



C(Extr.)/25/10

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

**COUNCIL**

**Twenty-Fifth Extraordinary Session**  
**Geneva, April 11, 2008**

REPORT

*adopted by the Council*

Opening of the session

- \*1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its twenty-fifth extraordinary session in Geneva on April 11, 2008, chaired by Mr. Doug Waterhouse (Australia), President of the Council.
- \*2. The list of participants is reproduced in the Annex to this document.
- \*3. The session was opened by the President who welcomed the participants.

Adoption of the agenda

- \*4. The Council adopted the agenda as proposed in document C(Extr.)/25/1 Rev. after the deletion of item 7 and the inclusion of document C(Extr.)/25/8 under agenda item 8 and document C(Extr.)/25/2 Add. under agenda item 9.

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\* An asterisk next to the paragraph number indicates that the text has been taken from the Report on the Decisions (document C(Extr.)/25/9).

Examination of the conformity of the Law on New Varieties of Agricultural Plants of The Former Yugoslav Republic of Macedonia with the 1991 Act of the UPOV Convention

5. The Council considered document C(Extr.)/25/4.

\*6. The Council decided to:

(a) take note of the analysis in document C(Extr.)/25/4;

(b) recommend that The former Yugoslav Republic of Macedonia incorporate the additional provisions and amendments in the Law, as provided in document C(Extr.)/25/4, and recommend that once the additional provisions and amendments have been incorporated in the Law, the amended Law should be submitted to the Council for examination in conformity with Article 34(3) of the 1991 Act;

(c) request the Office of the Union to offer its assistance, at the earliest opportunity, to the Government of The former Yugoslav Republic of Macedonia in drafting the necessary additional provisions and amendments to the Law; and

(d) authorize the Secretary-General to inform the Government of The former Yugoslav Republic of Macedonia of that decision.

7. The Delegation of The former Yugoslav Republic of Macedonia expressed its appreciation for the decision taken by the Council and for the analysis contained in document C(Extr.)/25/4. The Delegation informed the Council that it intended to modify its Law and requested the assistance of the Office of the Union in May or June 2008 in order to draft the necessary additional provisions and amendments to the Law. The Delegation reported that the Government of the Former Yugoslav Republic of Macedonia had the intention to submit the amended Law to the Council at its forty-second ordinary session.

Examination of the conformity of the Draft Law on the Protection of Plant Breeder's Rights of the Republic of Serbia with the 1991 Act of the UPOV Convention

8. The Council considered document C(Extr.)/25/5.

\*9. The Council decided to:

(a) take note of the analysis in document C(Extr.)/25/5 and the information provided by the Delegation of Serbia that it intends to:

(i) amend paragraph 1 of Article 22 of the Draft Law on the duration of the breeder's right, to read as follows "The breeder's right to the protected variety shall expire 25 years after the grant thereof or 30 years after the grant thereof in case of trees and vines";

(ii) delete paragraph 3 of Article 29 of the Draft Law;

(iii) delete Article 35 of the Draft Law; and

(b) subject to the introduction of the recommended changes in the Draft Law, as identified in document C(Extr.)/25/5 and the replacement of “90 days” by “three months” in paragraph 2 of Article 17, take a positive decision on the conformity of the Draft Law on the Protection of Plant Breeder’s Rights of the Republic of Serbia with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants; which allows that, once the changes have been incorporated in the Draft Law and the Law is adopted and in force, the Republic of Serbia may deposit its instrument of accession to the 1991 Act;

(c) request the Office of the Union to offer its assistance to the Government of the Republic of Serbia in the incorporation of the changes in the Draft Law identified in document C(Extr.)/25/5; and

(d) authorize the Secretary-General to inform the Government of the Republic of Serbia of that decision.

10. The Delegation of Serbia thanked the Council for its decision and reported that it would make the necessary changes to its Law. The Delegation hoped that Serbia would become a member of UPOV by October 2008.

Examination of the conformity of the Draft Law on Protection of Plant Varieties of Montenegro with the 1991 Act of the UPOV Convention

11. The Council considered document C(Extr.)/25/6.

\*12. The Council decided to:

(a) take note of the analysis in document C(Extr.)/25/6 and the additional information provided by the Delegation of Montenegro that it intends to move Article 42(3) to Article 44 of the Draft Law;

(b) take a positive decision on the conformity of the Draft Law on Protection of Plant Varieties of Montenegro with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows that, subject to the replacement of “90 days” by “three months” in Article 19, once the Law is adopted and in force, Montenegro may deposit its instrument of accession to the 1991 Act; and

(c) authorize the Secretary-General to inform the Government of Montenegro of that decision.

13. The Delegation of Montenegro informed the Council that the Law would be adopted in the near future and the Government of Montenegro looked forward to the deposit of its instrument of accession.

Examination of the conformity of the Law No. 8631 on Protection of New Varieties of Plants and of the Motion to the Draft Law on Amendments and Additions of Various Norms Regulating Intellectual Property-Related Matters (File 16.955) of the Republic of Costa Rica with the 1991 Act of the UPOV Convention

14. The Council considered document C(Extr.)/25/7.

15. The representative of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) requested the Council to delay its examination of the Law and the Motion to the Draft Law of Costa Rica. She informed the Council that CIOPORA had not had sufficient time to make a thorough analysis of the Law and the Motion to the Draft Law. She explained that CIOPORA might have difficulties with certain provisions of the Law and gave as examples paragraph 2 of Article 2 (Sphere of application), and the definitions of “seeds” and “variety whose existence is a matter of common knowledge” (Article 4).

16. The Delegation of Mexico noted that there had been a short time available, but considered that there had been sufficient time to examine document C(Extr.)/25/7. In the opinion of the Delegation, the Law as it would be amended by the Motion to the Draft Law, did not contain any provisions which were contrary to the 1991 Act. The Delegation did not consider that there was a need to delay a decision by the Council.

