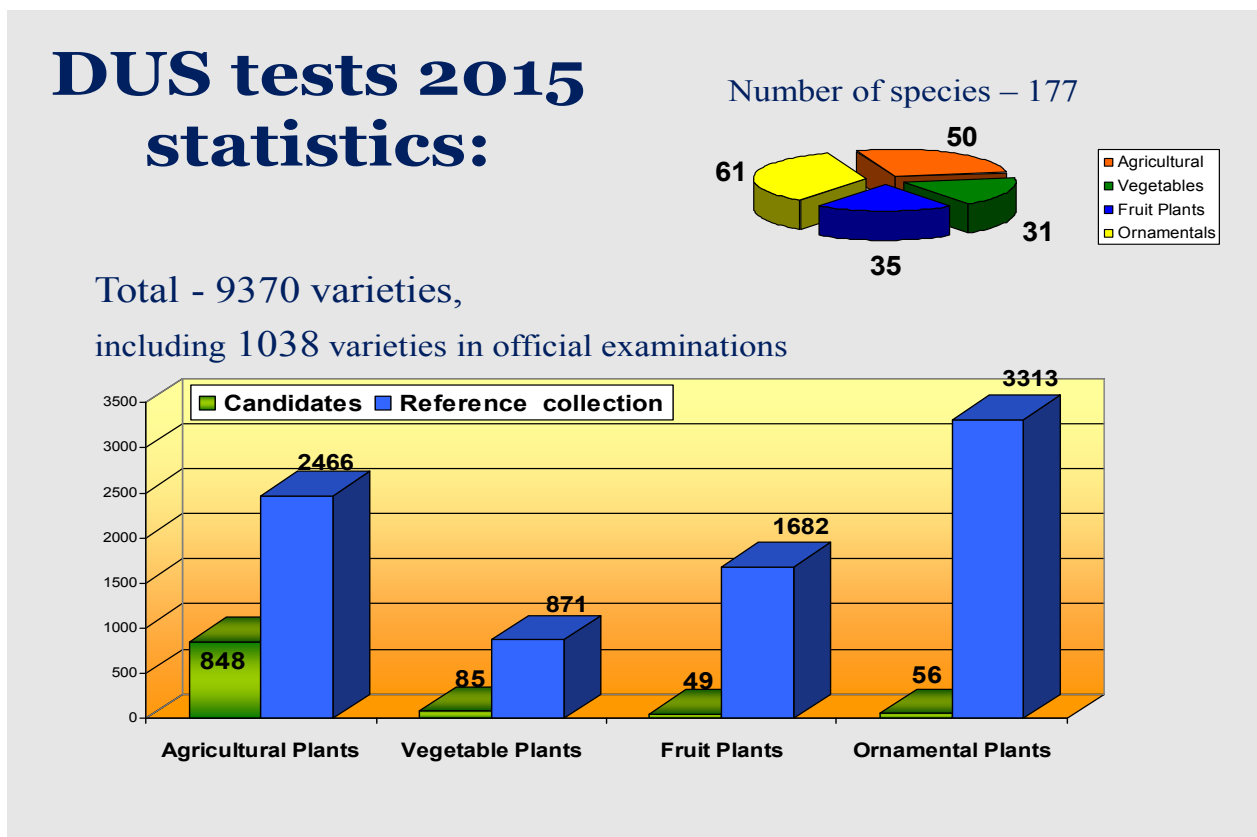
3. and 4. Situation in the administrative and technical fields

COBORU variety testing activity in the field of DUS is done in 13 different Experimental Stations for Variety Testing located all over the country and in case of fruit plants additionally in the Research Institute of Horticulture in Skierniewice.

In 2015, 9370 varieties within 177 plant species were tested (which included 8332 varieties in living reference collection and 1038 candidate varieties).

The number of varieties tested in Poland, per plant sector, is shown in the graph below.

Number of varieties in DUS testing in 2015



In 2015, COBORU received 97 applications for national PBR protection in total, which constitutes an increase by 22 applications in comparison with the previous year.

From January 1 to September 1, 2016, 94 new applications, including 71 domestic and 23 foreign, have been submitted for national PBR. This number is higher by 26 applications than that observed in the previous reporting period (68).

In 2015, COBORU granted 61 titles of national protection (4 titles more than in 2014). At the end of 2015, there were 1128 national PBR titles in force, which comparing to the previous year represents a decrease by 19 varieties (1.7%).

In the period from January 1 to September 1, 2016, 85 titles of national PBR protection have been granted. In total, 1168 varieties are protected in Poland (as on Sept. 1, 2016).

Details on the statistics are given in the table below.

In the column "Titles having ceased", 4 varieties for which - within the reported period - national PBR expired have also been included.

Plant Species	Applications for PBR 1.01. – 1.09.2016			Grants of PBR 1.01. – 1.09.2016			Titles having ceased	Titles in force as on 1.09.2016
	domestic	foreign	together	domestic	foreign	together		
Agricultural	61	5	66	40	11	51	24	639
Vegetable	-	3	3	4	-	4	-	209
Ornamental	9	14	23	7	18	25	14	210
Fruit	1	1	2	4	1	5	7	110
Total	71	23	94	55	30	85	45	1168

5. Activities for the promotion of plant variety protection

Representatives from Poland regularly participate in the sessions of the UPOV organs and in the UPOV Technical Working Parties.

Furthermore, Polish representatives take part in the meetings of the Standing Committee on CPVR DG SANCO, Brussels as well as in the CPVO Administrative Council meetings.

Within the reporting period, three COBORU experts have successfully completed the UPOV Distance Learning Course "Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention" (DL-205).

– *Publications*

Every two months COBORU issues the *Polish Gazette for Plant Breeders' Rights and National List* (Diariusz), which contains details referring to national PBR protection and national listing systems.

The list of varieties protected by national Plant Breeders' Rights (including provisional PBR's), valid as on June 30, 2016, has been published in the third number of the *Polish Gazette for Plant Breeders' Rights and National List* /No 3(134)2016/.

The Official Gazette is also being published on our website, in the section: *Publications*.

Additionally, the Research Centre for Cultivar Testing maintains and updates systematically a homepage www.coboru.pl that contains the official information on PVP matters in Poland.

During the reporting period COBORU was involved in the following promotional activities:

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)
1. Workshop for Moldavian Experts in the framework of "Agricultural Competitiveness and Enterprise Development Project (ACED)"	30.08 - 5.09.2015	Poland, Słupia Wielka, Experimental Stations: Słupia W., Zybiszów, Węgrzce; Horticultural Institute - Brzezna	COBORU, United States Agency for International Development (USAID)	Presenting of COBORU organization and activity within the scope of national listing, PBR granting and recommendation of plant varieties; practical exercises relating to DUS and VCU testing	MD - 15 PL - 9
2. Visit of UKSUP (SK) representatives	9.09.2015	Poland, Experimental Station Słupia W.	COBORU	Exchange of experience in DUS testing of grasses and herbage legumes	SK - 2 PL - 6
3. Visit of COBORU management in Ukraine	7-8.11.2015	Ukraine, Lvov	Ukrainian Office, COBORU	Prospects of mutual cooperation and assistance to conform the Ukrainian law to the EU standards and regulations within examination and legal protection of plant varieties	UA - 10 PL - 8
4. Visit of COBORU management in the Czech Republic - UKZUZ	24-25.11.2015	Czech Republic, Oblekovice	UKZUZ	Review of agreement on cooperation in DUS testing	CZ - 9 PL - 7
5. Conference "Plant Breeder's Right and Patent Protection of Plant Discoveries and Techniques in Biotechnology"	16.03.2016	Poland, Warsaw	MARD	Bringing up of topical issues on coexistence between the two forms of intellectual property rights in plant breeding and seed industry	PL - 30

