

**Council****C/53/INF/4****Fifty-Third Ordinary Session  
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**SITUATION IN THE LEGISLATIVE, ADMINISTRATIVE AND TECHNICAL FIELDS:  
REPORTS BY REPRESENTATIVES OF MEMBERS AND OBSERVERS***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 XVI: South Africa, Germany, Bosnia and Herzegovina, Brazil, Spain, Hungary, Israel, Kenya, Lithuania, New Zealand, Poland, Republic of Korea, Republic of Moldova, Romania, Serbia and European Union
3. Reports received after September 10, 2019, will be included as an addendum to this document, which will be published after the Council session.

[Annexes follow]

SOUTH AFRICA

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

- Adaption to the 1991 Act of the Convention

South Africa hosted a workshop on the accession to UPOV 1991 in October 2018 to obtain inputs from relevant stakeholders on South Africa's approval of the 1991 Act of the Convention. Process not yet concluded.

- Other amendments, including in respect of fees

1.1.1 The fees on Plant Breeders' Rights were published in the SA Government Gazette, No. 42230 of 15 February 2019 in respect of the 2019/20 financial year, ending 31 March 2020.

1.1.2 The Plant Breeders' Rights Act, Act No.12 of 2018, was published in the SA Government Gazette No. 42347 of 29 March 2019. The department is currently working on the Regulations to give effect to the Act.

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

As per Table 1 of the Plant Breeders' Rights Act, Act No 15 of 1976, the following six additional genera and species were declared:

- *Akebia* Decne (all spp.)
- *Cenchrus* L. (all spp.)
- *Eleusine* Gaertn. (all spp.)
- *Fagopyrum* Mill. (all spp.)
- *Lablab* Adans. (all spp.)
- *Plantago* L. (all spp.)

Published in Government Gazette No. 42010 of 02 November 2018.

1.3 Case Law

None to report.

2. Cooperation in examination

- Conclusion of new agreements (completed, in progress or planned):  
None to report.
- Amendments of existing agreements (completed, under way or planned):  
None to report.

3. Situation in the administrative field

No changes.

4. Situation in the technical field

The evaluation centres are responsible for the biological examination (DUS testing).

242 PBR applications were received in 2018 of which 53% [129] were for Agricultural crops, 6% [14] for Ornamental crops, 30% [72] for Fruit crops and 11% [27] for Vegetable crops.

As of December 2018, a TOTAL of 3042 varieties had valid plant breeder's rights in South Africa, of which 24% [740] were for Ornamental crops, 39% [1194] for Agricultural crops, 29% [847] for Fruit crops and 8% [261] for Vegetable crops.

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)
NUMPRO Meeting [Nuclear Material Producers]	21 May 2019	Pretoria, South Africa	Potato Certification Service	PBR on potato varieties	SA Potato Industry 60 participants
World Intellectual Property Day	29 April 2019	Thohoyandou, South Africa	University of Venda	Promoting Research and Innovation	Researchers, post graduate students, OTTs, relevant government departments (approximately 100 participants)

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

None to report.

[Annex II follows]

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field: 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

In conjunction with the Global Forum for Food and Agriculture, held in Berlin in January 2019, initial contact was made with representatives of the Ministry of Agriculture and the plant varieties office of Uzbekistan. This led to a visit by representatives of the plant varieties office of Uzbekistan to the Federal Plant Varieties Office and a further visit by the Federal Plant Varieties Office to Tashkent, Uzbekistan. The meeting in Germany was an opportunity to provide colleagues from Uzbekistan with theoretical and practical explanations of tasks in the area of variety testing. During the visit to Tashkent, a letter of intent was signed with a view to strengthening technical cooperation between the two plant varieties offices. Workshops on the technical aspects of variety testing are due to be held next year.

As part of a bilateral exchange between the Netherlands and Iran, the Federal Plant Varieties Office took part in, and provided expertise for, a technical workshop in Tehran on agricultural cultivars (with a focus on cereals).

During a visit by a delegation representing various institutions in Ethiopia (plant varieties office, Ministry of Agriculture, research institutes), a letter of intent was signed to enhance cooperation between the plant varieties office of Ethiopia and the Federal Plant Varieties Office. The delegation was also provided with an explanation of the main tasks of the Federal Plant Varieties Office in the areas of registration testing and assessing value for cultivation and use. In the coming months, topics should be finalized for a technical exchange between Germany and Ethiopia on plant variety matters, due to be held next year.

On November 5 and 6, 2018, in Ulaanbaatar, Mongolia, the UPOV Office participated in meetings with the Working Group responsible for drafting the Plant Variety and Seed Act, organized by the Ministry of Food, Agriculture and Light Industry (MOFALI) of Mongolia, with the financial assistance of the German-Mongolian cooperation project for sustainable agriculture (DMKNL). The purpose of the meetings was to provide assistance to Mongolia in drafting legislation and in the procedure to become a UPOV member. In separate meetings discussions took place with experts to identify potential partners for technical cooperation.

The Indo–German Cooperation Project of the Federal Ministry of Agriculture was extended for a further three years (from July 2019 to June 2022). The third and final phase will be aimed at consolidating the project. In the preceding reporting period, there was a technical exchange with international experts in New Delhi, India, on the use of molecular markers in plant variety testing. The Federal Plant Varieties Office also hosted an exchange on IT topics, with a particular focus on electronic data collection and data evaluation and management.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

Nothing to report.

[Annex III follows]

BOSNIA AND HERZEGOVINA

In Bosnia and Herzegovina, there are not implemented provisions of the Law on Protection of New Varieties of Plants in Bosnia and Herzegovina ("Official Gazette", No. 14/10 and 32/13). Legal regulations are contained in the legal official procedures.

Now we have a National variety list for agricultural plants.

New varieties are registered on the basis of DUS tests and enrollment solutions from the surrounding countries (Croatia, Serbia, Montenegro and other).

Bosnia and Herzegovina does not have the conditions to perform a DUS test but the Administration of Bosnia and Herzegovina for Plant Health Protection requires DUS reports for new varieties.

For the adoption of the necessary legal regulations it is necessary to obtain the consent of the entity ministries of agriculture and Brčko Distrik B&H, but we do not have it today.

Regulations under legal procedure are:

- Rulebook for entry in registers for Protection of Breeders' Rights;
- Rulebook for use of seeds of small farmers (farmer's seed);
- Rulebook on costs for the procedures for registration and recognition of varieties, certification of seed and planting material, and procedures for the Plant Breeder's Rights.

The Administration of Bosnia and Herzegovina for Plant Health Protection will continue to work on bringing legal regulations and publishing them in the Official Gazette.

[Annex IV follows]

## BRAZIL

## I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

## 1.1 Amendments of the law and the implementing regulations

*Instrução Normativa nº 13, May 27, 2019, updating the PVP fees.*

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

*Extension of the protection for the following species:*

Species	UPOV CODE
Cenchrus ciliaris; C. pennisetiformis; C. setigerus	CENCH
Digitaria decumbens; D. eriantha; D. milanjana; D. pentzii; D. smutsii; D. swazilandensis; D. valida	DGTRA
Eruca sativa Mill.	ERUCA_SAT
Hylocereus undatus (Haw.) Britton & Rose	HYLOC_UND
Hylocereus costaricensis Britton & Rose	HYLOC_COS
Ilex paraguariensis A. St.-Hil.	ILEXX_PAR
Selenicereus megalanthus (K. Schum. ex Vaupel) Moran e Selenicereus setaceus Rizz.	SELEN

## 1.3 Case law

Nothing to report.

2. Cooperation in examination

New cooperation as follows:

Species	UPOV CODE	Providing authority/ examination office
Mangifera indica	MANGI_IND	AU
Olea europaea L.	OLEAA_EUR	ES
Pyrus communis L. Pyrus communis L. var sativa DC.	PYRUS_COM	FR
Malus domestica Borkh. Malus pumila Mill var. domestica Pyrus malus L.	MALUS_DOM	DE
Malus domestica Borkh. Malus pumila Mill var. domestica Pyrus malus L.	MALUS_DOM	FR
Solanum lycopersicum L. Lycopersicon esculentum Mill.	SOLAN_LYC	JP
Rosa L.	ROSAA	JP
Cymbidium Sw.	CYMBI	JP

3. Situation in the administrative field

Since the end of 2018, the SNPC fully implemented the electronic PVP application and currently the office is running paperless

4. Situation in the technical field

Nothing to report.

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
1. General course on IP	February 5 to April 5, 2019	Distance learning course	INPI (Patent and trademark office of Brazil) WIPO	General course of IP with a chapter of PVP	Around 2000 participants (all of them Brazilians) acting in different areas (students, lawyers, legal representatives, public employees, researchers, etc.)	SNPC (PVP Office) examiners acted as tutors in the PVP discussions
2. General course on IP	May 7 to July 5, 2019	Distance learning course	INPI (Patent and trademark office) WIPO	General course of IP with a chapter of PVP	Around 2000 participants (all of them Brazilians) acting in different areas (students, lawyers, legal representatives, public employees, researchers, etc.)	SNPC (PVP Office) examiners acted as tutors in the PVP discussions
3. General course on IP	August 6 to October 4, 2019 (in course)	Distance learning course	INPI (Patent and trademark office) WIPO	General course of IP with a chapter of PVP	Around 2000 participants (all of them Brazilians) acting in different areas (students, lawyers, legal representatives, public employees, researchers, etc.)	SNPC (PVP Office) examiners acted as tutors in the PVP discussions
4. General course on IP	March 11 to 22, 2019	Rio de Janeiro/RJ	WIPO- Brazil	Summer Course on IP WIPO-Brazil	Around 50 participants (all of them Brazilians) acting in different areas (lawyers, legal representatives, public employees, researchers, etc.)	Lecture from representative of SNPC (PVP Office)
5. General course on IP	July 15 to 26, 2019	Florianópolis /SC	WIPO- Brazil	Summer Course on IP WIPO-Brazil	Around 50 participants (all of them Brazilians) acting in different areas (lawyers, legal representatives, public employees, researchers, etc.)	Lecture from representative of SNPC (PVP Office)
6. Brazilian Plant Breeding Congress	July 28 to 31, 2019	Águas de Lindoia/SP	Brazilian Plant Breeding Society	X Brazilian Plant Breeding Congress – Speech about PVP in Brazil	Around 1000 participants (students, professors, scientists, researchers, etc.)	Speech from a Representative of SNPC (PVP Office)

[Annex V follows]

## SPAIN

## I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

## 1.1 Amendments to the law and regulations

The protection of plant varieties is regulated in Spain by Law No. 3/2000 of January 7, 2000, laying down the legal regime for the protection of plant varieties, in force since January 10, 2000, and by Royal Decree No. 1261/2005 of October 21, approving the Regulations for the Protection of Plant Varieties, in force since November 5, 2005, as amended on July 30, 2014. No further amendments have been made to this Law.