17. The Delegations of Argentina, Colombia, Dominican Republic, European Community, Netherlands, Spain, and the United States of America supported the comments made by the Delegation of Mexico.

\*18. The Council decided to:

(a) take note of the analysis in document C(Extr.)/25/7 and the clarification provided by the Delegation of Costa Rica that the second paragraph of Article 31 of the Law was not contrary to the provision on national treatment;

(b) take a positive decision on the conformity of the Law on Protection of New Varieties of Plants of the Republic of Costa Rica, subject to the adoption of the proposed amendments of Articles 2, 3 and 8 of the Law in the Motion to the Draft Law, with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants; which allows that, once the proposed amendments in the Motion to the Draft Law are adopted, with no changes, and in force, the Republic of Costa Rica may deposit its instrument of accession to the 1991 Act; and

(c) authorize the Secretary-General to inform the Government of the Republic of Costa Rica of that decision.

19. The Delegation of Costa Rica explained that membership of UPOV had been an aspiration for a long time and noted that the decision that the Council had taken was very important to assist the Government of Costa Rica in its ongoing legislative process. The Delegation expressed its appreciation to the members of UPOV and the Office of the Union for their continued support.

Report by the President on the work of the seventy-fifth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee

\*20. The Council noted the oral report by the President on the seventy-fifth session of the Consultative Committee, held on April 10 and 11, 2008, in particular, that the Consultative Committee:

(a) had undertaken preliminary examinations concerning the conformity of the Law of The former Yugoslav Republic of Macedonia, the Draft Law of Republic of Serbia, the Draft Law of Montenegro, as well as the Law and the Motion to the Draft Law of the Republic of Costa Rica with the 1991 Act of the UPOV Convention;

(b) recommended the adoption by the Council of documents TGP/4/1 “Constitution and Maintenance of Variety Collections” and TGP/9/1 “Examining Distinctness”;

(c) discussed a further extension to the current appointment of the Vice Secretary-General;

(d) agreed proposals to improve the efficiency, effectiveness and time flexibility of the UPOV sessions and had agreed that those measures be presented to the Council at its forty-second ordinary session;

(e) noted that information had been provided on the meetings and activities concerning biodiversity, plant genetic resources and plant variety protection and of developments in the Council for TRIPS concerning the review of Article 27.3(b) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”); and

(f) agreed that a Symposium on Contracts in Relation to Plant Breeders’ Rights would be held in Geneva on October 31, 2008, and received information on developments in the preparation of the World Seed Conference that would be held in 2009.

21. The President reported to the Council that, with respect to any future opinion on whether India and Zimbabwe have acted expeditiously to complete their legislation and any UPOV formalities and to effect the deposit, the Consultative Committee had recommended to the Council that the opinion on whether that condition had been fulfilled should be the responsibility of the Consultative Committee.

\*22. With respect to any future opinion on whether India and Zimbabwe have acted expeditiously to complete their legislation and any UPOV formalities and to effect the deposit, the Council decided, based on the recommendation of the Consultative Committee, that the opinion on whether that condition had been fulfilled should be the responsibility of the Consultative Committee.

23. The President reported to the Council that the Consultative Committee had recommended to the Council to request the Office of the Union to prepare a document containing a draft text of the UPOV Financial Regulations and Rules for consideration by the Council at its forty-second ordinary session, to be held in Geneva, on October 30, 2008.

\*24. In accordance with the recommendation of the Consultative Committee, the Council requested the Office of the Union to prepare a document containing a draft text of the UPOV Financial Regulations and Rules for consideration at its forty-second ordinary session.

25. The Council considered document C(Extr.)/25/8.

\*26. In accordance with the recommendation of the Consultative Committee, the Council decided to adopt the decision, as set out in paragraph 1 of document C(Extr.)/25/8, and agreed that the letter in the Annex to document C(Extr.)/25/8 be sent to the Executive Secretary of the Secretariat of the Convention on Biological Diversity (CBD).

Adoption of documents TGP/4/1 “Constitution and Maintenance of Variety Collections” and TGP/9/1 “Examining Distinctness”

\*27. The Technical Director introduced documents C(Extr.)/25/2, C(Extr.)/25/2 Add., TGP/4/1 Draft 10 and TGP/9/1 Draft 10.

\*28. The Council adopted document TGP/4/1 “Constitution and Maintenance of Variety Collections” on the basis of document TGP/4/1 Draft 10 and the amendments proposed by the Technical Committee and Administrative and Legal Committee, as set out in document C(Extr.)/25/2 Add.

\*29. The Council adopted document TGP/9/1 “Examining Distinctness” on the basis of document TGP/9/1 Draft 10.

Extension of the appointment of the Vice Secretary-General

30. The Council considered document C(Extr.)/25/3.

\*31. The Council decided not to take a decision on a one-year extension of the current appointment of the Vice Secretary-General and to consider a three-year extension at the forty-second ordinary session of the Council to be held on October 30, 2008.

Retirement

32. The President noted that Mr. Nicholas P. McGill (Ireland) would retire before the forty-second ordinary session of the Council, and he expressed to him his best wishes on behalf of the Council for a long and happy retirement.