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)
6. CPVO visit at COBORU	9-10.06.2016	Poland, Słupia Wielka, Experimental Stations: Karzniczka, Chrzastowo, Słupia Wielka	COBORU	Acquainting with COBORU organization and activity, including conducting of DUS tests of agricultural plant species, mostly: potato, maize, oilseed rape, grasses and cereals	CPVO - 2 PL - 6
7. Meeting of Ornamental Experts (OEM16)	28-29.06.2016	Poland, Środa Wlkp., Experimental Point in Śrem Wójtostwo	CPVO, COBORU	Discussion on DUS testing of ornamental plant species for the purpose of CPVR	CPVO -5 CIOPORA -1 DK -1, FR -1, NL -2, DE -1, PT -1, HU -2, GB -2, PL -4
8. Visit of NEBIH (HU) representatives	29-30.06.2016	Poland Experimental Stations: Słupia Wielka, Zybiszów	COBORU	Bilateral cooperation in DUS testing, inspection of DUS trials	HU - 2 PL - 8

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

The *Polish National List of Agricultural Plant Varieties*, the *Polish National List of Vegetable Plant Varieties* and the *Polish National List of Fruit Plant Varieties* were issued in April May and June 2016, respectively. These Official Lists as well as updated lists of varieties are also available at www.coboru.pl.

[Annex IX follows]

REPUBLIC OF MOLDOVA

PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments to the Law and the implementing regulations

The Law No. 39-XVI of 29.02.2008 on the Protection of Plant Varieties was modified and amended by the Law No. 162 of 07.30.2015 Amending and Supplementing Certain Legislative Acts.

1.2 Extension of protection to further genera and species

According to the Law No.39-XVI/2008 on the Protection of Plant Varieties, the protection is offered to varieties of all botanical genera and species, including hybrids between genera and species.

1.3 Case Law

There is no precedent with regard to the protection of breeders' rights.

2. Cooperation in examination

Utilization of existing DUS report offered by:

- GEVES (France), INRA Beaucouze, FR.
- National Food Chain Safety Office, Budapest, HU/Tordas, Debrecen, HU

3. Situation in the administrative field

No changes.

Changes in the Procedural and Protection System

Two national test guidelines were developed for:

- Seabuckthorn - Hippophae rhamnoides L.
- Paulownia - Paulownia Elongata S.Y. Hu x Paulownia Fortunei (Seem.) Hemsl.

Statistics

In the period from January 1, 2015 to December 31, 2015:

- 37 applications have been received (national applications), as follows:

- Barley (Hordeum vulgare L.) - 1
- Bean (Vicia faba L.) - 1
- Egg Plant (Solanum melongena L.) - 1
- Grapevine (Vitis L.) - 4
- Maize (Zea mays L.) - 7
- Peas (Pisum sativum L.) - 1
- Peppermint (Mentha x piperita) -1
- Soybean (Glycine max (L.) Merrill) - 1
- Sunflower (Helianthus annuus L.) - 1
- Sweet Pepper (Capsicum annum L.) - 10
- Tomato (Solanum lycopersicum L.) - 4
- Triticale (Triticosecale Witt.) - 1
- Wheat (Triticum aestivum L.) - 4

- 28 patents for plant varieties have been issued (20 national patents), as follows:

Apple (*Malus domestica* Borkh.) – 1
 Bean (*Phaseolus vulgaris* L.) – 1
 Chickling vetch (*Lathyrus sativus* L.) – 1
 Grapevine (*Vitis vinifera* L.) – 1
 Lavender (*Lavandula angustifolia* Mill.) – 1
 Lentil (*Lens culinaris* Medik.) – 2
 Maize (*Zea mays* L.) – 11
 Prunus rootstock (*Prunus* L.) – 1
 Soybean (*Glycine max* (L.) Merrill) – 4
 Tomato. (*Solanum lycopersicum* L.) – 3
 Wheat (*Triticum aestivum* L.) – 2

- 157 plant variety patents were valid on 12/31/2015.

4. Situation in the technical field

No changes.

5. Activities for the promotion of plant varieties protection

Meetings, seminars

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each country/organization)
1. TAIEX Workshop on the Protection of Plant Varieties and Enforcement of Breeders' Rights	05.10.2015 – 06.10.2015	Chisinau	UPOV, CPVO, TAIEX, State Agency on Intellectual Property of the Republic of Moldova (AGEPI), State Commission for Crops Variety Testing of the Republic of Moldova (CSTSP)	Extend knowledge and share best practices of PVP	UPOV - 2 CPVO – 1 CIOPORA - 1 AGNAS, Poland - 1 Swedish Seed Trade Association, Sweden - 1 MA, Romania - 1 DIMOPOULOU,ESA - 1 Republic of Moldova – 45: -AGEPI -CSTSP - Deputy Minister of Agriculture and Food Industry - representatives in industrial property -scientific institutions - business representatives, - breeders
2. Search in DB UPOV PLUTO	22.01.2015	Chisinau	AGEPI	The schooling on search in database UPOV PLUTO	Interested persons, scientists and breeders, Republic of Moldova - 30
3. Plant variety protection system at national and international level	05.03.2015	Chisinau	AGEPI	Information on plant variety protection system at national and international level	Representatives in industrial property, interested persons, including students, scientists and breeders, Republic of Moldova - 35
4. Infoinvent 2015	25.11.2015-28..11.2015	Chisinau	AGEPI	Seminar at the Exhibition of Inventions on how to register plant varieties and the situation in this area in the Republic of Moldova	Representatives in industrial property, interested persons, including students, scientists and breeders, Republic of Moldova - 32

Publications

On a regular basis, AGEPI maintains the web site www.agepi.gov.md, where the national legislation in the field of plant varieties protection can be accessed, as well as the application form for a plant variety patent, and useful related information for applicants and breeders, available in Romanian, Russian and English languages.

[Annex X follows]

PLANT VARIETY PROTECTION

1. Situation in the legislative field

Ministerial Order No. 1778/2015 modifying the *Ministerial* Order No. 1348/2005 for the approval of the Rules regarding the testing and registration of agricultural plants and Order No. 1349/2005 for the approval of the Rules regarding the testing and registration of vegetables.

This order is in compliance with the new EU directives regarding testing and registration varieties.

2. Cooperation in examination

The cooperation with UKZUZ from Czech Republic in the field of DUS testing continued and the exchange of seed samples with other EU authorities also continued.

3. Situation in the administrative field

There were no changes in the administrative structure and procedures system.

4. Situation in the technical field

This year, in the field of testing, 942 varieties were tested : 503 agricultural plant species, 51 vegetable, 30 fruit tree, 6 vine and 7 ornamental varieties and 208 varieties were registered in our national Official Catalogue: 60 varieties of agricultural plant species, 31 vegetables, 9 fruit trees, 3 vine and 5 ornamentals.

In addition, 27 applications for protection, and 15 protection titles were issued.

[Annex XI follows]

ANNEX XI

SERBIA
(September 2015 - September 2016)

PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

“Amendments of the rulebook on form and content of the application for granting plant breeder’s right, the required documentation, the amount and manner of delivery of reproductive material samples” was adopted and published in the “Official Gazette of the Republic of Serbia”, No. 20/2016, dated on March 3, 2016.

1.2 Extension of protection to further genera and species

All plant genera and species are subject to protection under the Law on the Protection of Plant Breeders Rights (“Official Gazette of RS”, No. 41/2009 and 88/2011).