## 1.2 Extension of protection to other genera and species

Spanish legislation allows the protection of new varieties belonging to any species.

2. Cooperation in examination

No new agreements have been concluded during 2019, nor have existing ones been modified. Even in the absence of a prior agreement, Spain agreed to carry out DUS testing of one cotton variety for OAPI, two strawberry varieties for the United Kingdom and one walnut variety for Germany. In addition, since January 2019, requests to purchase test results for 96 varieties have been received from 17 non-EU countries.

3. Situation in the administrative field

A new Director of the Spanish Plant Variety Office, Mr. José Antonio Sobrino Maté, and a new Head of the Register of Commercial and Protected Varieties, Ms. Nuria Urquía Fernández, have been appointed.

There have been no changes in the administrative procedures and systems of the Spanish Plant Variety Office (OEVV).

4. Situation in the technical field

The DUS tests of agricultural and horticultural species for the granting of titles by the OEVV are carried out by the National Institute of Agricultural Research, INIA. In order to carry out DUS examinations of fruit species, the OEVV has signed collaboration agreements with 10 research centers. In order to carry out DUS examinations of ornamental species, Spanish legislation allows for cooperation with other examination offices outside the territory of Spain.

5. Activities for the promotion of plant variety protection

Title of activity	Date	Venue	Organizers	Purpose of activity	Participating countries/organizations (no. of participants from each country/organization)	Comments
National transfer and innovation event for extensive winter crops, GENVCE	May 28-29, 2019	Vitoria	MAPA -INIA -NEIKER -Basque Government -Private sector	Promotion of new crops, need for protection to promote technology transfer	Spain International private companies active in Spain	Participation of 1,500 professionals, field visits allowing for observation of the behavior of varieties. This is an annual event.

## II. OTHER NEWS OF INTEREST TO UPOV

Spain is concerned about the recent decision of the European Patent Office to recognize the patentability of products obtained through essentially biological processes, including plant varieties (Case G 3/19).

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

The Hungarian Patent Act (ACT XXXIII OF 1995 ON THE PROTECTION OF INVENTIONS BY PATENTS) which also regulates the PVP rights in Hungary changed on 1 January 2019. The changes affect mainly administrative matters. The English translation of the amended Articles is provided as below.

**Art. 114/I.**

(3) In addition to the data specified in Article 45(5) and (6), the application for plant variety protection shall contain the name and address of the breeder, or an indication that the breeder requests that his name and address not be indicated in the plant variety protection documents and that the breeder gives his name and address on a separate sheet.

(3a) In all other respects, applications for plant variety protection shall be filed in compliance with the detailed requirements laid down in the law on the detailed formal requirements of patent applications and the law on the electronic filing of industrial property applications.

**Art. 114/J.**

(b) the name of the applicant, his address or seat or secure delivery service address, in the case of representation the name of the representative, his address or seat or secure delivery service address or any other data making it possible to contact the applicant,

**Art. 45.**

(5) In the absence of a provision of this Act to the contrary, in patent matters within the material competence of the Hungarian Intellectual Property Office requests shall contain:

- a) the name and address of the natural person requesting party and, in the case of representation, the name and address of the representative,
- b) the name and address of the non-natural person requesting party and, in the case of representation, the name and seat of the representative, and
- c) in the case of communication by non-electronic means, the signature of the requesting party or of his representative.

(6) If the applicant or his representative has an obligation to communicate by electronic means with the Hungarian Intellectual Property Office in patent matters within the material competence of the Hungarian Intellectual Property Office or if he wishes to do so, the request shall contain, in addition to the data specified in paragraph (5)

- (a) the place, date of birth and mother's name of the natural person requesting party or representative,
- (b) the tax number of the non-natural person requesting party or representative.

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 VII follows]

## ISRAEL

## I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

No changes.

2. Cooperation in examination

No changes.

3. Situation in the administrative field

- Changes in the administrative structure: New PBR Council was nominated on April 18<sup>th</sup>, 2019.
- Changes in office procedures and systems: None.

4. Situation in the technical field

No changes.

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
Yevul See Exhibition	17- 18.10.18	Ma'ayan Harod	Yevul See	PBR Promotion and participation	Local agricultural companies, growers etc.	Booth and representation in the Ministry's pavilion
Open Day in Ha'ARAVA- The big exhibition in Israel	30-31.1.19	Tamar – Yair Station	North and Center MOP Arava-Tamar	PBR Promotion and participation	Local agricultural companies, growers etc.	Booth and representation in the Ministry's pavilion
Fresh Agro Mashov Exhibition	11.06.19	TLV Convention Center, Tel Aviv, Israel	Mashov Group	PBR Promotion and participation	Local agricultural companies, growers etc.	Booth and representation in the Ministry's pavilion
IP examiners visit and introduction of PBR DUS testing	13.01.19	Israel Plant Gene Bank & plant testing systems, ARO	PBR office	Cooperation	Local IP office, ARO & PBR office – 30 participants	

[Annex VIII follows]

## KENYA

## I. PROTECTION OF NEW PLANT VARIETIES

1. Situation in the legislative field

## 1.1 Amendments of the law and the implementing regulations

Plant Variety Protection in Kenya is provided under the Seeds and Plant Varieties Act (CAP 326) of 1972, which became operational in 1975 and was revised in 1991. Official regulations to guide the implementation of PVP service were put in place in 1994 and the office to administer the PVP was established in 1997 and has functioned under Kenya Plant Health Inspectorate Service (KEPHIS) since 1998. Kenya acceded to UPOV under the 1978 Convention on 13<sup>th</sup> May 1999. In 2012, the Seeds and Plant Varieties Act was amended to incorporate components of the 1991 UPOV Convention. On April 11, 2016, Kenya deposited the instrument of accession to the 1991 UPOV Convention Kenya is now bound by the 1991 UPOV Convention effective from May 11, 2016. Currently Kenya is in the process of reviewing PBR Regulations to facilitate implementation of the optional exemption.

## 1.2 Genera and species covered

Kenya extends plant variety protection to all plant genera and species. At the moment, a total of seventy-eight (78) taxons of selected plant species have been registered for protection in the country.

## 1.3. Case law

Under the Kenyan Seeds and Plant Varieties Act, applications for Plant Breeders Rights are required to be published in the Kenya gazette, to allow those opposing any applications or grant of rights, to make the objections and make representations to the Authorized Officer – KEPHIS. The Authorized Officer determine the hearing of such representations but any applicant aggrieved by the decision of the Authorized Officer may appeal to the Seeds and Plants Tribunal and if further aggrieved by the decision of the Tribunal, final appeal to the High Court.

From the time of inception of the PVP service in Kenya, a total of forty-eight (48) applications for PBRs have been contested. Out of these, cases for thirty-one (31) applications have been heard and determined by the Authorised Officer. Hearing of representations for the remaining cases for seventeen (17) applications is on-going. So far there has been no case that has been challenged through the Tribunal.

2. Cooperation in examination

As per UPOV Article 32 on Special Agreements, The PVP office in Kenya has entered into international cooperation with other UPOV Member States and Intergovernmental Organizations in the utilization of the existing DUS examination reports notably,

- European Community – Community Plant Variety Office
- RaadVoorPlantrassen (Board for Plant Varieties) – Netherlands
- The Plant Breeders' Rights Council – Israel
- Commissioner of Plant Variety Rights – New Zealand
- The registrar, National Department of Agriculture – South Africa
- Bundessortenamt – Germany
- Department for the Environment, Food and rural Affairs (DEFRA) – United Kingdom
- New Business and Intellectual Property Division Food Industry Affairs Bureau – Japan
- Korea Seed and Variety Services – Republic of Korea
- Intellectual Property Division Food, Industry Affairs Bureau – Japan

3. Situation in the Administrative field

The administrative structure, office procedures and systems within the PVP office in Kenya remains the same however the PBR applications can be done online. Kenya has embraced the use of UPOV PRISMA application

tool for all genera and species. Kenya is currently automating its plant variety protection system where all plant variety protection processes will be online.

4. Situation in the Technical field

a. Application and Grant of Plant Breeders' Rights

Since inception until end of 2018 of the PVP office in Kenya, a total of 1679 applications been received by Breeders' Rights and 650 plant breeders' rights have been granted. Figure 1 below shows the status of PBR in Kenya.