*33. The present report has been adopted by correspondence.*

[Annex follows]

ANNEXE / ANNEX / ANLAGE / ANEXO

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /  
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(dans l'ordre alphabétique des noms français des membres/  
in the alphabetical order of the names in French of the members/  
in alphabetischer Reihenfolge der französischen Namen der Mitglieder/  
por orden alfabético de los nombres en francés de los miembros)

I. MEMBRES / MEMBERS / VERBANDSMITGLIEDER / MIEMBROS

AFRIQUE DU SUD / SOUTH AFRICA / SÜDAFRIKA / SUDÁFRICA

Noluthando NETNOU NKOANA (Ms.), Registrar: Plant Breeders' Rights Act, Directorate: Genetic Resources, Department of Agriculture, Private Bag x973, 0001 Pretoria  
(tel.: +27 12 319 6183 fax: +27 12 319 6385 email: noluthandoN@nda.agric.za)

Joan SADIE (Mrs.), Principal Agricultural Food and Quarantine Officer, Directorate: Genetic Resources Management, Private Bag X5044, Stellenbosch 7599  
(tel.: +27 21 809 1648 fax: +27 21 887 2264 email: JoanS@nda.agric.za)

Barry BEUKES, Legal Officer, Department of Agriculture, Private Bag X250, 0001 Pretoria  
(tel.: +27 12 3196807 fax: +27 12 3257391 e-mail: barryb@nda.agric.za)

ALLEMAGNE / GERMANY / DEUTSCHLAND / ALEMANIA

Friedel CRAMER, Ministerialrat, Referat 516 "Acker- und Pflanzenbau", Bundesministerium für Ernährung, Ernährung und Landwirtschaft, Rochusstrasse 1, 53123 Bonn  
(tel.: +49 228 99529 3839 fax: +49 228 99529 553839 e-mail: 516@bmelv.bund.de)

Udo VON KRÖCHER, Präsident, Bundessortenamt, Osterfelddamm 80, 30627 Hannover  
(tel.: +49 511 9566603 fax: +49 511 956 6904 email: udo.vonkroecher@bundessortenamt.de)

Michael KÖLLER, Justiziar, Bundessortenamt, Osterfelddamm 80, 30627 Hannover  
(tel.: +49 511 9566624 fax: +49 511 563362 email: michael.koeller@bundessortenamt.de)

ARGENTINE / ARGENTINA / ARGENTINIEN / ARGENTINA

Marcelo Daniel LABARTA, Director de Registro de Variedades, Instituto Nacional de Semillas (INASE), Paseo Colón 922, 3 piso, of. 347, 1063 Buenos Aires  
(tel.: +54 11 4349 2445 fax: +54 11 4349 2444 e-mail: mlabarta@inase.gov.ar)

Carmen Amelia M. GIANNI (Sra.), Directora de Asuntos Jurídicos, Instituto Nacional de Semillas (INASE), Paseo Colón 922, 3 piso, of. 308/310, 1063 Buenos Aires  
(tel.: +54 11 4349 2430 fax: +54 11 4349 2421 email: cgianni@inase.gov.ar)

María Laura VILLAMAYOR (Srta.), Abogada, Dirección de Asuntos Jurídicos, Instituto Nacional de Semillas (INASE), Paseo Colón 922, 3 piso, of. 309, 1063 Buenos Aires  
(tel.: +54 11 4349 2422 fax: +54 11 4349 2421 email: mlvillamayor@inase.gov.ar)

AUSTRALIE / AUSTRALIA / AUSTRALIEN / AUSTRALIA

Doug WATERHOUSE, Chief, Plant Breeder's Rights Office, IP Australia, P.O. Box 200, Woden ACT 2606  
(tel.: +61 2 6283 7981 fax: +61 2 6283 7999 email: doug.waterhouse@ipaaustralia.gov.au)

Nik HULSE, Senior Examiner, Plant Breeder's Rights Office, IP Australia, P.O. Box 200, Woden ACT 2606  
(tel.: +61 2 6283 7982 fax: +61 2 6283 7999 email: nik.hulse@ipaaustralia.gov.au)

AUTRICHE / AUSTRIA / ÖSTERREICH / AUSTRIA

Heinz-Peter ZACH, Leiter des Referates III/9c für Saatgut und Sortenwesen, Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft, Stubenring 12, A-1010 Wien  
(tel.: +43 1 711 002795 fax: +43 1 513 8722 email: heinz-peter.zach@bmlfuw.gv.at)

BÉLARUS / BELARUS / BELARUS / BELARÚS

Tatyana SEMASHKO (Mrs.), Deputy Director, State Inspection for Testing and Protection of Plant Varieties, 90/1 Kazintsa str., 220108 Minsk  
(tel.: +fax: +375 17 212 7451 fax: +375 17 212 0421 e-mail: tatianasortr@mail.ru)

BELGIQUE / BELGIUM / BELGIEN / BÉLGICA

Camille VANSLEMBROUCK (Madame), Responsable de la Section Droits d'obtenteur, Office de la propriété intellectuelle, North Gate III, 16, Boulevard Albert II, B-1000 Bruxelles  
(tel.: +32 2 277 8275 fax: +32 2 277 5262 email: camille.vanslembrouck@economie.fgov.be)

BRÉSIL / BRAZIL / BRASILIEN / BRASIL

Daniela DE MORAES AVIANI (Mrs.), Coordinator, National Plant Variety Protection Service (SNPC), Ministry of Agriculture, Livestock and Supply, Esplanada dos Ministérios, Bloco 'D', Anexo A, Sala 249, Brasilia, D.F.70043-900  
(tel.: +55 61 3218 2549 fax: +55 61 3224 2842 email: daniela.aviani@agricultura.gov.br)

CANADA / KANADA / CANADÁ

Valerie SISSON (Ms.), Commissioner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), 2, Constellation Crescent, Ottawa Ontario K1A 0Y9  
(tel.: +1 613 221 7521 fax: +1 613 228 4552 email: vsisson@inspection.gc.ca)

Sandy MARSHALL (Ms.), Examiner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), 2, Constellation Crescent, Ottawa Ontario K1A 0Y9  
(tel.: +1 613 221 7525 fax: +1 613 228 4552 email: smarshall@inspection.gc.ca)