2. Situation in the administrative field

Ministry of Agriculture and Environmental Protection (MAEP) - Plant Protection Directorate (PPD) is designated authority for the protection of the plant breeders’ rights in the Republic of Serbia. Plant Protection Directorate (PPD) as an administrative authority within the MAEP performs tasks related to: protection of plants against harmful organisms; authorization and control of plant protection and plant nutrition products; plant variety registration; protection of plant breeders’ rights; biological safety (GMO); phytosanitary inspections and other related tasks. Within PPD, Group for Plant Variety Protection and Biosafety exercises administrative procedures related to provisions of the Law on Protection of Plant Breeders Rights and to granting of plant breeders rights, also as tasks related to GMO.

3. Situation in the technical field

Within the period from September 1, 2015 to August 30, 2016, plant breeders’ rights were granted for 51 plant varieties. In the said period 60 applications for granting of PBR have been received.

Register of Applications for Plant Breeders Rights, also as Register of Protected Plant Varieties are available on the web page of PPD:

http://www.uzb.minpolj.gov.rs/index.php?option=com_content&view=article&id=61&Itemid=14&lang=en

4. Activities for the promotion of plant variety protection

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)	Comments
1.Seminar on protection of Intellectual property	October 30, 2015	Serbia	Ministry of Agriculture and Environmental Protection - Plant Protection Directorate and Seed Association of Serbia	Promotion of importance of plant breeders’ rights and protection of Intellectual property.	Serbia	Seminar and Workshop were organized with the aim to improve the knowledge of plant breeders, producers of propagating material, representatives of seed companies and other stakeholders
2.Workshop on Plant Variety Protection - benefit for science, technology transfer, production and consumers	February 25-26, 2016	Serbia	Ministry of Agriculture and Environmental Protection - Plant Protection Directorate (MAEP-PPD) and TAIEX (AGR 60798)	Better understanding of system for protection of plant breeders’ rights, as a driver for promoting innovation in agriculture.	MAEP-PPD,Serbia UPOV National Food Chain Safety Office (NEBIH), Hungary AGNAS, Poland	

					Austrian Agency for Health and Food Safety (AGES), Austria Netherlands Inspection Service for Horticulture (Naktuinbouw), Netherlands	with legislative, administrative and technical aspects of PBR.
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II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

The National List of Plant Varieties, also as other information related to registration of plant varieties, are available on the web pages of the Ministry of Agriculture and Environmental Protection – Plant Protection Directorate:

www.uzb.minpolj.gov.rs/index.php?lang=en

www.sorte.minpolj.gov.rs

[Annex XII follows]

I. PLANT VARIETY PROTECTION IN THE REPUBLIC OF SLOVENIA

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

No changes.

1.2 Extension of protection to further genera and species

No changes.

1.3 Case law

No case law.

2. Cooperation in examination

No new agreement. We continue co-operation in the field of DUS examination with Austria, Czech Republic, Croatia, Hungary, Netherlands, Slovakia, Italy and Poland.

3. Situation in the administrative field

The name of the Ministry of Agriculture and the Environment was changed to the Ministry of Agriculture, Forestry and Food. No other changes.

4. Situation in the technical field

No changes.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

New National List of Varieties, including the list of protected varieties, was published in August 2016.

Three new issues of Slovenian Plant Breeder's Rights and Variety Registration Gazette have been published since September 2015.

[Annex XIII follows]

SWITZERLAND

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

There were no changes to the legal basis for the protection of plant varieties in the past year

1.2 Extension of protection to further genera and species

In Switzerland, all genera and species may be protected.

1.3 Case law

To our knowledge, no rulings concerning the protection of plant varieties were handed down during the past year.

2. Cooperation in examination

No changes. No trials are conducted in Switzerland. All examinations are done abroad under contract, or alternately, existing examination reports are taken on board.

3. Situation in the administrative field

Nothing to report.

4. Situation in the technical field

Nothing to report since no trials are conducted in Switzerland.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

Two ordinances of potential relevance to UPOV entered into force in Switzerland:

- Ordinance of October 28, 2015 on the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture (PGRELV; SR 916.181)
- Ordinance of December 11, 2015 on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization (Nagoya Ordinance, NagV; SR 451.61)

[Annex XIV follows]

ANNEX XIV

EUROPEAN UNION

Period: October 2015 - October 2016

(Report prepared by the European Commission
in close relation with the Community Plant Variety Office)ⁱ

PLANT VARIETY PROTECTION

1) Legislation

1.1 Amendment of the law and the implementing Regulations:

Commission implementing Regulation (EU) No 2015/2206 of 30 November 2015 amending Regulation (EC) No 1238/95 as regards the fees payable to the Community Plant Variety Office:

The main changes are the following. In order to encourage electronic applications the application fee was reduced to €450 when the application is filed by electronic means. The amount of the application fee retained by the Community Plant Variety Office (CPVO) was reduced to €150 when the application is not valid and the deficiencies found in the application are not remedied.

1.2 Case law:

Judgment of the General Court of the European of 10 September 2015 in joined Cases T-91/14 and T-92/14, Schniga Srl vs CPVO:

The General Court has dismissed the action brought against the decision of the Board of Appeal to refuse Community Plant Variety Right (CPVR) of an apple variety for lack of distinctness. According to the Board, the additional characteristic concerned could not be taken into account, since it was not mentioned in the applicable protocol. Moreover, the applicant never requested to assess such a characteristic. The latter only appeared in the final report of the entrusted office and in the decision of the President of the CPVO. Thus, the variety description was drafted in breach of the CPVO Protocol (Section III) and the decision of the President was illegitimately retroactive according to Article 22(2) of Regulation No 874/2009. Moreover, the characteristic was observed during only one year and not at least two, as required by the applicable Protocol.

The judgment of the General Court is based on the following three major arguments: (1) protocols and test guidelines applicable *ratione temporis*, (2) the relationship between the respective protocols and test guidelines of the CPVO and UPOV, (3) the legal nature of protocols and test guidelines adopted by the Administrative Council of the CPVO and their binding effect on its President.

As regards, first, the determination of the protocols and guidelines applicable *ratione temporis*, according to the general legal principle of *tempus regit actum*, procedural rules (such as those contained in CPVO TP/14/1) are generally taken to apply from the date on which they enter into force. The applicability of this principle to the case at hand is confirmed by Article 22(2) of Regulation No 874/2009 under which, according to the Court's interpretation, new test guidelines adopted by the Administrative Council are, as a general rule, directly applicable to ongoing examination procedures. Therefore, the CPVO protocol of 2003 shall apply. Moreover, if the President of the Office makes use of the power under Article 23(1) Regulation No 874/2009, Article 22(2) of the same Regulation shall apply as well. Finally, the contention that the President could exercise his discretion at any stage of the procedure to add an additional characteristic is also disputed by UPOV TG/1/3, sections 6.2 and 7.2, which stipulate that the relevant characteristics for the purpose of Distinctness Uniformity Stability (DUS) testing are determined by reference to the variety description established at the date of the grant of protection and not by reference to the variety description established at the date when the application is lodged. The fact that in the Designation Agreement, reference is made to UPOV guidelines where no CPVO technical protocols have been adopted for the conduct of the technical examination is irrelevant as such reference does not prejudice the applicability of any test guidelines that may be adopted by the Office in the course of the technical examination (Paras. 73 – 78 of the judgment).

The second argument refers to the relationship between CPVO protocols and UPOV guidelines. According to the Court, the fact that the EU became member of the UPOV Convention does not imply that UPOV protocols necessarily take precedence over protocols drawn up by the Office in the hierarchy of norms.

According to UPOV General Introduction TG/1/3, the said guidelines are only recommendations without legal binding effect. Therefore, in case of divergence, CPVO technical protocols shall prevail on UPOV guidelines (Paras. 79 – 80 of the judgment).

Third, differently from UPOV guidelines, CPVO test protocols are deemed to be akin to legal rules as they are officially adopted by the Administrative Council of the Office and are published in the Official Gazette. Therefore their procedural rules are binding and limit the scope of discretion of the President of the Office. Hence, the procedure for the adoption of additional characteristics established by the said CPVO protocol of 2003 was breached (Paras. 81 – 93 of the Judgment).

