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PLANT VARIETY PROTECTION

Gazette and Newsletter of the International Union for the Protection of New Varieties of Plants (UPOV)

No. 84
April 1998

UPOV
The International Union for the Protection of New Varieties of Plants (UPOV)—an international organization established by the International Convention for the Protection of New Varieties of Plants—is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plant breeders—for their benefit and for the benefit of agriculture and thus also of the community at large—in accordance with uniform and clearly defined principles.

*Plant Variety Protection* is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only—although some items are quadrilingual (English, French, German and Spanish)—at irregular intervals, usually at a rate of three issues a year. Requests for addition to the mailing list may be placed with:

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The picture on the front cover shows the species *Siphonochilus aethiopicus*,
painted by Mrs. Elise Buitendag (South Africa)

UPOV PUBLICATION
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ANNEX

Plant Variety Protection Index - April 1998
ACCESSION TO THE 1978 ACT OF THE UPOV CONVENTION

TRINIDAD AND TOBAGO

On December 30, 1997, the Government of Trinidad and Tobago deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972 and on October 23, 1978, with the Secretary-General of UPOV.

The 1978 Act of the Convention entered into force in respect of Trinidad and Tobago on January 30, 1998. On that date, Trinidad and Tobago became the thirty-fifth member State of UPOV and the thirty-third State bound by the Act of 1978.

According to the notification filed with the Secretary-General together with the instrument of accession, protection is available in respect of the families of plants known as Bromiliaceae and Orchidaceae.

ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION

BULGARIA


According to the notification filed with the Secretary-General together with the instrument of accession, protection is available to the following genera and species (the Latin and English names have been communicated by the Bulgarian authorities; the French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union):

<table>
<thead>
<tr>
<th>Latin</th>
<th>English</th>
<th>Français</th>
<th>Deutsch</th>
<th>Español</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Triticum aestivum</em> L.</td>
<td>Wheat, Soft</td>
<td>Blé tendre,</td>
<td>Weichweizen</td>
<td>Trigo blando</td>
</tr>
<tr>
<td>emend. Fiori et Paol</td>
<td>Wheat, Bread</td>
<td>Froment</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Triticum durum</em> Desf.</td>
<td>Durum Wheat,</td>
<td>Blé dur</td>
<td>Hartweizen</td>
<td>Trigo duro</td>
</tr>
<tr>
<td></td>
<td>Hard Wheat</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Hordeum sativum</em> L.</td>
<td>Barley</td>
<td>Orge</td>
<td>Gerste</td>
<td>Cebada</td>
</tr>
<tr>
<td><em>Helianthus annuus</em> L.</td>
<td>Sunflower</td>
<td>Tournesol, Soleil</td>
<td>Sonnenblume</td>
<td>Girasol</td>
</tr>
<tr>
<td>Latin</td>
<td>English</td>
<td>Français</td>
<td>Deutsch</td>
<td>Español</td>
</tr>
<tr>
<td>-----------------------</td>
<td>---------------</td>
<td>------------------</td>
<td>-----------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Phaseolus vulgaris</td>
<td>French Bean</td>
<td>Haricot</td>
<td>Gartenbohne</td>
<td>Judía común, Alubia</td>
</tr>
<tr>
<td>L.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lens culinaris Medik.</td>
<td>Lentil</td>
<td>Lentille</td>
<td>Linse</td>
<td>Lenteja</td>
</tr>
<tr>
<td>Nicotiana tabacum L.</td>
<td>Tobacco</td>
<td>Tabac</td>
<td>Tabak</td>
<td>Tabaco</td>
</tr>
<tr>
<td>(common)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicago sativa L.</td>
<td>Lucerne, Alfa</td>
<td>Luzerne (cultivié)</td>
<td>Blaue Luzerne</td>
<td>Alfalfa, Mielga</td>
</tr>
<tr>
<td>Vitis vinifera L.</td>
<td>Grapevine</td>
<td>Vigne</td>
<td>Rebe</td>
<td>Vid</td>
</tr>
<tr>
<td>Gossypium hirsutum L.</td>
<td>Cotton</td>
<td>Cotonnier</td>
<td>Baumwolle</td>
<td>Algodón</td>
</tr>
<tr>
<td>Capsicum annuum L.</td>
<td>Sweet Pepper</td>
<td>Poivron, Piment</td>
<td>Paprika</td>
<td>Pimiento</td>
</tr>
<tr>
<td>Brassica oleracea</td>
<td>Cabbage</td>
<td>Chou pommé</td>
<td>Kopfkohl</td>
<td>Repollo</td>
</tr>
<tr>
<td>var. capitata (L.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alef.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pisum sativum L.</td>
<td>Pea</td>
<td>Pois</td>
<td>Erbse</td>
<td>Guisante, Arvejo</td>
</tr>
<tr>
<td>Arachis hypogaea L.</td>
<td>Peanut</td>
<td>Arachide</td>
<td>Erdnuß</td>
<td>Cacahuete, Maní</td>
</tr>
<tr>
<td>Dianthus sinensis L.</td>
<td>Carnation</td>
<td>Oeillet</td>
<td>Nelke</td>
<td>Clavel</td>
</tr>
<tr>
<td>Beta vulgaris L. var.</td>
<td>Sugar Beet</td>
<td>Betterave sucrière</td>
<td>Zuckerrübe</td>
<td>Remolacha azucarrera</td>
</tr>
<tr>
<td>saccharifera Alef.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

RUSSIAN FEDERATION


The complete list of genera and species to which protection is available will be published in a future issue.


Article 37 of the 1991 Act of the UPOV Convention provides that the 1991 Act shall enter into force one month after five states have adhered to it of which three must be existing member States. The accessions of Bulgaria and the Russian Federation brings to six the total of adherence to the Act. Denmark, Israel, Netherlands and Sweden, all member States, had already notified the Act. The accession of Bulgaria and the Russian Federation accordingly had the effect of bringing the 1991 Act into force on April 24, 1998.
THE FIFTEENTH EXTRAORDINARY SESSION OF THE COUNCIL

The Council of the International Union for the Protection of New Varieties of Plants (UPOV) held its fifteenth extraordinary session in Geneva, on April 3, 1998, under the chairmanship of Mr. Ryusuke Yoshimura (Japan), President of the Council.

At that session, the Council took the following decisions:

(a) It decided to advise the Government of Croatia that the Plant Variety Protection Law, when supplemented by Regulations and with the incorporation of suitable amendments, would provide the basis for a law conforming with the 1991 Act.

(b) It decided to request the Office of the Union to offer its assistance to the Government of Croatia in respect of the amendments and the Regulations that were necessary to achieve conformity.

(c) It decided to further advise the Government of Croatia that

(i) after the enactment of a law on the revision of the Law in accordance with the suggestions of the Office of the Union, but without other substantial changes, and the making of necessary Regulations, and

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

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

(d) It decided to give a positive advice on the conformity of the legislation of Brazil with the provisions of the 1978 Act.

(e) It decided to advise the Government of Nicaragua that the Bill on the Protection of New Plant Varieties, when supplemented by implementing regulations and after elimination of Article 69, would provide the basis for a law conforming with the 1978 Act.