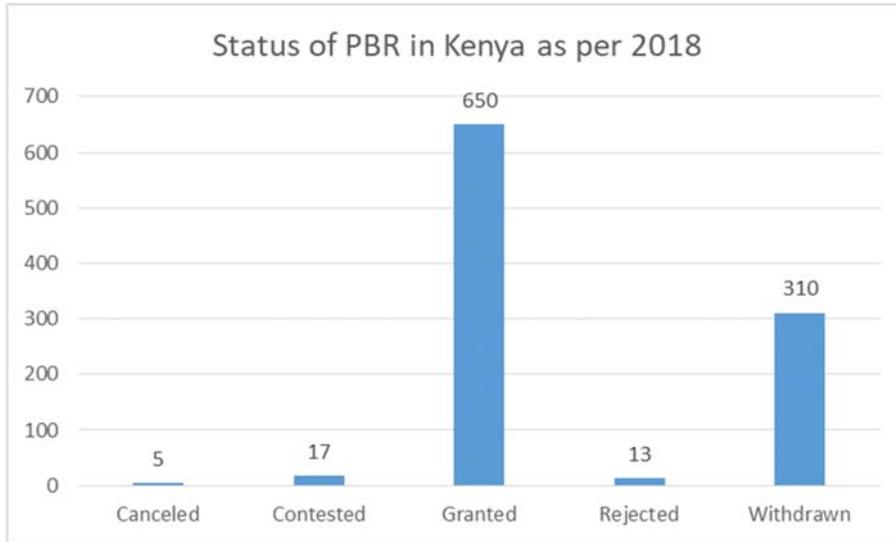


Figure 1. PBR Status in Kenya as at December 2018

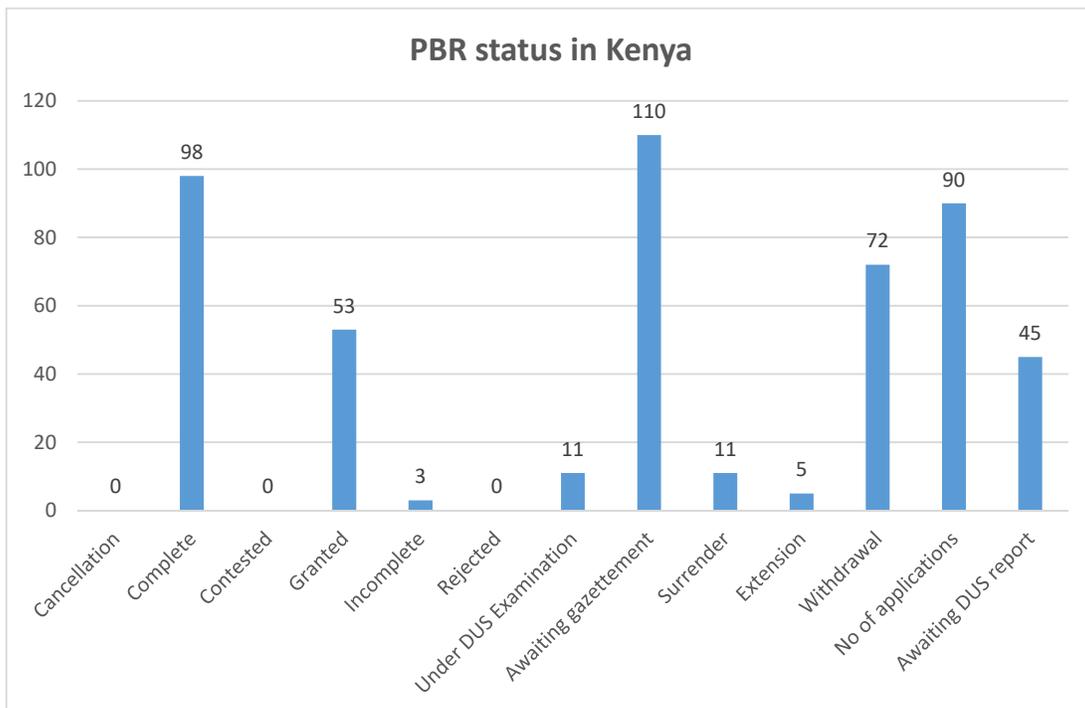


Figure 2. PBR Status in Kenya for the year 2018

Reasons for withdrawn applications by the breeders include reduced interest in a variety by consumers and availability of better varieties to the breeder. The incomplete applications are either due to missing supportive documents that must accompany the application or due to non-payment of the application fee by the applicant. Applications approved for granting of PBR titles are those with DUS examination report finalized and confirmed to be positive but await payment of grant for PBR certificate fee by the applicant. The date of payment of this fee becomes the official commencement date of protection of that variety in Kenya.

b. DUS testing

The Office is conducting DUS for Pigeon pea, Cowpeas, Cotton, Maize, Rice, Millets, Sorghum, Sunflower, Potatoes, Limonium and a number of traditional vegetables (Mrenda and Amarathus). National test guidelines have been developed for some of these crops. Kenya is part of the team reviewing the Tea test guideline.

5. Activities for the promotion of Plant Variety Protection

The PVP office in Kenya has been actively involved in a number of activities for the promotion of Plant Variety Protection in the Country and within the Africa region. Some of these promotional activities includes:

- Dissemination seminars on awareness creation on PVP services in the country. These seminars targets National Agricultural research institutions, Universities, policy makers, Agricultural extension staff as well as the larger farming communities.
- The office is working with other sectors in agriculture to ensure that operating regulations are in conformity with the Seed and Plant Varieties Act and by extension the UPOV Convention.
- Within the region, the Office has been instrumental in development of the ARIPO PVP framework and made contributions to the East African Community (EAC) Draft Seeds and Plant Varieties Bill, which includes a part on plant variety protection. The Office has also been involved in exposing delegations from Malawi and Somalia to the Kenyan PVP system.

All correspondences need to be addressed to:

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[Annex IX 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 19<sup>th</sup> of October, 2006 and last amended on 26<sup>th</sup> of April, 2012;
- Regulation No 1458 of the Government of the Republic of Lithuania of the 15<sup>th</sup> 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 8<sup>th</sup> 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 23<sup>th</sup> of June, 2004, regarding remuneration.

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

- According to the amendments of the Law on Plant Variety Protection of the Republic of Lithuania on 26<sup>th</sup> 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 on 2018.

2. Cooperation in examination

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

- Bilateral agreement of the 11<sup>th</sup> of August, 2000, with the Polish Research Centre for Cultivar Testing (COBORU) regarding performing DUS tests, has been amended on 14<sup>th</sup> 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 30<sup>th</sup> of June, 2006, has been amended on the 18<sup>th</sup> 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 6<sup>th</sup> of May, 2011, has been amended on 14<sup>th</sup> of March, 2019, by the Order of the Director of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania No A1-148;
- 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 on 14<sup>th</sup> of November, 2012, or by the other competent authority of the European Union by the breeder's 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. Administrative Council of the CPVO meeting	21–22 of March, 2018	Angers, France	CPVO	To discuss main questions regarding plant variety protection	European Commission, CPVO, UPOV, observers and member states – 45 at all
2. Administrative Council of the CPVO meeting	19 of September, 2018	Sofia, Bulgaria	CPVO	To discuss main questions regarding plant variety protection	European Commission, CPVO, UPOV, observers and member states – 47 at all

- Information Bulletin on Plant Breeder's Rights and National List of Plant Varieties No. 1 (29) of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania was published on the 19<sup>th</sup> of January, 2018, and No 2 (30) – on the 15<sup>th</sup> of June, 2018.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

- The Lithuanian National List of Plant Varieties 2018 has been approved by the order No A1-106 of the Director of the State Plant Service under the Ministry of Agriculture of the Republic of Lithuania on the 8<sup>th</sup> of March, 2018. 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 X follows]

NEW ZEALAND

PLANT VARIETY PROTECTION

1. Situation in the legislative field

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

The New Zealand government has commenced a review of the Plant Variety Rights Act 1987. Public consultation was carried out following the release of an Issues Paper in September 2018. An Options Paper was released for public consultation in July 2019. The objective is for a Bill to be introduced to Parliament by mid-2020 and a new regime in place by late 2021.

Detailed information regarding the Plant Variety Rights Act review is available at <https://www.mbie.govt.nz/have-your-say/plant-variety-rights-act-1987-review-options-paper>

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. New Zealand continues to supply a test report, on request from an Authority, at no cost.

Following on from discussions with Plant Breeder's Rights Australia in early 2019 a renewed cooperation initiative is underway between Plant Breeder's Rights Australia and New Zealand Plant Variety Rights Office. The initiative is based on mutual benefit and the sharing of information and experience on a variety by variety basis. The initiative also includes cooperation with breeders and in some cases sharing of information prior to application.

3. Situation in the administrative field

During the financial year ended 30 June 2019, 111 applications for plant variety rights were accepted (9% decrease on the previous year), 86 grants were issued (8% increase on the previous year) and 77 grants were terminated (8 % increase on the previous year). At 30 June 2019 there were 1310 valid grants, a small increase on the previous year. Application numbers are stable; however the trend of a slow decline is noted in recent years.

In association with the review of the Plant Variety Rights Act 1987, a wide ranging review of operational activities and Office functions is underway. The results of the review will be used to guide future regulatory change and Office practices.

4. Situation in the technical field

New Zealand's strict biosecurity requirements provide difficulties and delays for the importation of plant material for foreign bred varieties. The increasing length of the provisional protection period, particularly for fruit crop species, is now a significant factor for owners and their agents with respect to management of the variety. Lengthening application time frames for many species has also impacted DUS testing arrangements, organisation and scheduling. The greater use of foreign test reports combined with the use of variety information held by another authority is one approach to tackling the delays to testing caused by biosecurity factors.