Finally, as regards the fact that the additional characteristic on the basis of which distinctness was established was tested during only one growing cycle, the General Court confirmed the assessment made by the Board of Appeal that the said characteristic was not observed during two consecutive growing cycles in breach of the CPVO protocol (Section III and IV of CPVO TP/14/1 and Section 5.3.3.1.1 of UPOV TG/1/3).

2) Cooperation in examination

2.1 Conclusion of new agreements:

On 9 March 2016 the Agriculture and Food Agency (AFA), Council of Agriculture of Taiwan, Province of China, and the CPVO have signed an Administrative Arrangement (AA) on Plant Variety Rights protection of Phalaenopsis and Doritaenopsis.

2.2 Amendment of existing agreements: Nothing to report.

2.3 Memorandum of Understanding with third countries: Nothing to report.

3) Situation in the administrative field

The European Consortium for Organic Plant Breeding (ECO-PB) expressed its interest in attending the CPVO annual examination offices and technical crop experts meetings (agricultural and vegetable). This request was discussed in the CPVO Administrative Council (AC) meeting of 30 September-1 October 2015. The AC decided to accept the participation of ECO-PB and adopted a decision on admission of observers to the CPVO annual examination offices and technical experts meetings.

4) Situation in the technical field

4.1 Information concerning the functioning of the EU Plant Variety Protection

a. Relation with Examination Offices

In 2015, the CPVO held its 19th annual meeting with its examination offices, which was also attended by representatives from the UPOV office, the breeders' organisations (ESA, CIOPORA and Plantum), and a representative from Turkey. The main subjects of discussion were:

- Discrepancies between Technical Questionnaire information and appearance of plants in the DUS growing trial: presentation of the proposed survey
- Information on a procedure to assess non-EU based examination offices before initiating technical cooperation
- Centralisation of ornamental small species, situation
- CPVO Technical Protocol template: revision
- Entry into force date of Technical Protocols
- Reporting of similar varieties under point 16 of the Variety Description
- Species with hybrid varieties: Publication of variety descriptions of parent lines on the web site
- Updating of variety descriptions - Outcome of the survey and conclusions of the office
- Ownership of DNA samples (+ annex)
- Sharing online application system link to UPOV Electronic Application Form project

b. Preparation of CPVO protocols

In 2015, experts from the Member States' examination offices were invited to participate in elaborating or revising technical protocols for DUS testing which either were subsequently approved by the Administrative Council or can be expected to be approved in 2016. The following experts' meetings were held to discuss the technical protocols of:

- Agricultural crops: pea, rice, barley and oats, meadow and tall fescue
- Vegetable crops:; rhubarb, *Cucurbita moschata* lettuce, spinach, tomato and tomato rootstock protocol
- Ornamentals crops: Buddleja, *Dianthus* and *Pelargonium grandiflorum*
- Fruit crops: *Prunus* rootstocks, mandarins

c. Further development of the CPVO Variety Finder

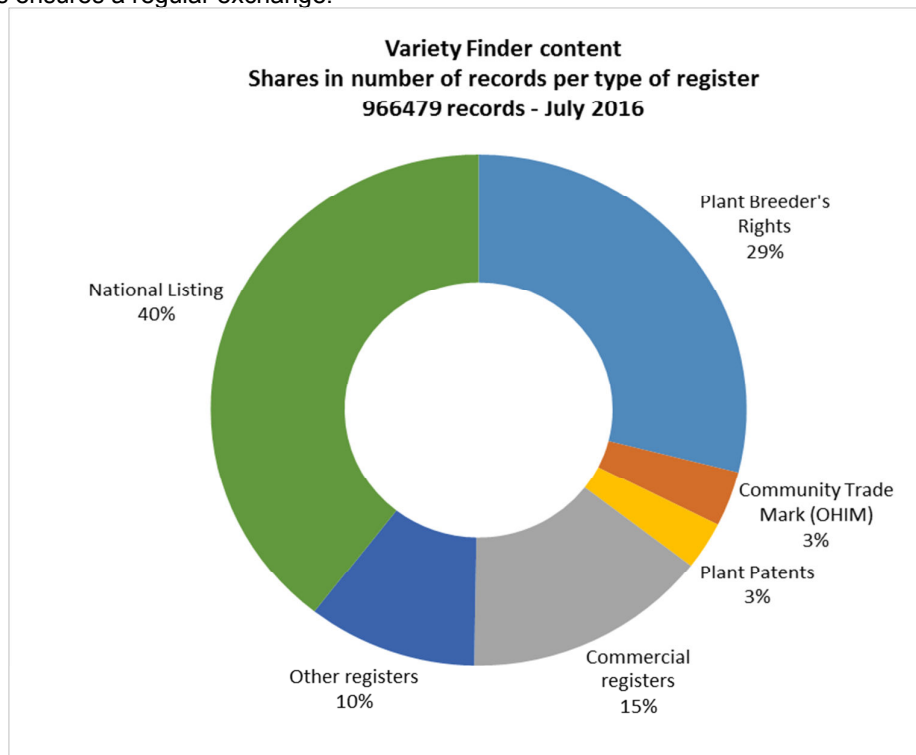
The CPVO Variety Finder is a web based database which includes a tool to test the suitability of denominations for similarity and a general search tool. It includes information on varieties registered in more than 60 countries and is accessible from the home page of the CPVO website.

It contains data on varieties applied for, varieties granted plant variety rights and varieties of national listings authorised for marketing, some commercial registers or other registers of interest as for example, the OECD variety register.

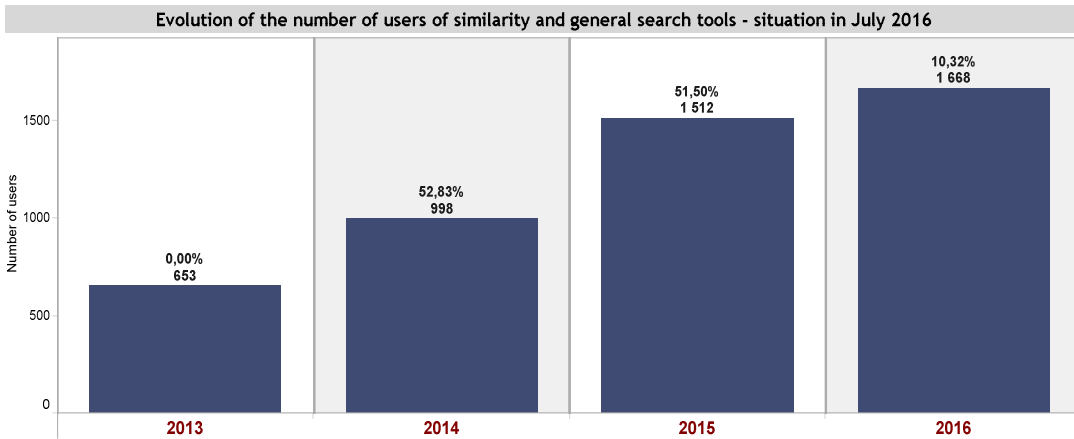
Since May 2014, European Union trademarks registered with the Office for the Harmonization of the Internal Market (renamed European Union Intellectual Property Office - EUIPO since 23 March 2016) have been included and updated on a daily basis in the Variety Finder database. These trademarks are registered in class 31 of the "Nice Agreement" concerning the international classification of goods and services for the purposes of the registration of marks, which contains living plants.

Currently the CPVO Variety Finder is updated with more than 400 contributions per year and contains 1 million records since June 2016. The general rule is an update of the Variety Finder after each official publication of contributors.