(f) It decided to request the Office of the Union to offer its assistance to the Government of Nicaragua in respect of the amendments and improvements to be made to the Bill and the drafting of the implementing regulations.

(g) It decided to further advise the Government of Nicaragua that

(i) after the enactment into law of the Bill incorporating the amendments suggested by the Office of the Union, but without other substantial changes, and the making of necessary regulations, and

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

it would be able to deposit an instrument of accession to the 1978 Act by April 24, 1999, at the latest.

(h) It noted that the Bill incorporated essential features of the 1991 Act and would conform to the latter if the following main changes were effected:

(i) an extension of the material basis of the breeder’s right to harvested material under the condition set out in Article 14(2) of the 1991 Act;
(ii) the introduction of provisional protection;
(iii) an extension of the duration of protection.

(i) It decided to request the Office of the Union to advise the Government of Nicaragua on the rationale of the provisions referred to above and the benefits that would be derived from them.

(j) It decided to take a positive decision on the conformity of the legislation of Venezuela with the provisions of the 1978 Act and the 1991 Act, subject to some amendments being made to the draft Regulations.

(k) It decided to request the Office of the Union to offer its assistance to the Government of Venezuela in respect of the amendments to be made to the draft Regulations.

(l) It decided to further advise the Government of Venezuela that

(i) after consultation with the Office of the Union as to whether the amendments to the Regulations were adequate, and
(ii) after adoption of the Regulations incorporating such amendments, but without other substantial changes, it would be able to deposit an instrument of accession to the 1978 Act prior to April 24, 1999, or to the 1991 Act at any time.

(m) It adopted the amendments to the program and budget of UPOV for the 1998-99 biennium resulting from the decision of the Secretary-General to renounce his right to receive an indemnity from UPOV.

(n) It decided to recommend that the representatives of member States in UPOV circles contact their counterparts in WTO in order to make them aware of the need to give a more prominent place to the UPOV Convention in the TRIPS Agreement.

(o) It decided to request the Secretary-General to enter into consultations with the Chairman of the Council for TRIPS to ensure that the UPOV Convention be specifically mentioned in Article 1 of the TRIPS Agreement as another Convention providing standards for intellectual property protection, on the occasion of the general review of the implementation of the Agreement in the year 2000.
PLANT VARIETY PROTECTION AROUND THE WORLD IN 1997

At its thirty-first ordinary session held in October 29, 1997, the Council of UPOV noted the reports given by member States and international organizations on the development of plant variety protection and related matters. A record of the statements is given below.

Member States

ARGENTINA

Situation in the Legislative Field

Regular meetings were held with officials of the National Industrial Property Institute with a view to harmonize the rules of interpretation with respect to the protection of biotechnological innovations. It is foreseen to conclude an “agreement on cooperation” under which each Institute undertakes to provide the technical assistance and information that is required by the other for the accomplishment of its tasks.

Situation in the Administrative Field

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

<table>
<thead>
<tr>
<th></th>
<th>1996 Register</th>
<th>1996 Ownership</th>
<th>1997 (until September 18) Register</th>
<th>1997 (until September 18) Ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cereals</td>
<td>43</td>
<td>34</td>
<td>83</td>
<td>37</td>
</tr>
<tr>
<td>Oil Crops</td>
<td>30</td>
<td>19</td>
<td>51</td>
<td>19</td>
</tr>
<tr>
<td>Industrial Plants</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Fodder Crops</td>
<td>28</td>
<td>15</td>
<td>54</td>
<td>36</td>
</tr>
<tr>
<td>Fruit Crops</td>
<td>18</td>
<td>5</td>
<td>34</td>
<td>4</td>
</tr>
<tr>
<td>Vegetables</td>
<td>130</td>
<td>7</td>
<td>247</td>
<td>9</td>
</tr>
<tr>
<td>Ornamental Plants</td>
<td>-</td>
<td>-</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td>251</td>
<td>83</td>
<td>478</td>
<td>113</td>
</tr>
</tbody>
</table>

Activities for the Promotion of Plant Variety Protection

In October 1996, at the Fifteenth Pan-American Seed Seminar held in Gramado (Brazil), a presentation was made on the various techniques for the identification of cultivars, starting from the well-established ones, such as electrophoresis on polyacrylamid gel (PAGE), and ending with the most recent ones, such as those based on molecular markers (AFLP, RFLP, microsatellites), and on their respective scope of application.

In December 1996, technical assistance was provided to the Regional Seed Office of Santa Cruz de la Sierra (Bolivia) in respect of the implementation and operation of the Register of Varieties.
Also in December 1996, a catalogue on the “Identification of Wheat Varieties by Polyaacrylamid Gel Electrophoresis (Gliadins)” was published. The catalogue contains the electrophoretic patterns of all varieties entered in the National Register.

In April 1997, the new “Molecular Markers Laboratory” was inaugurated. It has 250m² and is equipped for the development of techniques such as AFLP, RAPD and microsatellites. It is planned to continue with the establishment of catalogues for species such as barley, cotton and oats.

In May 1997, the Argentinean Delegation to the seventh session of the (FAO) Commission on Genetic Resources for Food and Agriculture included a person involved in plant variety protection and national listing.

Participation was secured at the fifth meeting of the Working Group on Intellectual Property Rights of the Free-Trade Area of the Americas held in Washington, D.C., from July 8 to 11, 1997, at a Colloquium on the Management of Natural Resources and Security in Biotechnology held in September 1997, and at a meeting on “Ethics and Equity in the Conservation and Use of Genetic Resources” held in Brazil.

Genetically Modified Organisms

Three titles of ownership were issued in 1997 in respect of transgenic soya beans resistant to glyphosate.

The release of genetically modified organisms into the environment is regulated in Argentina by the National Commission of Agricultural Biotechnology (CONABIA). The National Seed Institute is represented in it alongside other public and private bodies.

The tests carried out in the 1997/98 agricultural campaign pertain to 36 applications relating to cotton, maize, potato, sunflower and wheat and to tolerance to herbicides, resistance to insects, tolerance to fungi and viruses, and modification of proteins.

AUSTRIA

Situation in the Legislative Field

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

The Law has been amended on some minor points in connection with the Seed Law (BGBl. No. 72/1997).

The application and examination fees were increased by way of Ordinance (BGBl. No. 207/1997).

Cooperation in Examination

Two agreements on cooperation in examination are in preparation (with France and Slovenia).

Situation in the Administrative Field

In 1997, up to August 31, a total of 20 applications were filed and 16 titles of protection were issued, bringing the total number of titles in force to 174.

Developments in Related Fields of Activity

Seed Law

On July 1, 1997, the Seed Law 1997 entered into force, together with amendments to other laws, including the Plant Variety Protection Law. The implementing regulations will be issued as soon as possible.

Genetic Engineering

The implementing Regulations to the Genetic Engineering Law have been pub-
lished. Those relating to the release of genetically modified organisms and to consultations entered into force on March 1, 1997.

No authorization for release has been given yet in Austria.

**CANADA**

**Situation in the Legislative Field**

Regulations are in place for 39 species. Regulations should be in place for all species by early 1998. Discussions on the 1991 Act of the Convention have been initiated with members of the industry affected by this legislation.