CHILI / CHILE / CHILE / CHILE

Enzo CERDA, Jefe, División de Semillas, Servicio Agrícola y Ganadero (SAG), Ministerio de Agricultura, Avda. Bulnes 140, piso 2, Casilla 1167-21, Santiago de Chile  
(tel.: +56 2 345 1561 fax: +56 2 697 2179 email: enzo.cerda@sag.gob.cl)



CHINE / CHINA / CHINA / CHINA

ZHANG Yaning (Mrs.), Project Administrator, International Organizations Division, International Cooperation Department, State Intellectual Property Office, No 6 Xituchenglu, Haidan District, 100088 Beijing  
(tel.: +86 10 6208 3097 fax: +86 10 6208 3288 email: zhangyaning@sipo.gov.cn)

LÜ Bo, Director, Division for the DUS Testing of New Varieties of Plants, Development Center of Science and Technology, Ministry of Agriculture, 18 Mai Zi Dian Street, Chaoyang District, 100 125 Beijing  
(tel.: +86 10 6592 5213 fax: +86 10 6592 5213 email: lvbo@agri.gov.cn)

SUN Junli (Ms.), Assistant Director, Office for Protection of New Varieties of Plants, Department of Sci-Technology and Education, Ministry of Agriculture, 11 Nong Zhan Guan Nan Li, Chaoyang District, 100 125 Beijing  
(tel.: +86 10 64193069 fax: +86 10 64192901 email: sunjunli@agri.gov.cn)

SUN Lianfa, Deputy Director, Harbin DUS Testing Station, Ministry of Agriculture, No. 368 Xuefu Road, Harbin, 150086 Heilongjiang  
(tel: +86 451 86651186 fax: +86 451 86668737 e-mail: sunlianfa@yahoo.com.cn)

YU Jianya, Deputy Director General, Office for Protection of New Varieties of Plants, State Forestry Administration, Beijing

ZHENG Yongqi, Research Professor, Forestry Institute, Chinese Academy of Forestry, Xiangshan Rd, Haidian district, Beijing 10091  
(tel.: +86 10 6288 8565 fax: +86 10 6287 2015 email: zhengyq@caf.ac.cn)

COLOMBIE / COLOMBIA / KOLUMBIEN / COLOMBIA

Ana Luisa DÍAZ JIMÉNEZ (Sra.), Coordinador Nacional, Derechos de Obtentor de Variedades Vegetales y Producción de Semillas, Instituto Colombiano Agropecuario (ICA), Calle 37, # 8-43, Ed. Colgas, Of 409, Bogotá D.C.  
(tel.: +57 1 232 8643 fax: +57 1 232 4697 email: ana.diaz@ica.gov.co)

COMMUNAUTÉ EUROPÉENNE / EUROPEAN COMMUNITY / EUROPÄISCHE GEMEINSCHAFT / COMUNIDAD EUROPEA

Jacques GENNATAS, Conseiller du Directeur Général Adjoint, Direction Générale Santé et Protection des Consommateurs, Commission européenne, 101 rue Froissart, Office: F 101 09/38, 1040 Bruxelles, Belgique  
(tel.: +32 2 295 9713 fax: +32 2 299 7510 email: jacques.gennatas@ec.europa.eu)

Päivi MANNERKORPI, Administratrice, Commission européenne, Direction Générale Santé et Protection des Consommateurs, Commission européenne, 232, rue Bellerive, 1049 Bruxelles, Belgique  
(tel.: +32 2 299 3714 fax: +32 2 392449 email: paivi.mannerkorpi@ec.europa.eu)

Bart KIEWIET, President, Community Plant Variety Office (CPVO), 3, boulevard Maréchal Foch, B.P. 10121, 49101 Angers Cedex 02, France  
(tel.: +33 2 4125 6412 fax: +33 2 4125 6410 e-mail: kiewiet@cpvo.europa.eu)

Carlos GODINHO, Vice-President, Community Plant Variety Office (CPVO), 3, boulevard Maréchal Foch, B.P. 10121, 49101 Angers Cedex 02, France  
(tel.: +33 2 4125 6413 fax: +33 2 4125 6410 email: godinho@cpvo.europa.eu)

ÉQUATEUR / ECUADOR / ECUADOR / ECUADOR

Carlos JERVES ULLAURI, Director Nacional de Obtenciones Vegetales, Instituto Ecuatoriano de la Propiedad Intelectual (IEPI), Av. República 396 y Almagro, Edificio Forum 300, Casilla Postal 89-62, Quito  
(tel.: +593 2 2508 000 fax: +593 2 2508 027 email: cjerves@iepi.gov.ec)

Luís VAYAS VALDIVIESO, Primer secretario, Misión Permanente, 80-82, rue de Lausanne, 1202 Ginebra, Suiza  
(tel.: +41 22 732 4955 fax: +41 22 732 4834 e-mail: onuginebra@mmrree.gov.ec)

ESPAGNE / SPAIN / SPANIEN / ESPAÑA

Ernesto RÍOS LÓPEZ, Director, Oficina Española de Variedades Vegetales (OEVV), Ministerio de Agricultura, Pesca y Alimentación (MAPA), Calle Alfonso XII, No. 62, E-28014 Madrid  
(tel.: +34 91 3478232 fax: +34 91 3476703 e-mail: ernesto.rios@mapa.es)

Luis SALAICES, Jefe de Área del Registro de Variedades, Oficina Española de Variedades Vegetales (OEVV), Ministerio de Agricultura, Pesca y Alimentación (MAPA), Calle Alfonso XII, No. 62, 2a Planta, E-28014 Madrid  
(tel.: +34 91 3476712 fax: +34 91 3476703 email: luis.salaices@mapa.es)