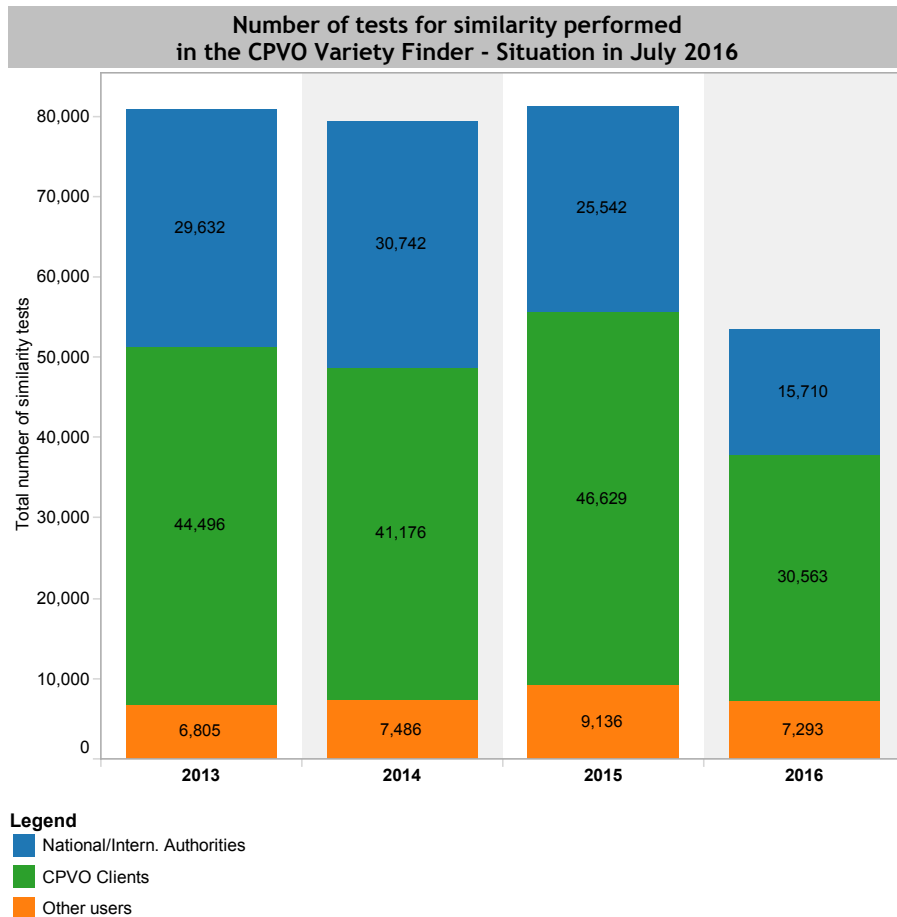
The memorandum of understanding signed with UPOV to share the task of collecting data from EU and non EU countries ensures a regular exchange.



Since 10 years, the number of users of the Variety Finder has constantly increased, users being mainly national authorities, breeders, applicants for Community Plant Variety Rights and the general public.



The number of similarity tests launched reached the level of 81,300 similarity tests in 2015. The CPVO clients (applicants) represent the biggest group of users with more than 55%.



In spring 2016, the general search tool in Variety Finder has been further developed to better meet the user's needs. In June 2016, a working group, consisting of users of the Variety Finder – EU Member States, examinations offices, European Commission and breeders – established by the CPVO Administrative Council met to define future needs and use of the Variety Finder and to develop new elements to be implemented in the Variety Finder.

d. Cooperation in denomination testing with EU Member States

Over the past six years, the success of the cooperation service in denomination testing service resulted in a steady increase in the number of requests for opinion to the CPVO, as illustrated in the graph below. The year 2015 was another record year with more than 7400 requests for opinion received by the Office. Despite this increase, the yearly processing duration remained stable with an average of half a day which the users of the service find very satisfying.



This was also a year that triggered lots of discussions and exchanges as to the interpretation of the rules on variety denominations, revealing the need of an in depth discussion on the explanatory notes to the Guidelines on Variety Denominations.

e. Revision of the Explanatory Notes to the CPVO Variety Denomination Guidelines

The Administrative Council (AC) agreed, in October 2015, on the establishment of a Working Group to discuss and prepare the revision of the current Explanatory Notes on Variety Denominations and to consider whether such amendments would have an impact on the CPVO's Guidelines currently in force and on the Commission Regulation (EC) No 637/2009 of 22 July 2009 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species.

This decision was triggered by the increasing number of situations where the actual Explanatory Notes do not provide a clear guidance. The aim of such revision is to discuss the actual criteria to assess the suitability of proposed variety denominations, to reach a higher clarity for stakeholders, harmonisation, and predictability of decisions on variety denominations.

The working group is composed of representatives from the EU Member States, European Commission, CIOPORA, ESA, Plantum, UPOV, KAVB (Royal General Bulb Growers' Association), RHS (Royal Horticultural Society) and ICNCP (International Code of Nomenclature for Cultivated Plants).

The CPVO has prepared a first draft revision of the Explanatory notes, which constituted the basis for the discussions in the first working group meeting, which took place on the 23rd June in Paris. The breeders' organisations as well as other participants in the meeting expressed the wish to have more flexibility in the rules for acceptance of variety denominations. The participants also stressed the interest of an effective harmonisation among UPOV, CPVO and ICNCP. Based on the comments received the CPVO will revise the draft document. The next meeting is foreseen in the beginning of October 2016.

4.2 Crop experts meeting

A meeting of vegetable experts was held on the 30th November and the 1st December 2015 to discuss: creation of new protocols and revisions to several vegetable technical protocols; proposed extended UPOV codes providing information on crop types; aberrant phenotype plants in cauliflower and cabbage; earlier closing and submission dates; ongoing discussion on disease resistance testing issues: implementation of a phasing in period for asterisked disease resistance characteristics, greater analysis of current asterisked disease resistance characteristics, uniformity levels for varieties expressing susceptibility to a particular disease.

A meeting of agricultural experts was held on 22 and 23 September 2015 to discuss: revisions to several technical protocols; uniformity standard in Triticale; additional characteristics in sunflower DUS; use of example varieties in DUS trial; getting plant material of old example varieties; centralisation of DUS test of parent line in oilseed rape.

A meeting of fruit experts was held on 13-14 October 2015 to discuss: Interim reports; request for reference variety for DUS test purposes; citrus – quarantine procedure Off-types: how to consider spontaneous mutations arising during DUS test, e.g. one branch sample for the uniformity assessment; in case of a mutation application, necessity to compare candidate and parent variety in the TQ; understanding of the term “variety description”; How to apply a UPOV Test Guideline when the example varieties are not available/known in the EU; partial revision of the mandarin TP.

A further meeting of fruit experts was held on 21-22 June 2016 to discuss: discrepancies between TQ information and appearance of plants in the DUS growing trial; uniformity assessment; DUS testing–exchange of information between examination offices on candidate varieties; follow up of the project reducing the number of observation periods in the fruit sector: reporting on experiences; plant health issues; improvement of TQ’s by inserting more characteristics; how to conduct a DUS trial if the plant material of a similar variety is not available; issues for discussion in the DUS trial of some apple mutation groups; testing at breeder’s premises.

A meeting of ornamental experts was held in June at the premises of the Dutch EO Naktuinbouw to: inform examiners of the developments in the work of the CPVO; discuss items linked to the technical examinations (such as the level of information to be provided by applicants in the application documents and the assessment of certain characteristics); reporting of the examination results; some new and revised technical protocols have been presented.

4.3 Quality Audit Service

Within CPVO’s assessment program nine audits of examination offices were carried out. These included regular triennial audit visits as well as two assessments in response to scope extension requests and one assessment of a new office seeking entrustment for the first time. The assessments carried out in 2016 marked the start of the third audit cycle since the inception of the program in 2010. Prior to the launch of the new audit cycle, a meeting to train the technical experts participating in the audit program was organised. This included an update on the new version of the Entrustment Requirements that came into force in the beginning of 2016.