New Zealand hosted the 51st session of the Technical Working Party for Ornamentals and Forest Trees in Christchurch from 18 – 22 February 2019. There were thirty participants from fifteen states and organisations.

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
Inter Government Consultation	12-14 March 2019	New Zealand	New Zealand and Indonesia	Plant Variety Protection Policy, organisation of testing and Office administration	Indonesia, New Zealand	Exchange and sharing of PVP authority experience and challenges
Cooperation in DUS testing	15 February 2019		New Zealand and Community Plant Variety Office	To explore options for enhanced technical cooperation	European Union, New Zealand	The opportunities for both parties to improve the sharing of variety information for mutual benefit
Cooperation in DUS testing	25-27 February 2019		New Zealand and IP Australia	To explore options for enhanced technical cooperation	Australia, New Zealand	The opportunities for both parties to improve the sharing of variety information for mutual benefit

[Annex XI follows]

POLAND

Period: September 1, 2018 – August 31, 2019

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

The Act of June 26, 2003 on the Legal Protection of Plant Varieties (consolidated text: OJ of 2018, item 432) 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. Since November 1, 2000 all plant genera and species are eligible for PBR protection in Poland.

In respect of fees, the Decree of the Minister of Agriculture and Rural Development of February 17, 2004 on fee rates for the lodging an application for the Plant Breeders' Rights protection, DUS testing as well as for the granting and the maintenance of the exclusive right titles (OJ No 60 of 2004, item 567; OJ of 2015, item 2166) is in force.

Poland became UPOV member on November 11, 1989 and acceded to the 1991 Act of the UPOV Convention as the twenty-fourth State, on August 15, 2003.

2. Cooperation in examination

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

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

In the reporting period, Poland carried out DUS tests for the authorities from the following countries: Belgium (2 varieties), Croatia (1 variety), Czech Republic (32 varieties), Denmark (1 variety), Estonia (16 varieties), France (1 variety), Germany (5 varieties), Hungary (27 varieties), Latvia (3 varieties), Lithuania (45 varieties), Slovakia (1 variety), Slovenia (4 varieties), Sweden (4 varieties), as well as for the CPVO (64 varieties).

These tests were done for the different species of agricultural (112 varieties), vegetable (16 varieties), ornamental (40 varieties) and fruit (38 varieties) plants. Altogether, 206 varieties were tested as a commissioned work for the above mentioned authorities.

As in previous years, some authorities, namely: Austria, Bosnia and Herzegovina, CPVO, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Iran, Latvia, Lithuania, Russian Federation, Serbia, Turkey, United Kingdom 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.

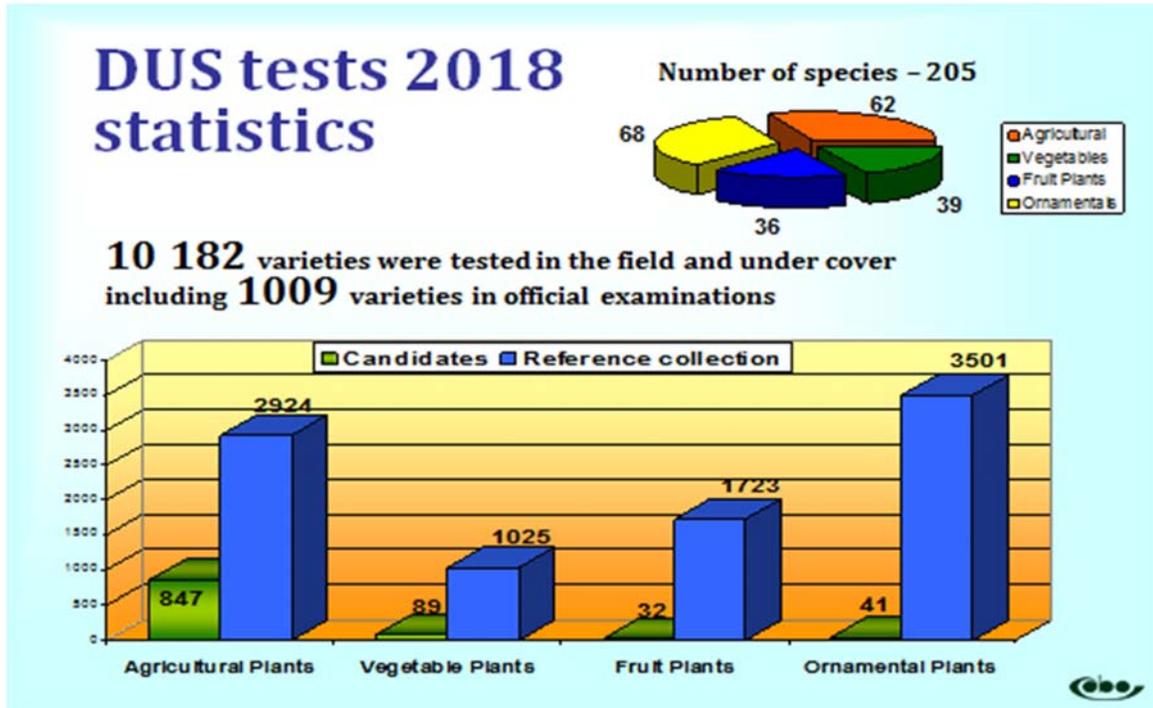
3. and 4. Situation in the administrative and technical fields

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 2018, 10,182 varieties within 205 plant species were tested (which included 9,173 varieties in living reference collection and 1,009 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 2018



In 2018, COBORU received 103 applications for national PBR protection in total, which constitutes a decrease by 7 applications in comparison with the previous year.

From January 1 to September 1, 2019, 112 new applications, including 59 domestic and 53 foreign, have been submitted for national PBR. This number is higher by 25 applications than that observed in the previous reporting period (87).

In 2018, COBORU granted 91 titles of national protection (17 titles more than in 2017). At the end of 2018, there were 1229 national PBR titles in force, which comparing to the previous year represents an increase by 51 varieties.

In the period from January 1 to September 1, 2019, 89 titles of national PBR protection have been granted. In total, 1235 varieties are protected in Poland (as on Sept. 1, 2019).

Details on the statistics are given in the table below.

In the column "Titles having ceased", there is no variety for which - within the reported period - national PBR expired.

Plant Species	Applications for PBR 1.01. – 1.09.2019			Grants of PBR 1.01. – 1.09.2019			Titles having ceased	Titles in force as on 1.09.2019
	domestic	foreign	together	domestic	foreign	together		
Agricultural	43	4	47	56	3	59	32	695
Vegetable	3	1	4	8	4	12	43	198
Ornamental	12	43	55	10	2	12	3	227
Fruit	1	5	6	6	-	6	5	115
<b>Total</b>	<b>59</b>	<b>53</b>	<b>112</b>	<b>80</b>	<b>9</b>	<b>89</b>	<b>83</b>	<b>1235</b>

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 SANTE, Brussels as well as in the CPVO Administrative Council meetings.

Within the reporting period, the UPOV Distance Learning Course "Introduction to the UPOV System of Plant Variety Protection under the UPOV Convention" (DL-205) has been successfully completed by one COBORU expert.

*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, 2019, has been published in the third number of the *Polish Gazette for Plant Breeders' Rights and National List*, i.e. No 3(152)2019.

The Official Gazette can also be found on our website, in the section: *Publications*.

Additionally, the Research Centre for Cultivar Testing maintains and updates systematically a homepage [www.coboru.pl](http://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. Visit of the Polish delegation in NEBIH (HU)	15.10-16.10.2018	Hungary, Zamardi	NEBIH - HU	Discussion on the most important issues concerning mutual provision of experimental services in the range of the official DUS testing; signing of the agreement on cooperation rules	HU - 6 PL - 5
2. Conference on the occasion of the World Intellectual Property Day – "Whose is the genome? Biotechnology and intellectual property protection"	26.04.2019	Poland, Warsaw	Polish Patent Office; WIPO	COBORU Director gave a lecture "The rules of coexistence between the system of legal protection of varieties and plant patent protection of biotechnological inventions"	WIPO - 2 EPO - 2 PL - 80
3. Visit of the guests from Serbia	10.06-13.06.2019	Poland, COBORU headquarters; Experimental Stations: Słupia Wielka, Zybiszów, Masłowice, Śrem	COBORU	Presentation of COBORU organization and activity; procedures of variety listing and protection in PL; system of DUS testing and VCU assessment; inspection of DUS trials	RS - 2 PL - 10
4. Visit of NEBIH (HU) representatives	11.06-12.06.2019	Poland, COBORU headquarters; Experimental Stations: Słupia Wielka, Zybiszów, Śrem	COBORU	Technical visit in the frame of bilateral cooperation	HU - 3 PL - 6
5. Conference – I Rose Symposium "Rosalia" 2019	15.06.2019	Poland, Warsaw	Polish Academy of Sciences, Botanical Garden – Center for Biological Diversity Conservation in Powsin; Polish Rose Breeders Association	COBORU expert made a presentation on "Legal protection of plant varieties in Poland"	PL - 20

6. Visit of CPVO representative	1.07-2.07.2019	Poland, COBORU headquarters; Experimental Stations: Śrem, Chrzastowo	COBORU	Technical visit in the frame of cooperation between CPVO and COBORU; inspection of DUS trials of ornamental plant species	CPVO - 1 PL - 6
7. Visit of the Belarussian authority delegation	16.07-17.07.2019	COBORU Experimental Station Krzyżewo	COBORU	Presentation of COBORU organization and activity, including DUS testing system; discussion on possible areas of cooperation; inspection of DUS trials	BY - 8 PL - 11
8. Visit of BSA (DE) representatives	27.08-28.08.2019	Poland, Experimental Stations: Zybiszów, Masłowice	COBORU	Technical discussion on DUS protocols for fruit plants	DE - 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 July 2019, respectively. These Official Lists as well as updated lists of varieties are also available at [www.coboru.pl](http://www.coboru.pl).