ÉTATS-UNIS D'AMÉRIQUE / UNITED STATES OF AMERICA /  
VEREINIGTE STAATEN VON AMERIKA / ESTADOS UNIDOS DE AMÉRICA

Kitisri SUKHAPINDA (Ms.), Patent Attorney, Office of Intellectual Property and Enforcement, U.S. Patent and Trademark Office (USPTO), Madison Building, West Wing, 600 Dulany Street, MDW 10A60, Alexandria VA 22314  
(tel.: + 1 571 272 8047 fax: + 1 571 273 0085 e-mail: kitisri.sukhapinda@uspto.gov)

Paul M. ZANKOWSKI, Commissioner, Plant Variety Protection Office, United States Department of Agriculture, 10301, Baltimore Ave., Beltsville MD 20832  
(tel.: +1 301 504 5518 fax: +1 301 504 5291 email: paul.zankowski@usda.gov)

Karin FERRITER (Ms.), Patent Attorney, U.S. Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria VA 22313-1450  
(tel.: +1 571 272 9300 fax: +1 571 273 0085 e-mail: karin.ferriter@uspto.gov)

FINLANDE / FINLAND / FINNLAND / FINLANDIA

Matti Juhani PUOLIMATKA, Head, Unit for Seed Testing and Organic Control, Finnish Food Safety Authority (Evira), Tampereentie 51, FIN-32200 Loimaa  
(tel.: +358 20 7725300 fax: +358 20 7725318 email: matti.puolimatka@evira.fi)

HONGRIE / HUNGARY / UNGARN / HUNGRÍA

Katalin ERTSEY (Mrs.), Director, Directorate of Plant Production and Horticulture, Central Agricultural Office, Keleti Károly u. 24, H-1024 Budapest  
(tel.: +36 1 336 9115 fax: +36 1 336 9011 email: ertseyk@ommi.hu)

Csaba BATICZ, Legal Officer, Hungarian Patent Office, Garibaldi u. 2, H-1054 Budapest  
(tel.: +36 1 474 5764 fax: +36 1 474 5965 email: csaba.baticz@hpo.hu)

Ágnes Gyözöné SZENCI (Mrs.), Senior Chief Advisor, Department for Administration and Information Technology, Ministry of Agriculture and Regional Development, Kossuth Lajos tér 11, H-1055 Budapest  
(tel.: +36 1 301 4308 fax: + 36 1 301 4668 e-mail: szencig@posta.fvm.hu)

IRLANDE / IRELAND / IRLAND / IRLANDA

Nicholas P. MCGILL, Controller of Plant Variety Rights, National Crop Variety Evaluation Centre, Department of Agriculture and Food, Backweston Farm, Leixlip, Co. Kildare  
(tel.: +353 1 630 2900 fax: +353 1 628 0634 email: nicholas.mcgill@agriculture.gov.ie)

David MCGILLOWAY, Office of the Controller of Plant Breeders' Rights, National Crop Variety Testing Centre, Department of Agriculture and Food, Backweston, Leixlip, Co. Kildare  
(tel.: +353 1 630 2913 fax: +353 1 628 0634 email: david.mcgilloway@agriculture.gov.ie)

JAPON / JAPAN / JAPAN / JAPÓN

Sotaro ITO, Director, Plant Variety Production and Seed Division, Agricultural Production Bureau, Seeds and Seedlings Division Agricultural Production Bureau, Ministry of Agriculture, Forestry and Fisheries, 1-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8950  
(tel.: +81 3 6744 2118 fax: + 81 3 3502 5301 email: soutarou\_itou@nm.maff.go.jp)

Tsukasa KAWAKAMI, Deputy Director, Plant Variety Protection and Seed Division (PVPSD), Agricultural Production Bureau, Ministry of Agriculture, Forestry and Fisheries, 1-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8950  
(tel.: +81 3 6744 2118 fax: +81 3 3502 5301 e-mail: tsukasa\_kawakami@nm.maff.go.jp)

Kenji NUMAGUCHI, Examiner, Plant Variety Protection and Seed Division, Agricultural Production Bureau, Ministry of Agriculture, Forestry and Fisheries, 1-2-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8950  
(tel.: +81 3 6744 2118 fax: +81 3 3502 5301 email: kenji\_numaguchi@nm.maff.go.jp)

KENYA / KENIA / KENYA

Evans O. SIKINYI, Head, Seed Certification and Plant Variety Protection, Kenya Plant Health Inspectorate Service (KEPHIS), P.O. Box 49592-00100, Oloolua Ridge, Karen, Nairobi  
(tel.: +254 20 884545 fax: +254 20 3536175 email: esikinyi@kephis.org)

LETTONIE / LATVIA / LETTLAND / LETONIA

Līga ABOLINA (Mrs.), Senior Officer, Ministry of Agriculture, Republikas Laukums 2, LV-1981 Riga  
(tel.: +371 670 27258 fax: +371 670 27514 email: liga.abolina@zm.gov.lv)

MEXIQUE / MEXICO / MEXIKO / MÉXICO

Enriqueta MOLINA MACÍAS (Srta.), Directora Nacional, Servicio Nacional de Inspección y Certificación de Semillas (SNICS), Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación (SAGARPA), Av. Presidente Juárez, 13, Col. El Cortijo, Tlalnepantla, Estado de México 54000

(tel.: +52 55 3622 0667 fax: +52 55 3622 0670 email: enriqueta.molina@sagarpa.gob.mx)

Alejandro F. BARRIENTOS-PRIEGO, Professor-Investigador, Departamento de Fitotecnia, Universidad Autónoma Chapingo (UACH), Km. 38.5 Carretera México-Texcoco, 56230 Chapingo, Estado de México

(tel.: +52 595 952 1569 fax: +52 595 952 1569 email: abarrien@gmail.com)

MOLDOVA / MOLDAU / MOLDOVA

Vasile POJOGA, President, State Commission for Crops Variety Testing and Registration, Stefan cel Mare str. 162, C.P. 1873, MD-2004 Kishinev