**Situation in the Administrative Field**

Canada has been receiving applications for plant breeders’ rights since November 6, 1991. As of October 6, 1997, the Office received 1,158 applications and granted 396 rights.

**COLOMBIA**

**Situation in the Legislative Field**

Plant Variety Protection is governed in Colombia by Decree No. 533 of 1994, as amended, which implements Decision No. 345 of the Junta of the Cartagena Agreement. The Colombian Institute of Agriculture and Livestock (ICA), in its capacity as execution agency, declared the National Register of Protected Varieties open by Resolution No. 1893 of June 29, 1995, and laid down the procedure for the issue of breeders’ certificates.

Protection extends in Colombia to all cultivated varieties of botanical genera and species, provided that the cultivation, possession or use thereof is not prohibited on grounds of human, animal or plant health.

**Cooperation in Examination**

It is planned to conclude agreements on cooperation in examination in particular with Germany, the Netherlands and the United Kingdom.

**Situation in the Administrative Field**

One application was filed in 1995. In 1996, until July 29, the day on which the transitional provision ceased to be applicable, 287 applications were filed; five applications were filed thereafter, bringing the total to 292 in 1996.

In 1997, up to September 30, a total of 21 applications were filed and 159 breeders’ certificates were issued.

From the total of 314 applications, 302 were filed by foreigners and 12 by nationals, the breakdown of species being as follows: rose: 174 (55.5%); carnation: 62 (20%); chrysanthemum: 42 (13.5%); other species: 36 (11.5%). The system is being used in respect of 17 species in total, with ornamental plants being clearly in the lead.

The first Gazette was published in June 1997; it aroused much interest among farmers and producers.

**Situation in the Technical Field**

The Institute currently has two laboratories equipped for variety testing. Tests are under way for two tobacco varieties.

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

Colombia has participated, as one among the 11 members of the Latin-American Integration Association, in the work on the draft Agreement, between a number of mem-

UPOV
ber States of ALADI, on the Harmonization of the Norms and Policies Relating to the Rights of Breeders of Plant Varieties.

Seminars, meetings and conferences were held in the country with a view to promote plant variety protection.

Decision No. 345 of the Junta of the Cartagena Agreement established a Subregional Committee for the Protection of Plant Varieties. The member States have unanimously decided to elect the representative of Colombia as the president of the Committee.

CZECH REPUBLIC

Situation in the Legislative Field


An adjustment of the administrative fees has been proposed, but the amendment of the Act on Administrative Fees has not yet been adopted by Parliament.

A proposal to extend protection to 23 species has been made.

Cooperation in Examination

Cooperation in examination with Hungary, Poland and Slovakia has been based upon a formal agreement. The agreement with Slovenia is under way. Its implementation has been delayed because of the need, arising from budget problems, to reassess the spectrum of species tested in the Czech Republic.

Situation in the Administrative Field

Between January 1 and September 15, 1997, 59 applications were received.

Activities for the Promotion of Plant Variety Protection

The Czech Republic had the honor to host a UPOV Seminar on "The Protection of Plant Varieties Under the UPOV Convention" from March 3 to 6, 1997. Besides the lecturers, 35 participants from 18 countries and 30 participants from the Czech Republic took part in the seminar.

Nine experts from the Russian Federation have undergone a practical training in the implementation of DUS tests in July and August 1997. The training focused on major agricultural crops and vegetables.

Developments in Related Fields of Activities

The Act No. 92/1996 Coll. on Varieties, Seeds and Planting Material has entrusted the Central Institute for Supervision and Testing in Agriculture (UKZUZ) with the preparation of a catalogue of varieties authorized for marketing.

Seed certification was carried out for the first time under that Act this season. The norms and administrative and technical rules in this area have been so designed as to be compatible with European Union legislation.

DENMARK

Cooperation in Examination

It has been planned for some time to revise the agreements on cooperation in examination of plant varieties for distinctness, uniformity and stability concluded with other member States. Due to special circumstances, the matter could not be pursued and is still pending.
Situation in the Administrative Field

In 1996, 53 applications for plant breeder’s rights were received, as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural crops</td>
<td>30</td>
</tr>
<tr>
<td>Ornamentals</td>
<td>23</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53</strong></td>
</tr>
</tbody>
</table>

In 1996, the number of titles of protection issued was 118:

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural crops</td>
<td>42</td>
</tr>
<tr>
<td>Fruit</td>
<td>1</td>
</tr>
<tr>
<td>Vegetables</td>
<td>2</td>
</tr>
<tr>
<td>Ornamentals</td>
<td>73</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>118</strong></td>
</tr>
</tbody>
</table>

In the period from January 1 to August 31, 1997, 28 applications for protection were received and 20 titles of protection were issued.

The number of applications filed in 1996 was some 50% lower than the number for 1995. The reduction is considered to be the result of the introduction of the Community plant variety rights system.

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

Nineteen varieties of *Euphorbia pulcherrima* were tested on behalf of the Community Plant Variety Office in 1996. This number has increased to 30 in 1997.

Development in Related Fields of Activity

Genetically Modified Plants

Agricultural risk assessments were carried out in 1996 for five applications regarding the placing on the market of genetically modified plants in the European Union. The applications concerned maize (three), leaf chicory and oilseed rape. In the period from January 1 to August 31, 1997, risk assessments were carried out on a further six applications relating to oilseed rape (two), fodder beet, carnation, maize and potato.

In addition, a total of 223 notifications concerning experimental releases of genetically modified plants in the European Union were reviewed in 1996. A further 194 notifications were reviewed in the period from January 1 to August 31, 1997.

Genetic Resources

The Plant Directorate, Division of Gene Technology and Variety Testing, was represented at the seventh session of the FAO Commission on Genetic Resources for Food and Agriculture held from May 15 to 23, 1997, in Rome.

FINLAND

Situation in the Legislative Field

Work with a view to adjusting the law to the 1991 Act of the Convention is in progress, and the discussions between the interested parties on farm-saved seed continue in a spirit of mutual understanding.

Cooperation in Examination

The administrative agreement concluded with the Federal Office of Plant Varieties of Germany has been extended. The latter will examine on behalf of the Plant Variety Board of Finland the varieties of *Vaccinium angustifolium* Ait. (common lowbush blueberry) and *Vaccinium brittonii* Porter ex Bickn (black lowbush blueberry).

Situation in the Administrative Field

From September 13, 1996, to September 17, 1997, 22 applications were received and 25 titles were issued.
GERMANY

Situation in the Legislative Field


Cooperation in Examination

It has been agreed with the National Institute for Agricultural Quality Control (OMMI) of Hungary that the BSA would examine fodder beet for the OMMI, that the OMMI would examine poppy for the BSA and that both institutes would exchange test results for gherkin.

A memorandum has been signed with the Seeds and Seedlings Division of the Ministry of Agriculture, Forestry and Fisheries of Japan with a view to exchanging test results for all plant species.

Activities for the Promotion of Plant Variety Protection

Technical training has been given to staff members of the variety offices of the successor States of the former Soviet Union. Several delegations from non-member States have been received at the BSA.