[Annex XII follows]

## ANNEX XII

REPUBLIC OF KOREA  
Period: September 2018 - August 2019

## I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

Nothing to report

2. Cooperation in examination

MOU on technological cooperation for PVP between KSVS and Center for Agricultural Crop Variety Trials of the Ministry of Agriculture Resources of the Republic of Uzbekistan was made last December, 2018. KSVS shall provide the results of the examination conducted in accordance with UPOV Convention, which are subject of an application filed by Korean authority, to the Uzbekistan authority at the request of the Uzbekistan authority and vice versa.

3. Situation in the administrative field

International Seed Training Center opened in last June with mission of training the people who are engaged in seed industry. It provides training courses related to PVP system as well as seed testing and regulations.

4. Situation in the technical field

During the financial year ended 31 December 2018, 765 applications for plant variety rights were accepted(2.7 % increase on the previous year), 574 grants were issued(8% decrease on the previous year) and 217 grants were terminated. PVP titles in force on 31 December 2018 are 5,325. Information on Plant Breeders' Rights can be found at [www.seed.go.kr](http://www.seed.go.kr)

New national Test Guideline(TG) for 9 genera and species was established, and existing TGs of 11 genera and species were revised for harmonizing with the UPOV TGs in 2018.

Republic of Korea has been participating in the revision of test guideline for *Ginseng* in TWA as leading expert since 2017.

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. Training course for the development of Asian seed industry	2018. 10. 14~10. 27	Gimcheon (Republic of Korea)	KSVS	Training seed experts	Afghanistan, Bangladesh, Cambodia, China, Myanmar, Pakistan, Philippines, Sri Lanka, Viet Nam (13)
2. East Asia PVP Forum	2019.4.23 ~24	Beijing (China)	EA-PVP Office	Regional cooperation for PVP	Brunei Darussalam, Cambodia, China, Indonesia, Japan, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Republic of Korea, Singapore, Thailand, Viet Nam
3. TWV	2018.5.20 ~5.24	Seoul (Republic of Korea)	Seoul	UPOV	Brazil, Canada, China, Czech Republic, European Union, France, Germany, Italy, Japan, Kenya, Netherlands, Republic of Korea, United Kingdom, United Republic of Tanzania, CropLife, ESA, ISF, UPOV

C/53/INF/4  
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Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)
4. Workshop for raising awareness on PVP	2019.2.15.	Jeju	KSVS	Raise awareness on PVP	Associations of fruit farmers and fruit tree producer, officials related to seed industry of rural government (640)
	3.22.	Daejeon			
	3.27.	Hwachun			
	4.9.	Eumsung			
	7.2.	Chungju			
	7.17	Muju			
	8.2.	Daechun			
		(Republic of Korea)			

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

Nothing to report.

[Annex XIII follows]

REPUBLIC OF MOLDOVA

PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments to the Law and the implementing regulations

No changes.

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, Beaucouzé, FR
- Bundessortenamt, DE
- Central Institute for Supervising and Testing in Agriculture (UKZUZ), CZ
- Plant Varieties and Seeds Animal and Plant Health Agency, UK

3. Situation in the administrative field

No changes.

*Changes in the Procedural and Protection System*

No changes.

*Statistics*

In the period from January 1, 2018 to December 31, 2018:

- 37 applications have been received (28 for national applicants and 9 for foreign applicants), as follows:

- Barley (*Hordeum vulgare* L.) – 3
- Bean (*Phaseolus vulgaris* L.) - 1
- Chick-Pea (*Cicer arietinum* L.) -1
- Chrisanthemum (*Chrysanthemum indicum* L.) – 1
- Common hazel (*Corylus avellana* L.) – 1
- Garlic (*Allium sativum* L.) – 2
- Grapevine (*Vitis* L.) – 2
- Lemon Day-Lily (*Hemerocallis x hybrida* hort.) – 1
- Maize (*Zea mays* L.) – 6
- Oats (*Avena sativa* L.) – 1
- Onion (*Allium cepa* L.) – 5
- Peas (*Pisum sativum* L.) – 1

Peony (*Paeonia lactiflora* Pall.) – 1  
Rye (*Secale cereale* L.) – 1  
Saffron (*Crocus sativus*) – 1  
Sage (*Salvia sclarea* L.) - 1  
Sunflower (*Helianthus annus* L.) – 2  
Tomato (*Solanum lycopersicum* L.) – 2  
Triticale (*Triticosecale* Witt.) – 1  
Wheat (*Triticum aestivum* L.) – 3

- 32 patents for plant varieties have been issued (30 for national applicants and 2 for foreign applicants), as follows:

Aronia (*Aronia melanocarpa* (Michx) Elliot) - 1  
Sweet pepper (*Capsicum annuum* L.) – 2  
Chrysanthemum (*Chrysanthemum indicum* L.) – 2  
Strawberry (*Fragaria* L.) – 1  
Soybean (*Glicine max* (L.) Merrill) – 1  
Sunflower (*Helianthus annus* L.) – 2  
Common sea buckthorn (*Hippophae rhamnoides* L.) – 2  
Barley (*Hordeum vulgare* L.) – 1  
Apple (*Malus domestica* Borkh) – 3  
Peppermint (*Mentha piperita* L.) – 1  
Bean (*Phaseolus vulgaris* L.) – 1  
Tomato (*Solanum lycopersicum* L.) – 3  
Eggplant (*Solanum melongena* L.) - 1  
Triticale (*Triticosecale* Witt.) – 1  
Wheat (*Triticum aestivum* L.) – 2  
Durum wheat (*Triticum durum* Desf.) – 1  
Maize (*Zea mays* L.) - 7

210 plant variety patents were valid on 12/31/2018.

#### 4. Situation in the technical field

No changes.

#### 5. Activities for the promotion of plant varieties protection

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

Information materials related to the protection of plant varieties are distributed under the different activities organized by AGEPI or in which AGEPI is involved, like seminars, IP awareness campaigns, exhibitions.

Since 2016 the Republic of Moldova represented by AGEPI is a participating member of the UPOV project on the development of an electronic application form UPOV PRISMA.

In 2018 the number of crops supported in UPOV PRISMA have been extended to 15 crops, such as Maize, Wheat, Pea, Barley, European Plum, Tomato, Grapevine, Sweet Pepper, Hot Pepper, Paprika, Chili, Sunflower, Walnut, Apple, Lettuce, Potato, Rose, Soybean.

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

*Ministerial* Order No. 212/2019 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 Directive 2019/114 from January 24, 2019 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.

The sale of DUS technical reports to EU authorities or other European countries continued.

3. Situation in the administrative field

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

The project for a new cold storage of agricultural species was approved.

4. Situation in the technical field

In 2019, in the field of testing, 780 varieties were tested : 660 agricultural plant species, 102 vegetables, 14 fruit trees, 2 vine varieties and 2 ornamentals and 198 varieties were registered in our national Official Catalogue: 142 varieties of agricultural plant species, 34 vegetables, 17 fruit trees, 1 vine, and 4 ornamentals.

In addition for PBR, 14 applications for protection, and 20 protection titles were issued.

[Annex XV follows]

SERBIA  
(September 2018 - September 2019)

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendments of the law and the implementing regulations

There were no changes.

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

There were no changes.

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. Cooperation in examination

3. Situation in the administrative field

- Changes in the administrative structure

There were no changes in the administrative structure.

According to the Law on Ministries ("Official Gazette of the Republic of Serbia", No.62/2017), designated authority for the protection of the plant breeders' rights in the Republic of Serbia is the Ministry of Agriculture, Forestry and Water Management (MAFWM) - Plant Protection Directorate (PPD). Plant Protection Directorate (PPD) as an administrative authority within the MAFWM performs tasks related to: protection of plants against harmful organisms; authorization and control of plant protection and plant nutrition products; plant variety registration for National List; protection of plant breeders' rights; biological safety (GMO); phytosanitary inspections and other related tasks.

Within Plant Protection Directorate, 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.

- Changes in office procedures and systems

There were no changes.

4. Situation in the technical field

Serbia participate in the UPOV PRISMA PBR Application Tool, as the way to improve system of PVP in Serbia.

PVP registers and other information are available on the web page of the MAFWM - PPD:

[http://www.uzb.minpolj.gov.rs/index.php?option=com\\_content&view=article&id=61&Itemid=14&lang=en](http://www.uzb.minpolj.gov.rs/index.php?option=com_content&view=article&id=61&Itemid=14&lang=en)

5. Activities for the promotion of plant variety protection

Title of activity	Date	Location	Organizer(s)	Purpose of activity
1. Seminar on Challenges and opportunities for berry production	November 27, 2018	Republic of Serbia, Novi Sad	Netherlands Embassy in Serbia and the Ministry of Agriculture, Forestry and Water Management – Plant Protection Directorate of the Republic of Serbia	Improvement of all aspects of berry production, as well as the challenges facing the creators of new plant varieties and producers of berries. A special part concerned the system of protection of plant breeders' rights in the Netherlands and Serbia.
2. Seminar on Certified seed for safe and healthy food	December 13, 2018	Republic of Serbia, Novi Sad	The Chamber of Commerce of Serbia, the Chamber of Commerce of Vojvodina Province and Seed Association of Serbia	System of seed certification, importance and benefits of certified seed for safe and healthy food. A part of seminar was concerned the protection of plant breeders rights.