(tel.: +373 22 220300 fax: +373 22 211 537 email: csispmd@yahoo.com)

Ala GUŞAN (Mrs.), Deputy Head Inventions, Plant Varieties and Utility Models Department, State Agency on Intellectual Property (AGEPI), 24/1 Andrei Doga str., MD-2024 Chisinau

(tel.: +373 22 400582 fax: +373 22 440119 email: agusan@yandex.ru)

NORVÈGE / NORWAY / NORWEGEN / NORUEGA

Haakon SØNJU, Registrar, Plant Variety Board, Moerveien, 12, P.O. Box 3, Mattilsynet, 1431 Aas

(tel.: +47 64 972513 fax: +47 64 944410 e-mail: haakon.sonju@mattilsynet.no)

Svanhilo-Isabelle Batta TORHEIM (Mrs.), Programme Officer, Development Fund, 9b, Grensen, 0159 Oslo

(tel.: +47 23 10 96 00 fax: +47 23 109601 e-mail: bell@utviklingsfondet.no)

NOUVELLE-ZÉLANDE / NEW ZEALAND / NEUSEELAND / NUEVA ZELANDIA

Christopher J. BARNABY, Assistant Commissioner of Plant Variety Rights / Examiner, Plant Variety Rights Office (PVRO), 205 Victoria Street, P.O. Box 9241, Marion Square, Wellington 6141

(tel.: +64 3 962 6206 fax: +64 3 962 6202 email: Chris.Barnaby@pvr.govt.nz)

PANAMA / PANAMA / PANAMÁ

Rafael Ernesto MONTERREY GONZÁLEZ, Jefe de Variedades Vegetales, Departamento Variedad Vegetal, Dirección de Propiedad Industrial, Ministerio de Comercio e Industrias, Avenida Ricardo J. Alfaro, Edificio Edison Plaza, 2 Piso, 0815-01119 Ciudad de Panamá

(tel.: +507 560 00700 fax: +507 5600741 email: rmonterrey@mici.gob.pa)

PAYS-BAS / NETHERLANDS / NIEDERLANDE / PAÍSES BAJOS

Christianus M.M. VAN WINDEN, Account Manager Propagating Material, Ministry of Agriculture, Nature and Food Quality, Postbus 20401, NL-2500 EK The Hague  
(tel.: +31 70 378 4281 fax: +31 70 378 6156 email: c.m.m.van.winden@minlnv.nl)

Krieno Adriaan FIKKERT, Head and Secretary, Board for Plant Varieties (Raad voor Plantenrassen), Postbus 27, NL-6710 BA Ede  
(tel.: +31 318 822 580 fax: +31 318 822 589 email: k.a.fikkert@minlnv.nl)

Louisa VAN VLOTEN-DOTING (Mrs.), Chairperson, Board for Plant Varieties (Raad voor Plantenrassen), Postbus 27, 6710 BA Ede  
(tel.: +31 318 822 580 fax: +31 318 822 404 e-mail: l.vanvloten-doting@minlnv.nl)

POLOGNE / POLAND / POLEN / POLONIA

Edward S. GACEK, Director General, Research Centre for Cultivar Testing (COBORU), PL-63-022 Slupia Wielka  
(tel.: +48 61 285 2341 fax: +48 61 285 3558 email: e.gacek@coboru.pl)

Julia BORYS (Ms.), Head, DUS Testing Department, Research Centre for Cultivar Testing (COBORU), PL-63-022 Slupia Wielka  
(tel.: +48 61 285 2341 fax: +48 61 285 3558 email: j.borys@coboru.pl)

Alicja RUTKOWSKA-ŁOŚ (Mrs.), Head, National Listing and Plant Breeders' Rights Protection Office, Research Centre for Cultivar Testing (COBORU), PL-63-022 Slupia Wielka  
(tel.: +48 61 285 2341 fax: +48 61 285 3558 email: a.rutkowska@coboru.pl)

RÉPUBLIQUE DE CORÉE / REPUBLIC OF KOREA / REPUBLIK KOREA / REPÚBLICA DE COREA

Ilho CHO, Director, Plant Variety Protection Division, Korea Seed and Variety Service (KSVS), Jungang-ro 328 (433 Anyang 6-Dong), Manan-gu, Anyang-Si, Gyeonggi-do 430-016  
(tel.: +82 31 467 0150 fax: +82 31 467 0116 email: choilho@seed.go.kr)

CHOI Keun-Jin, Senior Examiner, Korean Seed and Variety Service (KSVS), Ministry of Agriculture and Forestry, 233-1 Mangpodong Yongtonggu, Suwon, Kyunggido 443-400  
(tel.: +82 31 204 8772 fax: +82 31 203 7431 email: kjchoi@seed.go.kr)

RÉPUBLIQUE DOMINICAINE / DOMINICAN REPUBLIC / DOMINIKANISCHE REPUBLIK / REPÚBLICA DOMINICANA

Luz Adelma GUILLÉN (Sra.), Encargada de la Oficina de Seguimiento a la Reforma y Modernización del Sector Agropecuario, Secretaría de Estado de Agricultura, Km 6.5 Autopis Duarte, Jardines del Norte, Santo Domingo, D.N.  
(tel.: 809 533 7522 Ext. 4815 fax: 809 533 5312 email: laguillen@ica.org)

José SÁNCHEZ, Encargado División Certificación de Semillas, Secretaria de Estado de Agricultura, Santo Domingo, D.N.  
(tel.: +809 525 43888 e-mail: j\_sanchez29@hotmail.com)

RÉPUBLIQUE TCHÈQUE / CZECH REPUBLIC / TSCHECHISCHE REPUBLIK /  
REPÚBLICA CHECA

Daniel JUREČKA, Director, Plant Production Section, Central Institute for Supervising and Testing in Agriculture (ÚKZÚZ), Hroznová 2, 656 06 Brno  
(tel.: +420 543 548 210 fax: +420 543 217 649 email: daniel.jurecka@ukzuz.cz)