Developments in Related Fields of Activity

National List

A draft law amending the Seed Trade Law, with a view to adapt some of the latter’s provisions to the new Plant Variety Protection Law, is in preparation. There were intensive discussions with the interested circles on the simplification of seed certification.

The Federal Office of Plant Varieties is examining genetically modified varieties, in coordination with the competent authority, for the purposes of plant variety protection and national listing.

Genetic Resources

There were intensive discussions with the interested circles on the creation of a system for the commercialization of “seeds of genetic resources.”

IRELAND

Situation in the Legislative Field

The Memorandum for the Government to amend the Plant Varieties (Proprietary Rights) Act, 1980 was finalized and submitted to Government in December 1996. Legislation is currently being prepared and will be presented to the Dail (Parliament) in November/December 1997. It is anticipated that the Act will become law in 1998.

Situation in the Administrative Field

Following the introduction of the European Community protection scheme in April 1995, the number of applications for national rights dropped considerably. Many existing national rights for “newer varieties” were also converted into Community rights. The situation in 1997 is similar to that in 1996, with relatively few applications for national rights.
Developments in Related Fields of Activity

The Advisory Committee established by the Minister for Agriculture and Food in 1996 continues to function and provided funding for six projects in 1997 related to animal and plant genetic resources.

Situation in the Legislative Field

Preparatory work is being undertaken with a view to making the amendments to the Seeds and Seedlings Law that are necessary for its adaptation to the 1991 Act of the Convention. The Ministry of Agriculture, Forestry and Fisheries has decided to introduce a Bill into the Diet early in 1998.

Cooperation in Examination

The Japanese Government has signed a bilateral agreement with the United Kingdom, which came into force on June 30, 1997, and in which the authorities have agreed to take over each other’s examination reports. It has signed an almost identical bilateral agreement with Germany, which came into force on August 1, 1997. It has also communicated with the Governments of Denmark and the Netherlands for the establishment of agreements on cooperation in examination.

Activities for the Promotion of the Protection of Plant Varieties

The Japanese Government contributed to the UPOV regional seminar on plant variety protection for countries in the Central Asian region which was held in Kyrgyzstan from November 11 to 16, 1996.

A workshop for the countries of the Asia and Pacific region was held in Australia on September 22, 1997, and national seminars will be held in the near future in India and Sri Lanka. Furthermore, a training workshop for Asian countries is to be held in the United Kingdom next year with financial support from the Japanese Government.

NETHERLANDS

Situation in the Legislative Field

The Council of State has advised on a draft general administrative order on the rules concerning the “farmer’s privilege.” The Ministry of Agriculture, Nature Management and Fisheries is preparing a revised draft that is due to be published before the end of this year.

Furthermore, a reduced annual fee (25% of the normal fee) for plant varieties covered both by a Dutch right and a Community right was introduced by a general administrative order of August 27, 1997.

Cooperation in Examination

In 1997, a memorandum to facilitate certain aspects of the administrative procedure between Japan and the Netherlands has been signed by the competent Dutch authority and sent to Japan.

It is expected that the agreement between the Netherlands and South Africa (regarding the species Anthurium Schott, Gerbera Cass. and Lachenalia Jacq. f) will be concluded soon.
Situation in the Administrative Field

In 1996, the number of applications filed for plant breeders' rights showed a further reduction of 15% in relation to 1995: 1,005 applications were received as against 1,183 in 1995. However, the total amount of national and Community applications, filed by Dutch breeders, was about 1,200, which is equivalent to the number of national applications filed in 1995.

Notwithstanding this reduction in national applications, a considerable workload was caused by requests of the Community Plant Variety Office to provide existing reports (in 1996: 157 reports) or to carry out new tests concerning Community applications (in 1995 and 1996: 473 new tests). In 1996, the Board was able to provide 2 interim reports and 75 final reports. Furthermore, 185 requests for Community protection were filed through the Board.

In 1996, the Board entrusted 309 examinations to foreign authorities (25% of the examinations). The number of requests for examination to be conducted in the Netherlands—coming from non-EC countries—showed an increase from 280 in 1995 to 446 in 1996.

In the period from January 1 to September 1, 1997, 493 applications were received.

In 1996, two officers of the Community Plant Variety Office paid a visit to the Board in order to familiarize themselves with the Dutch system for processing large numbers of applications.

Situation in the Technical Field

Following questions whether there can be free competition between research institutes, the study on the feasibility of a system of certification regarding DUS-examinations (both for PBR and marketing purposes) is in progress. It is expected that the results will be available by the end of 1997.

Activities for the Promotion of Plant Variety Protection

The Board received a delegation from Japan and informed them about the implementation of the 1991 Act of the Convention at national level. Delegations from Egypt and the Republic of Korea were received to be informed about the plant breeders' rights system in the Netherlands.

Furthermore, a very successful course on plant variety protection, attended by 13 participants from 12 countries in five continents, was organized in April 1997, in Wageningen, by the Centre for Plant Breeding and Reproduction Research (CPRO-DLO). The course covered the legal, institutional and technical aspects of plant variety protection and touched upon other intellectual property rights systems in plants. Lecturers came from the Ministry of Agriculture, Nature Management and Fisheries, UPOV, the Community Plant Variety Office, the Board and the seeds and planting material industry. Most participants were sponsored by their own organizations; some have been supported by the private sector. The CPRO-DLO is planning similar courses in the near future, to be organized either in Wageningen or in other regions of the world. A number of institutes from abroad have already asked CPRO-DLO for technical assistance in developing plant variety protection systems for those countries.
NEW ZEALAND

Situation in the Legislative Field

During the period covered by this report there has been no real progress towards amending the Plant Variety Rights Act 1987 to bring it into conformity with the 1991 Act of the Convention. The reasons for the lack of progress are:

- Other legislative priorities.
- A commitment given by the Government to Maori in 1994 to consult over proposed intellectual property law changes. The consultation has continued since then without as yet reaching a conclusion.
- A claim under the Treaty of Waitangi of 1840, yet to be heard, in which Maori have inter alia asserted rights of sovereignty over indigenous flora.

The Plant Variety Rights Amendment Regulations 1997 came into force on May 19, 1997. They require that a color photograph be supplied at the time of application for all fruit, ornamental and tree varieties.

Cooperation in Examination

A possible bilateral agreement with Denmark remains under discussion.

At the request of its authorities, a possible agreement with the Chinese Special Administrative Region of Hong Kong is under discussion.

Activities for the Promotion of Plant Variety Protection

The Commissioner of Plant Variety Rights participated in a meeting of a special working group to discuss intellectual property rights issues that was held at the South Pacific Forum Secretariat, Suva, Fiji, from May 5 to 7, 1997. Amongst other matters, the working group discussed the introduction of a system of plant variety protection for the South Pacific islands. The conclusions of the working group were to be presented to the South Pacific Commission and Pacific Regional Agricultural Programme member countries at a meeting of PHALPS (Permanent Heads of Agriculture and Livestock Production Services) and RAB (Regional Advisory Board - comprising the national directors of agriculture).