II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

Information related to registration (approval) of plant varieties for the National List of Plant Varieties of the Republic of Serbia, are available on the web pages of the Ministry of Agriculture, Forestry and Water Management - Plant Protection Directorate: <http://www.uzb.minpolj.gov.rs/index.php?lang=en>

[Annex XVI follows]

EUROPEAN UNION  
Period: July 2018 - July 2019

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

I. PLANT VARIETY PROTECTION

1. Situation in the legislative field

1.1 Amendment of the law and the implementing Regulations: No amendments to legislation.

1.2 Extension of protection to further genera and species (made or planned): No amendments to legislation.

1.3 Case law

Judgment of the Court of Justice of the European Union of 8 November 2018 in the case C-308/18 'Gala Schnico'

The Court of Justice of the European Union (CJEU) dismissed the action and ordered Schniga GmbH (the applicant) to pay the costs. By its judgment, the Court confirmed the General Court findings by stating that there was no contradictions regarding the results of the technical examination and the meteorological condition occurred at the time of the growing trials. The Court dismissed the two grounds of appeal finding that the action was not well founded.

Judgement of the General Court of 5 February 2019 in the case T-177/16, 'Braeburn 78'.

The General Court annulled the decision of the Board of Appeal (BOA) in case A001/2015. The Court recognized that it cannot issue directions to the CPVO on the measures necessary to comply with its judgements, but it is up to the CPVO to draw the appropriate inferences from the operative part and grounds of the judgements. The Court also established that the CPVO, despite its broad discretion in carrying out its tasks, is bound by the principle of sound administration, which implies that it must ensure the proper conduct and effectiveness of proceedings which it sets in motion. In this respect, the BOA is also bound by the principle of sound administration, which implies that it has to base its decisions on all the matters of fact and of law, which the parties put forward. Finally, the Court declared the obligation to state reasons for the measure adopted. This obligation, however, may be satisfied without it being necessary expressly and exhaustively to address all the arguments raised by an applicant.

Judgement of the General Court of 11 April 2019 in the case T-765/17, 'Pinova'.

The General Court dismissed the appeal lodged against the decision of the Board of Appeal in case A005/2016. The judgement has confirmed the wide discretion of the Office as regards the declaration of a title as null and void and this declaration can only be made when there are serious doubts (in this case on the novelty of the variety) that justify a reexamination of the protected variety. The Court also stated that the party requesting the nullity must provide the facts and evidences capable of raising serious doubts on the legality of the protection's granting. Moreover, the Court recognized that when it comes to technical questions, the control made by the Court on the decision of the Board of Appeal is that of the patent mistake. However, when it comes to facts with no technical complexity, the Court proceed to a control on the legality. The Court also analyzed the types of documents capable of demonstrating a novelty-destroying disposal, among which it refers to invoices, delivery notes, turnover, testimony of purchasers, leaflets, among others. Finally, the Court established that the essays on the variety that do not imply a sale or disposal to third parties for exploitation of the variety, do not destroy the novelty of Art. 10 BR.

Judgement of the General Court of 18 June 2019 in the case T-569/18, 'Kordes' Rose Monique'.

The General Court annulled the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) in case R 1929/2017-1. The Court declared that the variety denomination (in this case the variety 'Monique' had been granted protection in the Netherlands for roses until 7 July 2005) constitutes the generic designation of the variety and that, accordingly, it cannot be monopolized. The Court also established the importance of determining if the variety denomination has an essential position in the trademark as per Art. 7.1 of Regulation 207/2009. In order to do so, the Court identified certain criteria, such as the distinctive

character of the other elements, the message that the trademark transmits as a whole, visual dominance based on size and position or the number of elements composing the trademark. Using said criteria, the Court concluded that Kordes is the only distinctive element as it allows to identify the commercial origin of the goods. In this respect, it concluded that the trademark's message puts the accent on "Kordes" and also takes into consideration the fact that it is in first position in the mark. Said element is, according to the Court, the dominant element and the variety denomination 'Monique' is a generic designation that remains free to be used by other companies.

## 2. Cooperation in examination

### 2.1 Conclusion of new agreements

Conclusion of agreement with the Agriculture and Food Agency, Council of Agriculture of Taiwan, Province of China, to take over DUS reports for Phalaenopsis and Doritaenopsis.

### 2.2 Amendment of existing agreements

Extension of the agreement with SNICS Mexico – Servicio Nacional de Inspeccion y Certificacion de Semillas to carry out DUS examinations for the species Carica papaya.

### 2.3 Memorandum of Understanding with third countries

See under 2.1, in addition nothing to report.

## 3. Situation in the administrative field

3.1 Changes in the administrative structure: Nothing to report.

3.2 Changes in office procedures and systems: Nothing to report.

## 4. Situation in the technical field

### 4.1 Information concerning the functioning of the EU Plant Variety Protection

#### a. Relation with Examination Offices

In December 2018, the CPVO held its 22<sup>nd</sup> annual meeting with its Examination Offices, which was also attended by representatives from the UPOV Office, the Swiss PVP Office, and the breeders' organisations (ESA, CIOFORA, Plantum, the European Consortium for Organic plant breeding ECO-PB). The main subjects of discussion were:

- Discrepancies between information provided in the application document and the appearance of plants in the growing trial;
- Taking of photographs when accessing the DUS trials for inspection and sample taking;
- A revision of the procedure on the acceptance of additional characteristics;
- Status and use of reserve plants in the ornamental and fruit sector;
- Re-submission of seed samples;
- Obtaining reference varieties for DUS testing and revision of the Technical Verification procedure;
- Possible amendment of the CPVO Policy on the Status of Plant Material Used for DUS Testing Purpose (for the purpose of identity checks during market controls);
- Technical trainings for DUS examiners;
- Cooperation with EUIPO;
- Cooperation with the EPO;
- Update on Case law of CPVO Board of Appeal, General Court, Court of Justice;
- R&D update.

b. Preparation of CPVO protocols

In 2018/2019, experts from the EU 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 (AC) of CPVO or can be expected to be approved in 2019. Experts' meetings were held to discuss the technical protocols of:

- Agricultural crops: wheat, barley, rye grass, field bean, sorghum, white mustard, potato;
- Vegetable crops: lettuce, leaf chicory, industrial chicory, tomato, tomato rootstock;
- Ornamental crops: no protocols;
- Fruit crops: Japanese plum.

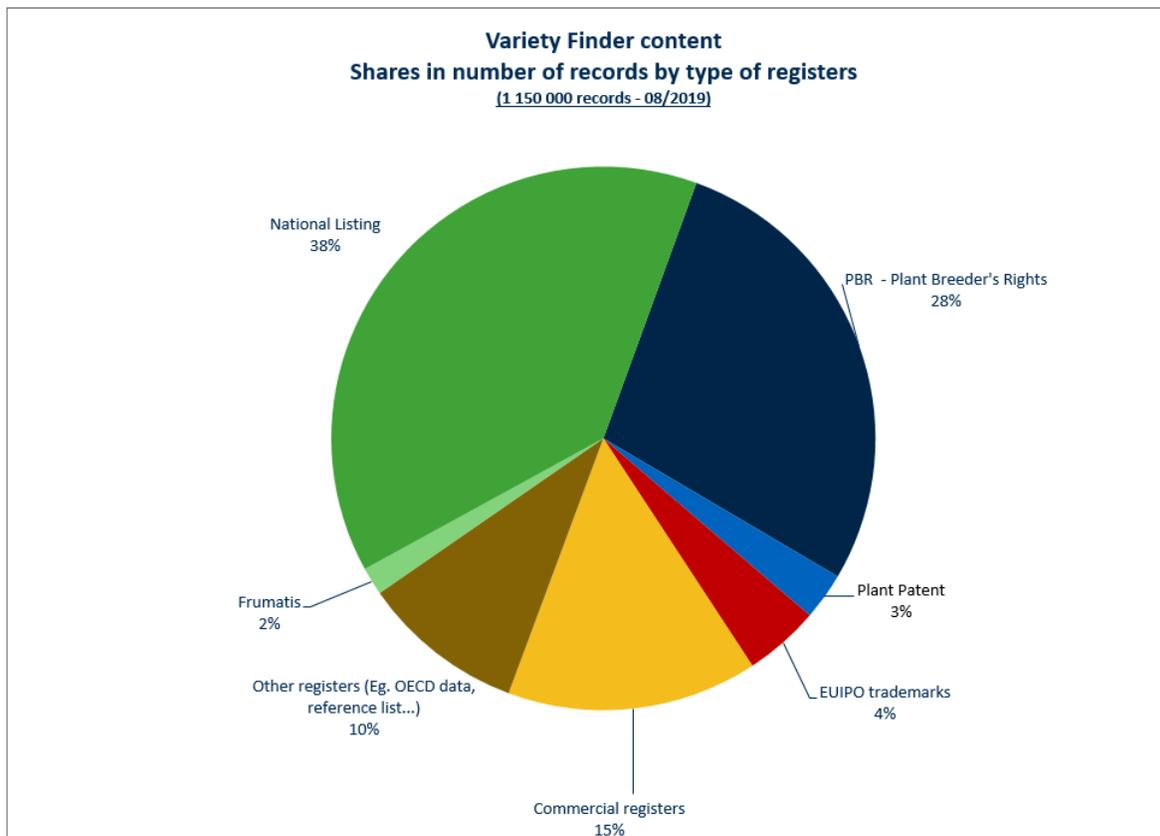
c. Further development of the CPVO Variety Finder

Maintained and developed by the CPVO since 2005, the web-based CPVO Variety Finder database, contains information on registers of more than 60 countries with a general search tool. It also includes a similarity search tool to test the suitability of denominations.