The CPVO Administrative Council accepted the entrustment recommendations provided at its meeting in April 2016. The Administrative Council also appointed the chair and the four members of the Audit Advisory Board. The board should be consulted when a complaint or request by an examination office in respect of the assessment process is filed. No such consultation has so far taken place.

As part of the cost sharing approach adopted for the audit program as of 2016, one third of the triennial audit fee was charged to the entrusted examination offices in the beginning of 2016. The fees for 2016 – 2018 are calculated to recover 50 percent of the costs of the assessment program.

5) Activities for the Promotion of Plant Variety Protection

5.1 International Meetings, Seminars

The CPVO participated and gave presentations in the following events:

- Workshop on Plant Variety Rights, organised by the European Commission (TALEX), in Chisinau (Moldova), from October 4-7 2015.
- Taiwan, Province of China – EU Plant Variety Protection Symposium on 12th March 2016.
- Second edition of the UPOV course “Training the trainers” for Latin American countries, in Santa Cruz de la Sierra (Bolivia) in November 2015.
- Workshops on the basic principles of plant variety protection under the UPOV Convention and the impact on agriculture in member countries organised on the 5th December 2015 in Bandar Seri Begawan (Brunei) and 7-8 December 2015 in Vientiane (Laos).
- International Seminar on Plant Variety Protection under the UPOV Convention”, organised at the International Potato Center (CIP) premises in Lima (Peru) in collaboration with UPOV, on May 16, 2016.
- Training Course on Plant Variety Protection under the UPOV Convention and Technology Transfer, organised in Cusco (Peru), from May 17 to 20 2016.
- Master in Intellectual Property of the University of Alicante Magister Lucentinus ‘II Plant Variety Right Intensive Module’ (CPVO-UPOV-OEVV), 11-12 November 2015 (Spain).
- Conference on Intellectual Property Protection for Plant Innovation in Amsterdam on 3-4 December 2015 (The Netherlands).
- Knowledge and Awareness Building Conference organised by EUIPO on 16-18 March 2016 in Alicante (Spain).
- 17th EIPIN Congress Magister Lucentinus on 14-16 April 2016 in Alicante (Spain).
- Conference ‘*Innovazione in Agricoltura*’ on 4 May 2016 in Rome (Italy) organised by the Confederazione Generale dell’Agricoltura Italiana.
- Pan European Seal IP Campus 2016 organised by EUIPO on 11 May 2016 in Alicante (Spain).
- Seminar on Finding the Balance - Exploring solutions in the debate surrounding patents and plant breeders' rights on 18 May 2016 organised by the Dutch Presidency of the Council of the European Union.
- Seminar organised by the Italian Patent and Trademark Office (UIBM) regarding the interference between patents and plant varieties on 27 May 2016 in Rome (Italy).
- Plant Law Seminar organised by ALTIUS Law firm on 10 June 2016 in Brussels (Belgium).
- 19th Plant Variety Protection Course in Wageningen (The Netherlands) on 20 June 2016 organised by Naktuinbouw.
- Review meeting on the draft ARIPO regulations for the implementation of the Arusha Protocol for the protection of new varieties of plants organized by the African Regional Intellectual Property Organization (ARIPO) in Harare, Zimbabwe on June 14 to 17, 2016.
- Meeting on a shared DNA database for *Phalaenopsis* and *xDoritaenopsis* and recent developments, in collaboration between Naktuinbouw, CPVO and authorities of Taiwan, Province of China, organised by Naktuinbouw (the Dutch examination office).
- International Congress for Mushroom Science held in Amsterdam (29 May – 2 June 2016).

The CPVO experts acted as “Tutors” in the both the UPOV DL-205 long distances courses which ran in October-November 2015 and February-March 2016 as well as in the UPOV DL-305 course which ran in February-March 2016.

5.2 Visits to and from non-Members and organisations

During the reporting period the CPVO had the honour to receive the following high level visits:

- Delegation from OAPI (African Intellectual Property Organisation), on 2 October 2015;
- Delegation from the UC Davis Plant Breeding Academy, on 9 March 2016.
- Delegation from China, in the frame of the IPKey cooperation project on accession of China to UPOV 91 Act, on 4-5 July 2016.

A delegation from the CPVO and Naktuinbouw (the Dutch examination office) visited the Seed Improvement and Propagation Station (TSIPS) in Taiwan, Province of China, DUS test institute of Phalaenopsis in March 2016. The visit focused on exchange of information on the DUS testing by the authorities and the CPVO procedures in the light of the cooperation as a follow up of the Administrative Arrangement signed by the Council of Agriculture and CPVO on 9th March 2016.

5.3 Participation in international fairs and open days

The CPVO considers its participation in international fairs and open days at examination offices as a useful tool to promote the Community Plant Variety Rights system, to have direct contact with applicants and to provide information to growers.

In 2015, the Office participated in two fairs:

- In January 2016, the Office attended the 'IPM' in Essen, Germany. The stand was shared with colleagues from the Bundessortenamt, GEVES, Naktuinbouw and NIAB. The focus was on ornamental plants.
- The 'Salon du Végétal' took place in February 2016 in Angers, France. The Office regularly participates together with GEVES, the French examination office, in this fair organised mainly for growers of ornamental plants.

In May 2016, the Office organised with NIAB (the British examination office) and participated in the "Chrysanthemum All Year Round Crop Open Day" in Cambridge, UK.

5.4 IT developments

The Office continues with the implementation of the Online Application system whereby over 90% of all applications are now being received electronically. The system has been further enhanced with the introduction of the "MyPVR" tool which further improves electronic interaction between the applicants and the CPVO. This system has been released as a pilot for a number of applicants and will be followed at a later stage with an "e-actions" tool for the applicants.

The electronic exchange of information with the examination offices is nearing completion. All documents are now sent from the CPVO to examination offices electronically and it is expected that by end 2016, all documents will be received electronically from examination offices, including invoices in machine readable (xml) format. This development leads to significant time and resource savings for document management and entry. Examination offices can also now manage species data (part of "Annex 11") through the website.

A major project for the overhaul of the CPVO external website is underway, with completion expected during the last quarter of 2016.

RELATED FIELDS OF ACTIVITIES:

1) R & D

1.1 IMMODUS *ad hoc* working group

As one of the three objectives of the revised R&D strategy of the CPVO adopted by the Administrative Council (AC) in March 2015, the AC has voted for the creation of a CPVO *ad hoc* working group on biomolecular techniques. This working group is named IMODDUS which stands for Integration of Molecular Data into DUS testing. The aim of the group is to work on projects in the different crop sectors which would allow for the application of biomolecular techniques in DUS testing where these techniques can contribute to

efficiency and quality. The group is composed of experts on bio-molecular techniques (BMT) from interested examination offices and breeders organisations.

The first meeting of IMODDUS was held on 26 April 2016 in Paris. A full report of the first IMODDUS meeting is available in the document BMT/15/27. Three presentations were made by researchers and a representative of the breeders association ESA on the use of BMT methods in plant science, plant breeding and with an outlook on future developments. Seven R&D project proposals were presented, most of them focused on BMT methods for the improvement of the management of reference collections but also an item addressing distinctness in apple mutants by exploring epigenetics in that species. The experts were invited to assess the different proposals by considering the criteria which had been agreed upon such as referring to agreed or new models or techniques, the relevance to the DUS test or the impact on the costs. Based on the evaluation, a priority list of the project proposals is established which will trigger the co-funding of the projects by the CPVO. Furthermore it had been agreed that the CPVO would draft a strategy paper in which it would elaborate on how BMT can be implemented in DUS testing in short and medium term as well as reflections on visions for the longer term. This document will be finalised by the end of 2016. The next IMODDUS meeting is foreseen to be held on 17 January 2017.