NORWAY

Situation in the Legislative Field

The Regulations Concerning the Plant Breeder’s Right were revised with effect from July 16, 1997. Section 2 now provides that, in addition to variety owners who are resident or have their registered office in, or are nationals of, a State which is a member of UPOV, variety owners who are resident or have their registered office in, or are nationals of, a State which is a member of the World Trade Organization, may also be granted a plant breeder’s right. In respect of plant varieties of particular significance to Norwegian plant production, or when warranted by other considerations, the Plant Variety Board may grant a plant breeder’s right to an applicant from a country which is not a member State of UPOV or the World Trade Organization.

Cooperation in Examination

Norway received 27 DUS reports from other member States.

Situation in the Administrative Field

From January 1 to December 31, 1996, 26 applications were received and 30 titles were issued. The grants were as follows:
Cherry rootstock 1  Potato 1  Triticale 1  
Oat 1  Rose 11  Turnip rape 1  
Pelargonium 8  Strawberry 1  Wheat 3  
Poinsettia 2  

Ninety-one titles were in force on August 1, 1997.

POLAND

Situation in the Legislative Field

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

Poland has decided to accede to the 1991 Act of the Convention. The accession procedure is still in progress and might be completed by mid-1998.

Situation in the Administrative Field

From January 1 to September 30, 1997, 250 applications were filed and 124 titles of protection issued. At present, there are 706 protected varieties. Details are given below:

<table>
<thead>
<tr>
<th>Group</th>
<th>Applications</th>
<th>Grants</th>
<th>Titles having ceased</th>
<th>Titles in force at 30.09.97</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>domestic</td>
<td>foreign</td>
<td>total</td>
<td>domestic</td>
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<tr>
<td>Agricultural crops</td>
<td>32</td>
<td>19</td>
<td>51</td>
<td>13</td>
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<tr>
<td>Vegetables</td>
<td>2</td>
<td>-</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Ornamental Plants</td>
<td>24</td>
<td>148</td>
<td>202</td>
<td>2</td>
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<tr>
<td>Fruit Trees and Berry Plants</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>4</td>
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<tr>
<td>Total</td>
<td>89</td>
<td>170</td>
<td>259</td>
<td>29</td>
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</table>

Activities for the Promotion of Plant Variety Protection

A training course for 20 specialists from the Russian Federation was organized by COBORU in the period from July 20 to August 3, 1997. The course covered the following subjects: identification of varieties of cultivated plants; organization and carrying out the DUS testing; field and laboratory methods of variety testing.

SLOVAKIA

Situation in the Legislative Field

The amendment (No. 22/1996 of the Collection of Laws) of the Law No. 132/1989 Coll. on the Legal Protection of New Plant Varieties and Animal Breeds was adopted by the National Council of the Slovak Republic on December 19, 1995, and came into force on February 1, 1996. The amendment brought the Slovak legislation into conformity with the 1991 Act of the Convention and also with the

The Law is supplemented by two implementing decrees of the Federal Ministry of Agriculture and Food: No. 133/1989 Coll., which elaborates on some provisions of the Law, and No. 134/1989 Coll., which sets out the list of plant and animal species eligible for protection. New decrees were approved by the Ministry of Agriculture on April 22, 1997, and submitted to the Legislative Council of the Government, which will meet in October 1997.

Upon publication of the decrees in the Collection of Laws, Slovakia will be in a position to accede to the 1991 Act of the Convention.

Situation in the Administrative Field

Since 1990, a total of 546 applications have been filed. In 1997, up to June 30, 14 applications were received (5 domestic and 9 foreign applications).

Situation in the Technical Field

Slovakia participated in the “DUS ring tests” meetings on grasses (Svitavy, Czech Republic) and on sunflower (Budapest, Hungary) in the summer of 1997. Further “DUS ring tests” are being planned. Slovakia will participate in the “ring tests” on electrophore sis in sunflower which will be organized by experts from France and will continue participating in the “ring tests” on cucumber, poppy and red clover.

In May 1997, a seminar was organized in Velka Lomnica by the Association of Seed Traders and Breeders and the Ministry of Agriculture to explain the new implementing decrees.

Application of Biochemical, Molecular and Morphometrical Techniques in Seed and Variety Testing

These techniques are applied in official testing, according to the standard ISTA and the recommended UPOV methods, by the UKSUP’s Laboratory for Biochemical and Genetic Testing, which standardizes the testing methods, develops new methods and coordinates the testing activities in Slovakia. In the area of DNA-markers, it cooperates with the Research Institute for Plant Production in Piešťany (VURV) and in the area of isoenzyme analysis with the breeding company Zcainvest Tmava.

Genetic Resources

The new Genebank has been established. The UKSUP and the Genebank are preparing an agreement on the conservation of the reference collections of protected example varieties.

SOUTH AFRICA

Situation in the Legislative Field

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

The appeal against the granting of a plant breeder’s right to the grape variety ‘Sugraone’ was rejected in the beginning of 1997. Details of the decision appeared in Plant Variety Protection No. 81.

Requests for the extension of protection to further genera and species are still received from time to time. During the year under review, protection has been extended to 12 new genera and species and another four are in the process of being protected.
Cooperation in Examination

A bilateral agreement with the Netherlands is being finalized.

A request for a bilateral agreement has been received from the Chinese Special Administrative Region of Hong Kong.

Situation in the Administrative Field

From October 1, 1996, to August 31, 1997, 122 applications for plant breeders’ rights were received and 141 plant breeders’ rights were granted. As at August 31, 1997, there were 359 applications under consideration and 1,171 plant breeders’ rights in force. Further details are given below.

<table>
<thead>
<tr>
<th>Applications Received</th>
<th>Agricultural Crops</th>
<th>Vegetable Crops</th>
<th>Ornamental Plants</th>
<th>Fruit Crops</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications Received</td>
<td>46</td>
<td>13</td>
<td>40</td>
<td>23</td>
<td>122</td>
</tr>
<tr>
<td>Plant Breeders’ Rights Granted</td>
<td>47</td>
<td>19</td>
<td>60</td>
<td>15</td>
<td>141</td>
</tr>
<tr>
<td>Valid Plant Breeders’ Rights</td>
<td>372</td>
<td>184</td>
<td>432</td>
<td>183</td>
<td>1,171</td>
</tr>
<tr>
<td>Applications Under Consideration</td>
<td>100</td>
<td>19</td>
<td>145</td>
<td>95</td>
<td>359</td>
</tr>
</tbody>
</table>

Activities for the Promotion of Plant Variety Protection

Seminars, workshops and courses have been organized during the year for various groups of people having interests in plant breeders’ rights. The main topics discussed were the changes to the Act and especially the “farmer’s privilege.” Discussions are presently being held amongst various groups and the Government to amend the clause in the Act which deals with the “farmer’s privilege,” especially as far as vegetatively propagated varieties are concerned.

Developments in Related Fields of Activity

The Genetically Modified Organisms Act has been approved by Parliament and ratified by the President of South Africa. Provisional Regulations to the Act have already been drafted.

The South African Committee for Genetic Experimentation (SAGENE) is currently responsible for the provision of control measures and risk analyses in cooperation with the National Department of Agriculture and Health. SAGENE is a national advisory body consisting of private citizens appointed, nominated or invited to serve on a voluntary basis by virtue of their affiliations, skills or experience.