The general principle is an update of the database as soon as data are officially published. A memorandum of understanding has been signed with UPOV to share the task of collecting data from EU and Non EU countries and ensure a regular data exchange.

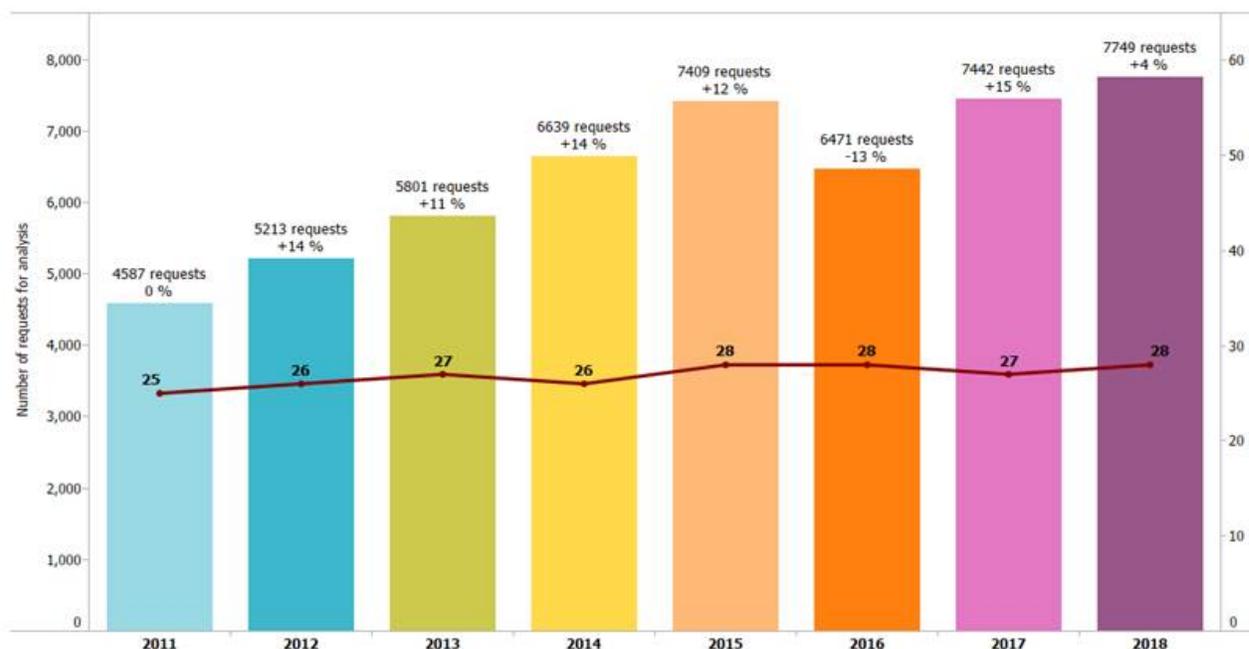
In total, more than 1 million records originating from EU and UPOV Member States have so far been included in the Variety Finder.

The graph below shows an overview of the content of the database with the number of records per type of register.



d. Cooperation in denomination testing with EU Member States

Number of requests for advice received and contributing national authorities (2011-2018)



2018 exceeded the record level of 2017 with nearly 7750 requests for opinion received. The active use of the service facilitates information exchanges between the Member States, the CPVO and other national authorities. This cooperation contributes to enhance the clarity, the transparency and the quality of the information available in the Variety Finder and aims at a convergent interpretation of the rules on the variety denominations.

#### 4.2 Crop experts meeting

A meeting of agricultural experts was held on 5 and 6 September 2018 to discuss:

- Revisions to several technical protocols and new technical protocols;
- Potentially new characteristics in DUS test Oilseed rape;
- Uniformity standard in Triticale;
- Re-submission of seeds: principles;
- “Subsequent” growing cycles in multi annual testing;
- Situation on ongoing and future R&D projects in the agricultural sector;
- A special day was dedicated to the Breeders participation system in the testing of maize.

A meeting of vegetable experts was held on 3-4 December 2018 to discuss:

- Revisions to several vegetable technical protocols;
- Observation of characteristics during multi-annual testing;
- Subsequent growing cycles in multi-annual testing;
- Harmonisation and translation of plant material requests;
- Situation on on-going and future R&D projects in vegetables, including those under IMODDUS.

A meeting of fruit experts was held on 18 September 2018 to discuss among others:

- Challenges in the DUS trial of some apple mutation groups;
- Status and use of the reserve plants in the fruit sector;
- Registration of interspecific and complex hybrids in contract;
- Organization of the DUS testing for blueberries;

- Duration of test in the fruit sector;
- Phytosanitary matters;
- Possibilities to store DNA extracted from the fruit varieties;
- R&D projects for fruit crops;
- EU legislation and implementation of Directive 2008/90; exchange of experience from experts.

No meeting of ornamental experts was held during the period covered by this report.

#### 4.3 Quality Audit Service (QAS)

Within CPVO's assessment programme 11 audits of examination offices were carried out. These included regular triennial audit visits as well as one assessment in response to a scope extension request and one surveillance exercise. The CPVO AC accepted the entrustment recommendations provided at the AC meetings in September 2018 and March 2019.

At the same two AC meetings, a total of 38 QAS Technical Experts were approved for the new 2019-2021 triennial assessment cycle. The list included 20 experts with prior experience of having been part of a QAS Team in an assessment exercise, and 18 new recruits. To prepare them for the new triennial cycle, all the experts took part within small, interactive groups, in tailor-made training on quality auditing organised by QAS at the headquarters of the French national organization for standardization (AFNOR) in Paris on 23-25 April 2019.

After internal analysis by the CPVO and QAS on the costs of the triennial assessment programme, the AC approved in September 2018 the proposal from the CPVO to drop altogether the audit fee charged to examination offices.

In June-July 2019, QAS started preparing its activities in relation to the IPKey China and OAPI programmes. In the autumn of 2019 QAS will undertake in-situ training exercises on quality auditing to examination authorities in China, as well as mock audits to designated DUS test centres in Cameroon and Senegal.

#### 4.4 IT developments

The new CPVO online application tool was released in June 2018, further enhancing exchanges with applicants. The tool is also designed to be used by EU member states in order to receive National applications. The work concentrates on a pilot project with the Netherlands foreseen to be completed by the end of 2019.

In the same vein, the CPVO is able to receive applications from UPOV PRISMA for all vegetable, fruit and ornamental species in such a way that data are directly transferred to the CPVO internal database without having to consider information from pdf documents. This possibility also exists for some but not yet all species in the agricultural sector.

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

#### 5.1 Internal cooperation and training

##### CPVO – European Patent Organisation

On 11 February 2016, the CPVO President and the European Patent Organisation (EPO) signed Administrative Arrangement No 2016/0009 on Bilateral Cooperation to exchange information and best practices in the area of plant-related patents and plant variety rights for a period of 3 years. Said agreement was renewed on 26 October 2018.

As implementation for the agreement,

- 5-6 July 2018: CPVO expert attends Annual EPO workshop Examination matters in Munich, Germany
- 5-6 September 2018: EPO examiner attends the CPVO Agricultural experts and Maize meeting at Milan, Italy
- 5-6 December 2018: EPO examiner attends Annual meeting CPVOs Examination Offices, Angers , France
- During 2019, the CPVO transferred Technical Questionnaires, Photos and Variety Descriptions grouped by application numbers.

## CPVO – training

CPVO has made presentations in the following events: Plant Variety Protection Course at the University of Wageningen on 24 June 2019, IP Rights' specialized Master Magister Lucentinus of the University of Alicante on 13 and 14 November 2018 and XX European Intellectual Property Institutes Network (EIPIN) Congress in Alicante, Spain. CPVO has provided training in the 2019 EUIPO IP Regional Seminar, on the interface between PVRs and trademarks to national trademark examiners of the EU in the Hague, the Netherlands (3 April 2019) and at the Benelux Trademark Office on 28 May 2019 to Benelux trademark examiners and its legal team.

In the framework of its collaboration with the European IPR Helpdesk and EUIPO, the CPVO provided two webinars, namely on Legal proceedings at the CPVO and Introduction to Plant Variety Protection in Europe.

## Stakeholder organisations

The CPVO attended the ESA Annual meeting in Madrid on 7-9 October 2018 and the annual meeting of CIOPORA in South-Africa in April 2018. The CPVO had organized formal annual bilateral meetings with AIPH, CIOPORA, ESA, and Plantum.

## 5.2 External cooperation and training

### CPVOs strategy for international cooperation

In 2015 the CPVO strategy for international cooperation was reviewed as regards the objectives in the light of the EU trade policy in the field of intellectual property rights in order to support the external dimension of EU policies. The revised strategy was adopted in 4 October 2017. This new strategy aligns the objectives of the CPVO with the European Commission communication on Trade, Growth and Intellectual Property — Strategy for the protection and enforcement of intellectual property rights in non-EU countries (the 'EU strategy'). The CPVO, together with the services of the European Commission, the Member States and other international organisations, is working outside the EU on an effort to strengthen the CPVR IP-protection system. The key elements of this cooperation are the exchange of knowledge and the support of EU users on registration and enforcement overseas, in cooperation with the EU Member States.