1.2 New projects approved:

a. "Harmonisation of resistance tests to diseases for DUS testing - 3"

This project was approved in the end of June 2016 as a follow up of a previous project. It aims to harmonise the resistance tests in terms of reference material (isolates and varieties), test conditions and notation scales, and to propose new harmonised and robust protocols to CPVO. A focus for Harmores 3 project is done on intermediate resistance, which makes it more difficult than the previous projects, but for which harmonised protocols and reproducible results are of great concern.

The project is coordinated by GEVES (FR), with the following project partners: Naktuinbouw (NL), INIA (SP), Central Institute for Supervising and Testing in Agriculture (CZ), Palacky University (CZ), BSA (D), Julius Kühn-Institut (D), National Food Chain Safety Office (HU), CREA (IT), SASA (UK), CTIFL (FR) and the European Seed Association (ESA).

The project aims at harmonising, at the European level, resistance tests to seven vegetable diseases:

- *Meloidogyne incognita*/tomato: IR, compulsory
- *Fusarium oxysporum* f. sp. *lycopersici* Race 0 (ex 1) and Race 1 (ex 2)/tomato for notation scale
- *Erysiphe pisi*/pea: field/greenhouse tests, different species, could become compulsory
- Powdery mildew/melon (*Podosphaera xanthii*): will be based on one race as model, and potentially modified with respect to the results of the CASDAR project for race definition, expected to be difficult, an additional will perhaps be necessary to obtain a robust protocol
- *Fusarium oxysporum* f. sp. *melonis* race 1.2/melon: IR
- *Fusarium oxysporum* f. sp. *melonis* race 2/melon: compulsory

This project is composed of 2 parts. Part 1 (with the duration of 1 year) initiated in 2016 and part 2 (with the duration of 2 years) will be initiated in 2017.

b. Ring tests for Strawberry

This new project has been approved in May 2016, it is coordinated by the CPVO and includes all the CPVO entrusted examination offices for the species: BSA (DE), COBORU (PL), DGAV (PT) and OEVV (ES).

The project consists in the organisation of ring tests and meetings with the DUS experts aiming at the harmonisation of the implementation of the protocol for strawberry.

The outcome of such ring tests will be valuable in order to aggregate comparable descriptions in a common database (using GEMMA).

a. Review of the characteristics of the current protocol taking into account the following elements:

- Variation of the expression with the environment
- Discriminating power
- To consider removal/addition of some characteristics from/to the protocol. This could potentially contribute to reduce the number of periods of observation for some variety types.

A set of 8 varieties, widely known in the EU, will be grown in a DUS trial design in the premises of the 4 partners of the project. These varieties will be described and the descriptions will be analysed in the light of the objectives. Partners will meet at an examination office in order to monitor and analyse the results.

A common calibration book could be built up. Consequences could be proposals amending the UPOV guideline and the CPVO protocol and changes to the trial design.

This project has a duration of 4 years and the final report is expected to be delivered in 2019.

c. "Construction of a European Potato database with varieties of common knowledge and its implementation in the potato DUS testing system"

This project was approved in the beginning of March 2016 and constitutes a follow up of the previous R&D projects: "Construction of an integrated microsatellite and key morphological characteristic database of potato varieties in the EU common catalogue" and "Construction of a European Potato database as centralised collection of varieties of common knowledge" and for ease of reference called "Potato_III_project."

The new project is coordinated by BSA (DE) and involves the nine entrusted examination offices for potato Naktuinbouw (NL), SASA (UK), COBORU (PL), OEVV (ES), DAF (IE), AGES (AT), UKZUZ (CZ), UKSUP (SK), CPVO and ESA.

The objective of the project is to continue the work on the setup of the EU database for potato. The database used will be GEMMA which has to be adapted to suit the requirements for potato DUS research. Subsequently, data need to be entered. The morphological characteristics, molecular data, and light sprout pictures to be included have been agreed already. Further details on varieties, administrative data, and morphological data still need to be discussed as well as the different agreements which will govern the running of that database.

The Examination Offices will continue to send samples of applications to the labs for molecular profiling. The molecular database will be supplemented with varieties of the EU common catalogue in order to achieve a complete database. The project has a duration of 2 years.

d. "Case study on minimum distances between vegetatively reproduced ornamental and fruit varieties"

This project was approved in November 2015, it will focus on the possible effects of the introduction of minimum distances according to the CIOPORA position on Minimum Distance for 3 vegetative reproduced species apple (fruit), rose (cut flower and outdoor roses) and Pelargonium (pot plant). The project is coordinated by Naktuinbouw (NL), with the following project partners: Bundessortenamt (DE), GEVES (FR), UKZUZ (CZ), NIAB (UK) and CIOPORA.

The CIOPORA position paper on Minimum Distance introduces the wish to introduce the change from the present botanical driven definition of the requirement of a variety to be clearly distinguishable into a system that takes into account only those characteristics that represent a certain agreed commercial importance for the species concerned. This project aims to test if it is feasible to apply this approach and identify possible problems in doing so.

The analysis will be given in draft reports per Examination office that will be discussed in a joint meeting with the participants, CIOPORA and CPVO. A final report will be presented in December 2016.

1.3 Follow-up of finalised projects

a. "Creation of a Common Maize Database for DUS studies through a partnership between Czech Republic, Hungary, Slovakia, and the CPVO"

This project was coordinated by ÚKZÚZ (CZ) having as partners NEBIH (HU) and UKSUP (SK). The aim of the project was to establish a common maize database for DUS studies through a partnership between the Czech Republic, Hungary, Slovakia and the CPVO. This database should contain harmonised morphological descriptions of maize lines and hybrids according to the CPVO technical protocol from all participating countries. The database will be updated regularly and will be available for electronic consultation for each partner and CPVO. Each partner can thus be in charge of maintaining physically at his premises only the seeds of varieties corresponding to its climatic conditions and not conserved in the other examination offices. During the execution of the project an exchange of information and experiences has taken place with an

expert from an EO which is already sharing a maize database. The final report was received in March 2016. The partners will start to use the database on a regular basis.

b. 'Impact analysis of endophytes on the phenotype of varieties of *Lolium perenne* and *Festuca arundinacea*'

This project, initiated in January 2013, was coordinated by the CPVO and the Food and Environment Research Agency (FERA) (UK), with the following project partners: Bundessortenamt (DE), GEVES (FR) and ESA (breeding companies: DLF Trifolium and Barenbrug). The project aimed at clarifying the possible impact that the presence of endophytes in varieties of *Lolium perenne* and *Festuca arundinacea* might have on the phenotype, and thus on the expression of the characteristics observed during the DUS tests and eventual consequences in terms of quality requirements for material to be submitted for that purpose. The project provided for the assessment of four varieties from each species, with two stages of endophyte infections (0% and 100% endophytes). These varieties have been integrated into regular DUS tests during two growing cycles using the relevant CPVO technical protocol. The final report has been received in February 2016. It states that there is no significant difference on the DUS characteristics between endophyte free material and endophyte infested material.

Based on the absence of clear effects of endophyte presence on the morphological expression of the varieties, the CPVO favours to continue accepting endophyte seed for the DUS test of a variety. As a consequence, the TQ remains as it is, which means that applicants are invited to inform CPVO on the estimated percentage of infection. A discussion on the outcome and the intentions of CPVO is foreseen during the 2016 CPVO agricultural crop experts meeting.

c. "A European Potato database as centralised collection of varieties of common knowledge"

This project approved in the beginning of 2014 was the follow up of the already finalised project "Construction of an integrated microsatellite and key morphological characteristic database of potato varieties in the EU Common Catalogue". This project was initiated by the CPVO (coordinator) and involved the nine entrusted examination offices for potato Naktuinbouw (NL), SASA (UK), BSA (DE), COBORU (PL), OEVV (ES), DAF (IE), AGES (AT), UKZUZ (CZ), UKSUP (SK), and the European Seed Association (ESA).