There has been a steady increase in GMO-related work over the past six years (from one to four trials per year in the early 1990’s to 10 in 1996). The trials concerned all agriculturally related plants with only one medical application. This steady increase is expected to continue with more plant applications, as well as more medical/pharmaceutical applications in the years to come.

The first three genetically modified varieties have just been released in South Africa.
SWEDEN

Situation in the Legislative Field


The new law makes it possible for Sweden to ratify the 1991 Act of the Convention. Government has been empowered to decide on a suitable ratification date.

Varieties of all genera and species are now eligible for protection. The period of protection has been extended to 25 years for all species except potato, trees and grapevine, for which the period is 30 years.

The provisions under Regulation No. 2100/94 of the Council of the European Union on the use of farm-saved seed have been incorporated into the new Act. An agreement has been concluded between the farmers’ organization and the seed industry in respect of cereals, field bean, field pea, linseed, oilseed rape and turnip rape. On average, the royalty level is 54 per cent of the normal license fee.

The fees were increased on January 1, 1997, to the following amounts (SEK): application fee: 2,000 or 2,500; renewal fee: 2,000; annotation fee: 200. Renewal fees equal to 50% of the existing rates have been introduced for varieties protected under a national right and subsequently granted a Community plant variety right.

Situation in the Administrative Field

In 1996, 44 applications for plant breeders’ rights were received (38 for agricultural crops and six for ornamentals); the number of titles of protection issued was 57 (30 for agricultural crops, four for fruit, 19 for ornamentals and four for trees).

In the period from January 1 to September 15, 1997, 50 applications for protection were received and 24 titles of protection were issued. The annual average over the five preceding years is 113 applications. The reduction, which is particularly important for ornamentals, is in large part due to the introduction of the Community plant variety rights system.

Situation in the Technical Field – Genetically Modified Organisms

In 1996, the official DUS testing has been finalized for the first genetically modified plant variety, a potato variety with modified starch. In 1997, applications have been submitted for another six genetically modified potato varieties.

UKRAINE

Situation in the Legislative Field

In July 1997, the draft of the new law on the protection of plant varieties was finalized and submitted to the Supreme Soviet of Ukraine for adoption. The new law will conform with the 1991 Act of the Convention. All genera and species will be eligible for protection.

Situation in the Administrative Field

During 1996, 8 applications for plant breeders’ rights have been received (wheat: 7; sunflower: 1).

Activities for the Promotion of Plant Variety Protection

Representatives of the State Commission for Plant Variety Testing and Protection participated in the following:
(a) Regional Seminar on Plant Variety Protection Under the UPOV Convention (Prague, March 1997);

(b) practical training on the protection and registration of plant varieties organized for 21 specialists by the Groupe­ment national interprofessionnel des semences et plants (GNIS) (France, April-October 1997);

(c) study program organized for four experts by the United States Department of Agriculture (April 1997);

(d) working group on the official text in the Russian language of the 1991 Act of the Convention (Geneva, April 1997);

(e) Congress of the International Federation of the Seed Trade (FIS) (Sweden, May 1997).

Developments in Other Fields of Activity

The Register of varieties authorized for sale in Ukraine was published in 1997.

Ukraine has applied to the OECD for joining the Schemes for the Varietal Certification of Seed Moving in International Trade and to the International Seed Testing Association (ISTA).

UNITED KINGDOM

Situation in the Legislative Field

A Plant Varieties Bill will shortly complete its progress through Parliament, thereby bringing the United Kingdom law fully into line with the 1991 UPOV Convention.

There was an increase in fees for plant breeders' rights with effect from April 1, 1997, in line with inflation rates.

Cooperation in Examination

Discussions continue with Norway on a bilateral agreement under which the United Kingdom would test Campanula, chrysanthemum, holly and apple varieties on behalf of the Norwegian authorities.

The Chinese Special Administrative Region of Hong Kong has also requested a bilateral agreement.

Situation in the Administrative Field

During the year ended March 31, 1997, 256 applications were received (13.2% decrease over previous year), 264 grants were issued (27.3% decrease), 413 grants were terminated (55.3% increase) and 1,854 grants were renewed (2.6% decrease), out of which 59 were renewed as suspended rights whilst a Community right operates.

Community Plant Variety Rights

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

The British Society of Plant Breeders and the farming organizations have agreed royalty levels on the use of farm-saved seed for Community-protected varieties.

Activities for the Promotion of Plant Variety Protection

The United Kingdom received visitors from Bulgaria, India, the Republic of Korea, the Republic of Moldova, the Russian Federation, Turkmenistan and Ukraine wishing to learn more about the United Kingdom and UPOV systems of plant variety protection.
The Controller of Plant Variety Rights was a speaker at the UPOV national seminars held in Bangladesh, India and Viet Nam during September 1996.

UNITED STATES OF AMERICA

Situation in the Legislative Field

An amendment to the Plant Variety Protection Act, which waived the eligibility restriction for varieties of potatoes that have been marketed for more than four years in another country, expired on April 4, 1997. The provision was implemented in 1996 because tuber-propagated crops had not previously been eligible for protection. Less than ten applications were received under this provision.

The Administration awaits the advice and consent of the Senate for ratification of the 1991 Act of the Convention. Action is not expected until next year.

The Plant Variety Protection Act and its Regulations and Rules of Practice were reprinted in July 1997. Copies are available from the Plant Variety Protection Office (PVPO).

Situation in the Administrative Field

In July of 1997, the Patent and Trademark Office issued its 10,000th plant patent. A presentation ceremony was held at the Botanical Garden in Washington, D.C.

The Plant Variety Protection Office (PVPO) received over 400 applications in fiscal year 1997. The number of applications has increased by 25% since the law was amended to conform to the 1991 Act of the Convention.

On June 9, 1997, Mr. Lon Hatamiya, Administrator of the Agricultural Marketing Service of the United States Department of Agriculture, met with the Vice Secretary-General of UPOV.

Activities for the Promotion of Plant Variety Protection

From June 4 to 6, 1997, national and foreign representatives of public and private-sector plant breeding, seed industry, variety examiners and related legal professions participated in the “Intellectual Property Rights III—Global Genetic Resources: Access and Property Rights” Workshop sponsored by the American Society of Horticultural Science and the Crop Science Society of America. Participants reviewed factors affecting global access to plant genetic resources, especially the current types of intellectual property rights for plant material and the impact of recent international treaties and agreements. All participants attended a plenary session on June 4 and were provided additional background material. On June 5 and 6, selected working groups discussed one of five main topics: (1) plant genetic resources for food and agriculture; (2) harmonization and standardization of laws; (3) feasibility and legality of tracking plant genetic resources; (4) education; and (5) benefit sharing and farmers' rights. Each working group developed a summary of its discussions and recommendations, which will be published as part of the proceedings of the conference.

The Plant Variety Protection Office has hosted various international delegations to inform them about the national system of plant breeders’ rights [China (November 1996); Ukraine (January 1997); Kazakhstan, Kyrgyzstan and Uzbekistan (February 1997); Kenya and Morocco (August 1997); Asian and Pacific Seed Association (September 1997)].
URUGUAY

Situation in the Legislative Field

No initiative has been taken so far on the adaptation of national legislation to the 1991 Act of the Convention. Protection now applies to 24 species belonging to 18 genera, and an extension to four further species is planned. There is a need to, and an interest in, applying the protection system to fruit species. This requires initial and on-the-job training of technical staff and, in turn, the assistance of member States. The necessary financial means have been found and the project has entered the implementation phase.