### EAPVP

The purpose of the East Asia Plant Variety Protection Forum (EAPVP Forum) is to provide assistance to ASEAN countries in explaining the benefits of the introduction of the UPOV plant variety protection system and UPOV membership. On 1 August 2018, the CPVO participated to the 11th EAPVP Forum Meeting in the Philippines organized by MAFF – JATAFF (Japanese Ministry of Agriculture, Forestry and Fisheries – Japan Association for Techno Innovation in Agriculture, Forestry and Fisheries). In the mentioned meeting a Japanese proposal to discuss and prepare EAPVP'S "The Next 10 year's strategic plan" in the 11th EAPVP Forum meeting was adopted. On 2 August the Office presented the benefits of a common regional Plant Variety protection system during the International Seminar on the Benefits of Plant Variety Protection under UPOV System held in the Philippines and organised by the Bureau of Plant Industry, Department of Agriculture of the Philippines. Finally, on 25 April 2019, the CPVO participated to the 2th East Asia Plant Variety Protection Forum Meeting held in Beijing, the People's Republic of China organised by the Ministry of Agriculture and Rural Affairs of the People's Republic of China where the ASEAN countries, plus China, Korea and Japan presented the updated individual Implementing strategies and the proposal of the national specific cooperation activities in 2019-2020.

### OAPI

In the beginning of July 2019, the EU Commission signed a contract with the African Intellectual Property Office (OAPI) in Geneva providing funds for a so-called Road Map aiming at the promotion of intellectual property to foster the creation of new varieties adapted to the African market and to provide an incentive to make superior varieties existing elsewhere available to OAPI area. The project will be managed by OAPI, the CPVO is – together with UPOV, GEVES, GNIS, and Naktuinbouw a partner. On 9 July 2019, a kick-off meeting with the project partners took place in Brussels: Eleven activities, to be conducted in the coming two years, have been agreed focusing on training and capacity building. The series of activities started at the end of August with a workshop held at the premises of OAPI headquarters in Yaoundé analyzing the administrative procedures in place (done by the CPVO) as well as the IT infrastructure (done by UPOV). The purpose is to streamline administrative procedures and to adapt the IT system to allow foreign breeders to apply for plant variety rights

using the UPOV PRISMA tool – a system through which breeders can file applications in a number of countries simultaneously.

#### ARIPO

The CPVO attended the 42nd ARIPO Administrative Council meeting which was held in Windhoek-Namibia. For the CPVO the discussions as regards the ratification of the Arusha Protocol for the protection of plant varieties, the proposed strategies for its implementation, the review of a list of agricultural crops with historical practice for Farm Saved Seed as well as the preparation of Quality Audit Guidelines for future examination offices were of particular interest. Joint to the AC meeting UPOV organized in cooperation with ARIPO and the USPTO a Seminar on Plant variety protection where the CPVO intervened as speaker explaining the implementation and highlighting the benefits of a regional PVP system in the European Union.

#### India

The Office contributed to workshop being part of a bilateral cooperation between India and Germany. The workshop focused on the use of molecular techniques in DUS testing, including the management of reference collections. The workshop was held on 21-22 November 2018 in New Delhi.

#### China

On 15 September 2018, CPVO participated to the Seminar in China on designing and conducting Distinctness, Uniformity and Stability (DUS) trials in vegetables and ornamentals organized by the Ministry of Agriculture and Rural Affairs (MOARA) and the State Forestry and Grassland Administration (SFGA, through their PVP agency Development Centre of Science and Technology (DCST). The CPVO presented the functioning and benefits of the EU PVR protection system. From 25 November to 3 December 2018, in the framework of the IPKey China project, the CPVO provided a presentation of the EU Plant Variety Right System to Chinese judges.

2019 marks the 20th anniversary of China becoming a UPOV member. Celebrations took place from 22 to 25 April 2019. In collaboration between CPVO, IP Key China, MOARA and NFGA, two seminars were organised:

- Seminar on Farm Saved Seed and Essentially Derived Varieties: One of the recommendations of the previous IP Key project to the Chinese authorities was to analyse the situation in China in respect of Farm Saved Seeds and Essentially Derived Varieties in order to develop adapted responses.
- Seminar on international co-operation and take-over of DUS reports. On 12 June 2019 and from 5 to 16 August 2019, in the framework of the IPKey China project, the CPVO provided trainings for Chinese experts in the EU on the examination of applications for Plant Variety Rights which took place in France, Germany and the Netherlands. The CPVO presented the functioning and benefits of the EU PVR protection system. Moreover, five specialised trainings were given especially on evaluation of PVR applications, DUS testing and quality assessment across examination centres.

#### Other promotional activities

Title of activity	Date	Location	Organizer(s)	Purpose of activity	Participating countries/ organizations (number of participants from each)	Comments
1. Plant varieties protection: seminars and workshop	23-31 August 2018	Lima, Quito	INDECOPI and SENADI	The seminars aimed at sensitizing policy makers on the social and economic impact of plant variety protection; enhancing knowledge of Plant Varieties; diffusing the scope and content of UPOV 1991; creating an international network of IP experts in PVP in the region that allows for ongoing exchange and cooperation. The CPVO presented the functioning and benefits of the EU PVR protection system.	Representatives from Peru, Ecuador, UPOV, CPVO	IPKey Latin America (LA) is an EU Project designed to enhance EU-LA cooperation on selected emerging challenges in the area of intellectual property founded and directed by European Commission and EUIPO.

2. Study visit on plant variety protection (PVP)	5-6 November 2018	Viet Nam	Co-organised by the Plant Variety Protection Office (PVPO), Ministry of Agriculture and Rural Development of Viet Nam	The CPVO advised on PVP best practice and the benefits of Regional PVP systems and discussed the potential developments of Plant Variety rights in South-East Asia.	Representatives from Indonesia, Malaysia, Philippines and Thailand	The IPKey South-East Asia action is designed to support the Free Trade Agreement (FTA) talks and Intellectual Property Dialogues of the European Union with its South-East Asia (SEA) trading partners, by helping countries address specific emerging challenges in the area of IP that also affect the EU.
3. IP Key SEA conference on International plant variety protection benefits,	8-9 November 2018	Indonesia	UPOV, Ministry of Agriculture, Forestry and Fisheries (MAFF) of Japan and USPTO	The CPVO presented the key implementation steps of the UPOV Convention in the EU.	Representatives from Indonesia, Malaysia, Thailand, and Viet Nam	

### 5.3 Participation in international fairs and open days

In January 2019 the Office attended the 'IPM' in Essen, Germany, the world biggest fair for ornamental plants. The stand was shared with colleagues from the Bundessortenamt, GEVES, Naktuinbouw and NIAB.

## II. OTHER DEVELOPMENTS OF RELEVANCE TO UPOV

### R & D

#### 6.1 IMODDUS ad hoc working group

In 2015 an hoc working group on biomolecular techniques was created and named IMODDUS (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 tests where these techniques can contribute to efficiency and quality. No meeting took place in 2019. Several R&D projects proposals have been considered positively by IMODDUS and have meantime been started: Tomato (The creation of a joint EU database with DNA data of Tomato), Durum wheat (Integration of molecular data into DUS testing in Durum wheat) and Apple (R&D Apple project on epigenetics).

#### 6.2 INVITE

The EU Horizon 2020 project INVITE (INnovations in plant Variety Testing in Europe to foster the introduction of new varieties better adapted to varying biotic and abiotic conditions and to more sustainable crop management practices) started in 2019. It aims at improving efficiency of variety testing and availability of information to stakeholders on variety performances under diversified production conditions and on biotic and abiotic stresses for 10 crops (7 "model" crops: maize, wheat, rye grass, sunflower, potato, tomato, apple and 3 "application crops": lucerne, soybean, rapeseed). It addresses DUS and performance testing in a balanced way and intends to maximize synergies between them through related activities based on phenotyping, genotyping, modelling and database management. In May-June 2019, both the Consortium agreement and the Grant agreement were signed by all beneficiaries of the project. The total amount awarded is about 8 million euros to be spent in a period of 5 years. CPVO will not receive any funding. In addition to its participation to the tasks of the project, CPVO is in charge of managing all issues related to the access to historical data and reference materials held by the Examination Offices. Discussions were initiated with the scientists, the Examination Offices and the breeders to coordinate the requests and prepare the agreements.

#### 6.3 Other R&D projects

##### Melon

A project to "Set up a database with descriptions and photos of melon varieties of common knowledge" has been approved for co-funding by the CPVO.

#### Minimum distances in Pelargonium varieties

This is a new project approved in October 2018. It is a follow-up project of an earlier study on minimum distances between vegetatively reproduced ornamental and fruit varieties. The initial project consisted of a reassessment of 50 varieties already granted PVRs using fewer characteristics. CIOFORA has expressed concern about shrinking distances between varieties to the point that in trade some varieties no longer can be distinguished from each other. The result of the earlier case study, which did not involve observations on real plants, but was conducted as a paper study, did not give a clear picture on the feasibility of the CIOFORA approach to establish distinctness on fewer characteristics. For the new project, CIOFORA has preselected seven pairs of Pelargonium varieties which have a similar phenotype, in total 14 varieties. All of these varieties are or were protected by a CPVR. These seven pairs of varieties are grown in a trial at the Bundessortenamt (BSA) in Germany and the distinctness shall be re-evaluated and discussed on the basis of the mock protocol. In a meeting CIOFORA discussed jointly with the BSA, the breeders and the CPVO a possible re-evaluation of the characteristics used to establish distinctness between varieties. The results of the study are expected for October 2019.

#### Strawberry ring test

The project started in 2016 and is expected to be finalized in 2019. The purpose is the harmonization of the implementation of the technical protocol for strawberry. The outcome of such ring tests will also be valuable in order to aggregate comparable descriptions in a common database like GEMMA. A review of the characteristics of the current protocol will also be made.

#### Harmores 3

This project in the vegetable sector aims at harmonising resistance tests and to propose harmonised disease testing protocols to be included in the CPVO TPs. The project covers 7 vegetable diseases. The results are expected to be available in November 2019.

[End of Annex XVI and of document]