The aim of the project was to set up and to maintain an EU database (DB) for potato varieties, containing morphological and molecular data and light sprout pictures plus a collection of DNA samples from those varieties.

The complete and maintained DB as a centralised collection of morphological and molecular data of varieties of common knowledge will be an important tool for examination offices to organise the DUS tests in an efficient manner by providing reliable results for a crop without a living reference collection. The use of a centralised DB will improve quality and will supposedly reduce the costs of the DUS test compared to the maintaining of several DBs on national level. Furthermore, beside its purpose for the DUS test, a part of the DB (molecular profiles) can be used by titleholders in enforcement situations.

The final report of that RD project has been received in March 2016. It had been agreed to continue the work in a follow-up project in 2016-2017. The follow up project Potato III has been approved by the President of the Office in March 2016 and is described above.

d. "Effect of seed priming on vegetable DUS tests"

This project initiated by the CPVO was approved in January 2014 for a duration of one year. The CPVO has been the project coordinator, with other project partners being ESA and the selected entrusted examination offices (Naktuinbouw (NL), OEVV/INIA (ES) and GEVES (FR)). The project investigated the implications which seed priming might have on the expression of characteristics of eggplant and tomato rootstocks varieties, in nominated examination offices entrusted for those species. Although these are not amongst the most important vegetable species applications-wise in the Community plant variety rights system, commercially they are mostly primed. The R&D project also studied the possible effect that seed priming might have in the reduction of the germination rate over time.

The project commenced its activities with the planning of the trial set up and the sending by ESA members of primed and unprimed samples for three eggplant and three tomato rootstock varieties. Naktuinbouw carried out trials for both eggplant and tomato rootstocks, whilst GEVES carried out trials for eggplant and OEVV/INIA carried out trials for tomato rootstocks. The trial setup was identical in both the partners for each species including usage of the applicable CPVO protocols for eggplant and tomato rootstocks. Seeds were sown in time and subsequent observations made on the plants according to local conditions.

The outcome of the project showed that there had been no undue influence on the expression of the characteristics for any of the varieties under study as a result of the seed priming technique; therefore none would have been declared distinct from each other in a side by side comparison in a DUS test. It has been observed that the primed seed samples of all the varieties in the study germinated earlier and more evenly than their non-primed equivalents.

Proposals have now been received by the CPVO from Naktuinbouw, GEVES and OEVV for the acceptance of primed seed samples for tomato rootstocks and eggplant. These alternative submissions of primed seed have been published in the S2 Gazette, so that they can be used for new DUS tests commencing in 2017.

e. "Harmonisation of vegetable disease resistances - 2"

This project, initiated in 2012, was coordinated by GEVES (France), with project partners from the ÚKZÚZ (CZ), BSA (DE), OEVV (ES), NEBIH (HU), Naktuinbouw (NL), SASA (UK) and the European Seed Association (ESA). This project was a follow-up to the earlier 'Harmonisation of vegetable disease resistances', completed in 2008. The aim of the project was to ensure that examination offices and breeders working in the selected disease resistance tests were able to use common methodologies and interpret the disease symptoms emanating from these tests in the same manner.

The final meeting between the project partners took place in April 2015 at INIA in Madrid (ES). Partners agreed on the improved common methodologies for each of the disease resistances which would be proposed in the final report. A review was also made on possible other disease resistance methodologies where harmonisation would be desirable if a third "Harmores" project were to be devised.

The project has been concluded in end of 2015 with the presentation of the final report to the CPVO. The coordinator of the project presented the findings to the CPVO vegetable expert meeting in December 2015, and outlined the different improved methodologies to each of the disease resistance methodologies in the project. These improved methodologies are due to be implemented in partial revisions to the CPVO technical protocols for pea, pepper and lettuce at the next CPVO vegetable experts meeting in autumn 2016, to be subsequently adopted by the Administrative Council in early 2017. The same proposals on the improved methodologies have also be made to the UPOV Technical Working Party for Vegetables (TWV) in June 2016, and these will form part of the agenda for the TWV in 2017 as partial revisions to the corresponding UPOV guidelines.

f. "Rose project: sampling, analyses, and storage of DNA samples"

In June 2011 the CPVO proposed to the Administrative Council to go ahead with a pilot project on sampling and DNA storage of roses. It was decided to keep a DNA sample from the original plant material submitted for each technical examination, on a compulsory basis. One possible use of such a sample could be, in cases where there are doubts, to verify (as far as the applicable techniques allow) the identity of the material ordered to be grown as a reference in a DUS test, comparing the DNA fingerprint of the material received as a reference variety with the fingerprint of the DNA stored for that same variety. This sample could also be used in relation to the enforcement of rights at the request of the breeder. In a future context, this sample could be used in the management of the reference collection.

A procedure setting out the details of the DNA sampling as part of the technical examination has been defined, on the basis of which a call for tender to select a laboratory was launched. In 2011, Naktuinbouw was entrusted for a period of 4 years ending in February 2015. The sampling started during the course of the 2011 DUS trial.

A DNA sample from the original plant material submitted for each rose's technical examination has been kept on a compulsory basis during these 4 years, following the adopted procedure. The leaves have been collected in the different entrusted examination offices (Bundessortenamt, Naktuinbouw and NIAB) and sent to the entrusted laboratory (Naktuinbouw). DNA extractions and storage took place in this laboratory.

In the beginning of 2015 the CPVO made an internal analysis of the outcome of the project and the comments received by the project partners and breeders organisations (CIOPORA and Plantum). During this period, none of these 902 samples have been used neither by the entrusted examinations offices, nor by the breeders. Different reasons can explain the situation.

The CPVO Administrative Council has agreed in March 2015, to extend the project for one more year, in order to avoid a gap in the DNA sampling, since a new R&D project for roses was under preparation (the

new R&D project intends to test the use of new molecular markers, which are considered to be of interest for the management of glass house rose reference collections).

Since the CPVO didn't receive any formal proposal of this project until the first quarter of 2016, the AC has agreed in April this year to end the automatic storage of samples and to leave it on a voluntary basis, at the costs of the applicant/breeder as from September 2016. Clear procedures and framework of this service will be prepared by the CPVO, communicated to the applicants/breeders and presented to the CPVO Administrative Council in October 2016.

g. Reducing the number of obligatory observation periods in DUS testing for candidate varieties in the fruit sector

The project was initiated in 2009. Partners investigated for the pilot species (peach, strawberry, raspberry, and grapevine) they are entrusted for the influence of the reduction of the number of observation periods issues on the assessment of distinctness, the assessment of uniformity, including impact for new varieties bred by mutation, the variety description. The results indicated that in the big majority of cases, the second year of observation confirmed the result of the first year in respect of DUS in a context where variety descriptions were made on the basis of 2 years of observations. The participants noted that in the first satisfactory fruiting period, trees were still young and did not express some of the characteristics under the present protocol in the same way as they would do in the second year of observation. Switching to a system where observations would be limited to the first fruiting period as a routine would have consequences when comparing variety descriptions based on observations during the second year of testing which were stored in databases. Still the situation needs to be assessed on a species' basis.

As a follow up of this project, the CPVO proposed at the UPOV Technical Working Party for Fruit (TWF) crops reconsideration of wording in the Test Guidelines for fruit crops on the duration of the testing in 2015. The issue was further discussed at the meeting with fruit experts at the CPVO and a further proposal will be presented at the TWF in November 2016.

ⁱ This report uses the terminology of the United Nations.

[End of Annex XIV and of document]