Radmila SAFARIKOVA (Mrs.), Head of Division, National Plant Variety Office, Central Institute for Supervising and Testing in Agriculture (UKZUZ), Hroznová 2, 656 06 Brno  
(tel.: +420 543 548 221 fax: +420 543 212 440 email: radmila.safarikova@ukzuz.cz)

ROUMANIE / ROMANIA / RUMÄNIEN / RUMANIA

Adriana PARASCHIV (Mrs.), Head, Agricultural Division, State Office for Inventions and Trademarks (OSIM), 5, Str. Ion Ghica, Sector 3, 030044 Bucarest  
(tel.: +40 21 3155698 fax: +40 21 312 3819 email: adriana.paraschiv@osim.ro)

Mihaela-Rodica CIORA (Mrs.), Head of Testing Department, State Institute for Variety Testing and Registration, Ministry of Agriculture, Food and Forestry, 61, Marasti, Sector 1, 011464 Bucarest  
(tel.: +40 213 177442 fax: +40 213 177442 email: mihaela\_ciora@yahoo.com)

Maria Camelia MIREA (Mrs.), Examiner, State Office for Inventions and Trademarks (OSIM), 5, Str. Ion Ghica, Sector 3, P.O.Box 52, 030044 Bucarest  
(tel.: +40 21 3145964 fax: +40 21 3123819 email: mirea.camelia@osim.ro)

SLOVAQUIE / SLOVAKIA / SLOWAKEI / ESLOVAQUIA

Bronislava BÁTOROVÁ (Mrs.), National Coordinator, Senior Officer, Department of Variety Testing, Central Controlling and Testing Institute in Agriculture (ÚKSÚP), Akademická 4, SK-949 01 Nitra  
(tel.: +421 37 655 1080 fax: +421 37 652 3086 email: bronislava.batorova@uksup.sk)

SLOVÉNIE / SLOVENIA / SLOWENIEN / ESLOVENIA

Joze ILERSIC, Secretary, Phytosanitary Administration, Einspielerjeva 6, SLO-1000 Ljubljana  
(tel.: +386 1 3094 396 fax: +386 1 3094 335 email: joze.ilersic@gov.si)

SUÈDE / SWEDEN / SCHWEDEN / SUECIA

Carl Johan LIDÈN, Head, Department for Crop Production and Environment, Swedish Board of Agriculture, S-551 82 Jönköping  
(tel.: +46 36 155030 fax: + 46 36 710555 e-mail: carljohan.liden@sjv.se)

SUISSE / SWITZERLAND / SCHWEIZ / SUIZA

Eva TSCHARLAND (Frau), Juristin, Sektion Zertifizierung, Pflanzen- und Sortenschutz, Bundesamt für Landwirtschaft, Mattenhofstrasse 5, CH-3003 Bern  
(tel.: +41 31 322 2594 fax: +41 31 323 5455 email: eva.tscharland@blw.admin.ch)

Manuela BRAND (Frau), Leiterin, Büro für Sortenschutz, Sektion Zertifizierung, Pflanzen- und Sortenschutz, Bundesamt für Landwirtschaft, Mattenhofstrasse 5, CH-3003 Bern  
(tel.: +41 31 322 2524 fax: +41 31 322 2634 email: manuela.brand@blw.admin.ch)

TRINITÉ-ET-TOBAGO / TRINIDAD AND TOBAGO / TRINIDAD UND TOBAGO /  
TRINIDAD Y TABAGO

Richard ACHING, Senior Examiner (Technical), Intellectual Property Office, Ministry of  
Legal Affairs, 72-74 South Quay, Port of Spain  
(tel.: +1-868 625 9972 fax: +1-868 624 1221 email: richard.aching@ipo.gov.tt)

TUNISIE / TUNISIA / TUNESIEN / TÚNEZ

Tarek CHIBOUB, Directeur de l'homologation et du contrôle de la qualité, Direction générale  
de la protection et du contrôle de la qualité des produits agricoles, Ministère de l'agriculture et  
des ressources hydrauliques, 30, rue Alain Savary, 1002 Tunis  
(tel.: +216 71 800419 fax: +216 71 784419 e-mail: tarechib@yahoo.fr)

Mondher KHEMIRI, Directeur de la législation, Direction générale des affaires juridiques et  
foncières, Ministère de l'agriculture et des ressources hydrauliques, 30, rue Alain Savary,  
1002 Tunis  
(tel.: +216 71 842 317 fax: +216 71 784 419 email: mondherkhemiri@yahoo.fr)

VIET NAM / VIETNAM / VIET NAM

Thanh Minh NGUYEN, International Relations Officer, Plant Variety Protection Office,  
Ministry of Agriculture and Rural Development (MARD), No. 2 Ngoc Ha Str, Ba Dinh  
District, Hanoi  
(tel.: +84 4 8435182 fax: +84 4 7342844 email: minh\_pvp@yahoo.com)

II. OBSERVATEURS / OBSERVERS / BEOBACHTER / OBSERVADORES

COSTA RICA / COSTA RICA / COSTA RICA / COSTA RICA

Walter Paulo QUIRÓS ORTEGA, Director Ejecutivo, Oficina Nacional de Semillas,  
Ministerio de Agricultura y Ganadería, Apartado 10309, 1000 San José  
(tel.: + 506 2223 5922 fax: +506 2221 7792 e-mail: wquiros@ofinase.go.cr)

María José CORDERO SALAS (Sra.), Negociadora comercial, Ministerio de Comercio  
Exterior, Edificio de Comercio Exterior, 4<sup>o</sup> piso, Paseo Colón, San José  
(tel.: +506 22 99 4995 fax: +506 83 772615 e-mail: mariaj.cordero@comex.go.cr)