Cooperation in Examination

No initiative has been taken so far, but cooperation is necessary, especially for fruit species.

Situation in the Administrative Field

At the end of June of this year, the National Seed Institute (INASE) started its operations.

INASE is a legal entity under public law, that is not under State control. The new law maintains the competence of the Executive over the definition of the national seed policy on the basis of advice and assistance provided by INASE.

The law has been published in Plant Variety Protection No. 82.

Developments in Related Fields of Activities

Work continues on the implementation of special regulations on the release of genetically modified organisms. Risk analyses are being carried out, based upon the national rules governing phytosanitary matters and national listing, with due regard also to the relevant international criteria.

Tests and seed multiplication under strict security measures have been authorized, and also the release of a transgenic soybean variety and material thereof. Field tests are being conducted with soya beans and eucalyptus. There is growing interest for transgenic maize.

The authorities participate actively in all international and regional activities relating to the conservation and the use of, and access to, plant genetic resources.

Non-member-States

ESTONIA

Estonia wishes to become a member of UPOV as soon as possible after adoption of the new law.

Cooperation in Examination

Estonia is exploring the possibilities for cooperation in examination in view of the large number of species that are eligible for protection and the limited means for maintaining reference collections.
Estonia, Latvia and Lithuania are trying to organize a cooperative system; the negotiations to that effect are under way.

Cooperation has been established with Finland.

Activities for the Promotion of Plant Variety Protection

Estonia wishes to acknowledge the assistance received from Denmark, Finland and Germany through training courses.

Developments in Related Fields of Activities

Estonia has a national listing system conforming to the system in place in other European countries. The seed certification system has been completed, with post-control being carried out since 1995.

The Baltic Seed Bank project is continuing, and a working group is preparing a database.

MOROCCO

Situation in the Legislative Field


The law was examined by the Council of UPOV at its extraordinary session of April 29, 1997. The Council gave a positive advice on the conformity of the law with the provisions of the 1991 Act of the Convention.

The implementing regulations are at their final stage of preparation and will shortly be submitted for approval.

Situation in the Administrative and Technical Fields

The infrastructure for the implementation of the law is being put in place, with the acquisition of office supplies and computers, the setting-up of a local computer network, the drawing-up of the application and other forms, and the training of five senior officers in the United States of America, from July 28 to August 13, 1997, in intellectual property, bio-security and plant variety protection.

Activities for the Promotion of Plant Variety Protection

With a view to promoting the law on the protection of new plant varieties, the Ministry of Agriculture, Equipment and Environment organized in Rabat, on March 24 and 25, 1997, in cooperation with USAID, the Michigan State University and the Agricultural Biotechnology for Sustainable Productivity Project (ABSP) of the United States of America, a colloquium on plant variety protection. A colloquium on biosecurity was organized on March 26. Over 250 persons attended these meetings.

SLOVENIA

Situation in the Legislative Field

A draft of the new Plant Variety Protection Law has been prepared, on the basis of the UPOV Model Law, to conform with the 1991 Act of the Convention. It is now being finalized by the Ministry of Agriculture, Forestry and Food and is expected to be brought before Parliament in 1998.

Cooperation in Examination

An agreement concerning the exchange of DUS reports has been signed in 1997 with
the United Kingdom authorities. Similar agreements are in preparation with Austria, France and the Netherlands. Cooperation is in place with the Czech Republic, Hungary and Slovakia.

**Situation in the Administrative Field**

It is expected that the first plant breeders rights will be granted soon (two for potato and two for vegetable varieties).

**Developments in Related Fields of Activity**

The National Variety List was published in August 1997.
# PLANT VARIETY PROTECTION STATISTICS

for the period 1991-1996

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Applications filed by:</th>
<th>Titles issued to:</th>
<th>Titles having ceased to be in force in reference year</th>
<th>Titles in force at end of reference year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Residents</td>
<td>Non-residents</td>
<td>Total</td>
<td>Residents</td>
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<tr>
<td>AR</td>
<td>1991</td>
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* As amended in their notification.
# PLANT VARIETY PROTECTION STATISTICS

for the period 1991-1996

<table>
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<th>State</th>
<th>Year</th>
<th>Applications filed by:</th>
<th>Titles issued to:</th>
<th>Titles having ceased to be in force in reference year</th>
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* As amended in their notification.
## PLANT VARIETY PROTECTION STATISTICS

for the period 1991-1996

<table>
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A = Applications and protection certificates for sexually reproduced plant varieties under Plant Variety Protection Act.
STATES PARTY TO THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS


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(Total: 37 States)

2. With a declaration that the Convention of 1961, the Additional Act of 1972, the 1978 Act and the 1991 Act are not applicable to Greenland and the Faroe Islands.
3. With a declaration that the 1978 Act applies to the territory of the French Republic, including the Overseas Departments and Territories.
5. With a declaration that the Convention of 1961 and the Additional Act of 1972 apply to the entire territory of Spain.
6. With a declaration that the Convention of 1961, the Additional Act of 1972, the 1978 Act and the 1991 Act are not applicable to Greenland and the Faroe Islands.
ADDRESSES OF PLANT VARIETY PROTECTION/offices in UPOV MEMBER STATES

ARGENTINA
Instituto Nacional de Semillas
Ministerio de Economia
Secretaria de Agricultura, Ganaderia y Pesca
Avda. Paseo Colón 922 - 3. Piso
1063 Buenos Aires
Telephone (54-1) 362 39 88
Telefax (54-1) 349 24 17

AUSTRALIA
Registrar
Plant Breeders’ Rights Office
P.O. Box 858
Canberra, A.C.T. 2601
Telephone (61-6) 272 3888
Telex 61 289
Telefax (61-6) 272 36 50

AUSTRIA
Bundesamt und Forschungszentrum für Landwirtschaft
Sortenschutzamt
Postfach 400
Spargelfeldstrasse 191
A-1226 Wien
Telephone (43-1) 288 16 20 02
Telex 135 259 banst a
Telefax (43-1) 288 16 42 11

BELGIUM
Ministère des classes moyennes et de l’agriculture
Service de la protection des obtentions végétales et des catalogues nationaux
Tour WTC/3 - 6ème étage
Avenue Simon Bolivar 30
B-1000 Bruxelles
Telephone (32-2) 208 37 28
Telephone (32-2) 208 37 22
Telefax (32-2) 208 37 05

BULGARIA
Patent Office of the Republic of Bulgaria
52 B, Dr. G.M. Dimitrov Blvd.
1113 Sofia
Telephone (359-2) 710 152, 717 044
Telefax (359-2) 708 325

CANADA
The Commissioner
Plant Breeders’ Rights Office
Canadian Food Inspection Agency (CFIA)
3rd Floor, East Court
Camelot Court
59 Camelot Drive
Nepean, Ontario K1A 0Y9
Telephone (613) 225-2342
Telefax (613) 228-6629