Alejandra BOLAÑOS (Sra.), Asesora Parlamentaria, Asamblea Legislativa de Costa Rica,  
Cuesta de Mores, Apdo. 84-1013, San José  
(tel.: +506 224 32333 fax: +506 224 32335 e-mail: abolanos@asamblea.go.cr)

Carlos GARBANZO, Misión Permanente, 11, rue Butini, 1202 Ginebra, Suiza  
(tel.: +41 22 731 2587 fax: +41 22 731 2060 e-mail: mission.costarica@ties.itu.int)

EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE / THE FORMER YUGOSLAV  
REPUBLIC OF MACEDONIA / DIE EHEMALIGE JUGOSLAWISCHE REPUBLIK  
MAZEDONIEN / EX REPÚBLICA YUGOSLAVA DE MACEDONIA

Hristjan DELEV, State Secretary, Ministry of Agriculture, Forestry and Water Economy,  
2, Leninova st., 1000 Skopje  
(tel.: +389 231 34477 fax: +389 2 32 14725 e-mail: hristjan.delev@mzsv.gov.mk)

Georgi AVRAMCHEV, Ambassador, Permanent Mission, 143, rue de Lausanne,  
1202 Geneva, Switzerland  
(tel.: +41 22 731 2930 fax: +41 22 731 2939 e-mail: mission.macedonia@ties.itu.int)

Goce VASILEVSKI, Professor, Faculty for Agriculture Sciences and Food, Ministry of  
Agriculture, Skopje  
(tel.: +389 3115277)

Biljana TASEVSKA (Mrs.), Minister Plenipotentiary, Permanent Mission, 143, rue de  
Lausanne, 1202 Geneva, Switzerland  
(tel.: +41 22 731 2930 fax: +41 22 731 2939 e-mail: mission.macedonia@ties.itu.int)

GRÈCE / GREECE / GRIECHENLAND / GRECIA

Nilolaos STEFANIDIS, Director, Directorate for Inputs of Crop Production, Ministry of  
Rural Development and Food, 2, Acharnon Street, GR-10176 Athens  
(tel.: +30 210 212 4109 fax: +30 210 212 4137 e-mail: ax2u056@minagric.gr)

MONTÉNÉGRO / MONTENEGRO / MONTENEGRO / MONTENEGRO

Jovan JEKIC, Chief of Party, USAID WTO Accession Project, Knez Mihailova 10/11,  
11000 Belgrade  
(tel.: +381 11 3282 499 fax: +381 11 2638 357 e-mail: jovan@fry-wto.com)

SERBIE / SERBIA / SERBIEN / SERBIA

Mirjana MILOSEVIC (Prof. Dr.), Minister Assistant, Ministry of Agriculture, Forestry &  
Water Management, Nemanjina 22-24 st., 11124 Beograd  
(tel.: +381 21 362 1506 email: m.milosevic@minpolj.sr.gov.yu)

Dragan DEDIC, Head, Plant Variety Registration and Protection Department, Ministry of  
Agriculture, Forestry & Water Management, Nemanjina 22-24, (Omladinskih brigada 1),  
11124 Beograd  
(tel.: +381 11 311 7317 fax: +381 11 260 2829 email: ddedic@minpolj.sr.gov.yu)

Jovan VUJOVIC, Advisor, Plant Variety Registration and Protection Department, Ministry  
of Agriculture, Forestry & Water Management, Nemanjina 22-26, (Omladinskih brigada 1),  
11124 Beograd  
(tel.: +381 11 3117094 fax: +381 11 3117094 email: jovanvujovic@minpolj.sr.gov.yu)

Slobodan VUKČEVIČ, Ambassador, Permanent Mission, 5, chemin Thury, 1206 Geneva,  
Switzerland  
(tel.: +41 22 839 33 44 fax: +41 22 839 33 59 e-mail: mission.serbia@bluewin.ch)



III. ORGANISATIONS / ORGANIZATIONS /  
ORGANISATIONEN / ORGANIZACIONES

ORNAMENTALES ET FRUITIÈRES DE REPRODUCTION ASEXUÉE (CIOPORA) /  
INTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED  
ORNAMENTAL AND FRUIT-TREE VARIETIES (CIOPORA) /  
INTERNATIONALE GEMEINSCHAFT DER ZÜCHTER VEGETATIV  
VERMEHRBARER ZIER- UND OBSTPFLANZEN (CIOPORA)  
COMUNIDAD INTERNACIONAL DE OBTENTORES DE VARIEDADES  
ORNAMENTALES Y FRUTALES DE REPRODUCCIÓN ASEXUADA (CIOPORA)

Birte LORENZEN (Ms.), Legal Consult to CIOPORA, International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA),  
78, Rothenbaumchaussee, 20148 Hamburg, Germany  
(tel.: +49 40 555 63702 fax: +49 40 555 63703 email: birte.lorenzen@ciopora.org)

INTERNATIONAL SEED FEDERATION (ISF)

Marcel BRUINS, Secretary General, International Seed Federation (ISF), 7, chemin du Reposoir, 1260 Nyon, Switzerland  
(tel.: +41 22 365 4420 fax: +41 22 365 4421 email: isf@worldseed.org)

IV. BUREAU / OFFICER / VORSITZ / OFICINA

Doug WATERHOUSE, President  
Keun-Jin CHOI, Vice-President

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

Rolf JÖRDENS, Vice Secretary-General  
Peter BUTTON, Technical Director  
Raimundo LAVIGNOLLE, Senior Counsellor  
Makoto TABATA, Senior Counsellor  
Yolanda HUERTA (Mrs.), Senior Legal Officer

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Ende der Anlage und des Dokuments/  
Fin del Anexo y del documento]