CHILE
Ministerio de Agricultura
Servicio Agrícola y Ganadero
Departamento de Semillas
Casilla 1167-21
Santiago de Chile
Telephone (56-2) 6962996 + 6982244
Telefax (56-2) 696 64 80

COLOMBIA
Instituto Colombiano Agropecuario (I.C.A.)
División de Semillas
Calle 37 No. 8-43
Santa Fe de Bogotá
Telephone (57-1) 232 4697, 232 8643
Telefax (57-1) 232 4695
CZECH REPUBLIC

Ministry of Agriculture of the Czech Republic
Department of European Integration
Těšnov 17
117 05 Prague 1
Telephone (420) 2-2181 2474
Telefax (420) 2-2181 2970

DENMARK

Plantenyhedsnaevnet
Teglaerkvej 10
Tystofte
DK-4230 Skælkoer
Telephone (45) 53 59 61 41
Telefax (45) 53 59 01 66

ECUADOR

División de Insumos
Ministerio de Agricultura y Ganadería
Avenida Eloy Alfaro y Amazonas
Quito
Telephone (593-2) 543 763
Telefax (593-2) 504 833

FINLAND

Plant Variety Board
Plant Variety Rights Office
Box 232
SF-00170 Helsinki
Telephone (358) 0-160 3316
Telefax (358) 0-160 2443

FRANCE

Comité de la protection des obtentions végétales
11, rue Jean Nicot
F-75007 Paris
Telephone (33-1) 42 75 93 14
Telex 250 648
Telefax (33-1) 42 75 94 25

GERMANY

Postal address:
Bundessortenamt
Postfach 61 04 40
D-30604 Hannover

Street address:
Bundessortenamt
Osterfelldamm 80
30627 Hannover
Telephone (49-511) 95 66-5
Telex 921 109 bsaha d
Telefax (49-511) 56 33 62

HUNGARY

Hungarian Patent Office
Magyar Szabadalmi Hivatal
Garibaldi-u.2 - B.P. 552
H-1370 Budapest
Telephone (36-1) 112 44 00
Telex 224 700 oth h
Telefax (36-1) 131 25 96

IRELAND

Department of Agriculture and Food
Agriculture House 6W
Kildare Street
Dublin 2
Telephone (353) 1-607 2000, 1-607 2079 (direct)
Telefax (353) 1-661 62 63, 1-678 2514,
1-662 01 98

ISRAEL

Plant Breeders’ Rights Council
The Volcani Center
P.O. Box 6
Bet-Dagan 50 250
Telephone (972) 3-968 36 69
Telex 381 476 arov c il
Telefax (972) 3-968 34 92
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<td><strong>ITALY</strong></td>
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<td>Telephone (39-6) 47 05 1</td>
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<td>Telephone (81-3) 35 91 05 24</td>
<td>Telefax (81-3) 35 02 65 72</td>
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Not yet member of UPOV

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AUSTRIA

Federal Law on the Protection of Plant Varieties\(^1\)\(^2\) (Variety Protection Law)
as amended by the Federal Law BGBI.I No. 72/1997

PART I
GENERAL

Section 1
Definitions

(1) For the purposes of this Federal Law:

1. “Species” shall mean species of plants and their groupings and subdivisions, including those characterized by a specific system of propagation or a specific final use,

2. “Variety” shall mean a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be

   - defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

   - distinguished from any other plant grouping by the expression of at least one of the said characteristics and

   - considered as a unit with regard to its suitability for being propagated unchanged;

3. “Propagating material” shall mean seed, plants and parts of plants, intended for the production of plants or for other growing,

4. “Marketing” shall mean announcing, advertising, offering, placing on sale, selling or any other form of cession where such activities are performed commercially,

5. “Related species” shall mean species within a genus or of related genera in which the same or a similar variety denomination can lead to confusion in trade and which are specified in an ordinance under subsection (2), and


(2) The Federal Minister for Agriculture and Forestry shall specify the related species (subsection (1), item 5) by ordinance.

Section 2
Material Scope of Application

(1) The grant of variety protection may be claimed for varieties of the following species:

1. Wheat (Triticum aestivum)
2. Durum Wheat (Triticum durum)
3. Barley (Hordeum vulgare)
4. Oats (Avena sativa)
5. Rye (Secale cereale)
6. Maize (Zea mays)
7. Potato (Solanum tuberosum)
8. Sugar beet (Beta vulgaris subsp. vulgaris var. altissima)
9. Sweet pepper (Capsicum annuum)
10. Radish (Raphanus sativus)
11. Poplar (Populus sp.)
12. Willow (Salix sp.)
13. Grapevine (Vitis sp.)

(2) The Federal Minister for Agriculture and Forestry shall declare further species to be eligible for protection, by ordinance, if there exists the possibility of carrying out the necessary variety examination (Section 23) and the need for commercial production or marketing of varieties exists in Austria.

Section 3
Right to File Applications

(1) The person having entitlement to the variety (Section 4(1)) may file an application for protection of the variety with the Variety Protection Office if he belongs to one of the following categories of persons:

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\(^1\) Consolidated text prepared by the Office of the Union
\(^2\) Translated by the Office of the Union
1. citizens of an EEA State,

2. natural and legal persons, unincorporated commercial law companies and trading companies having their place of residence or place of business in an EEA State,

3. natural and legal persons, unincorporated commercial law companies and trading companies having their place of residence or place of business in a Union State as also nationals of a Union State, if such Union State affords variety protection or an equivalent protective right to varieties of the same species and,

4. natural and legal persons, unincorporated commercial law companies and trading companies if, in the States to which they belong or in which they have their place of residence or place of business, Austrian citizens may obtain variety protection or an equivalent right for varieties of the same species and the fact that this condition is met has been established by ordinance of the Federal Minister for Agriculture and Forestry.

(2) A person who has neither place of residence nor place of business in an EEA State may only assert rights under this Federal Law before the Variety Protection Office or before the Federal Minister for Agriculture and Forestry through a representative with powers of attorney and before the Nullity Section of the Patent Office or before the Supreme Patent and Trademark Chamber through an attorney-at-law or a patent attorney. A representative who is not an attorney-at-law or patent attorney must have his place of residence in Austria. Patent attorneys and attorneys-at-law shall be subject to the regulations governing their profession. The powers of attorney shall entitle the representative to assert any rights under this Federal Law before those authorities; any restriction of the powers of attorney shall be without effect. The powers of attorney shall be submitted in the original or as a certified copy.

Section 4

Entitled Persons

(1) The person who has bred or discovered and developed a variety (original breeder) or his successor in title may claim the grant of variety protection. If more than one person has discovered or bred the variety jointly, the claim shall belong to such persons jointly. If more than one person has discovered or bred the variety independently, Section 20(4) shall be of application.

(2) Save proof to the contrary, the person who first files an application for the variety shall be deemed to be the entitled person.

(3) Variety protection may be assigned. It shall not revert to the State.

(4) Sections 6 to 19 of the Patent Law 1970, BGBl. Nr. 259, shall apply mutatis mutandis to varieties discovered or bred by employees.

Section 5

Variety Requirements

(1) Variety protection shall be granted by the Variety Protection Office for varieties that are distinct, homogeneous, stable and new.

(2) A variety shall be deemed to be distinct if its individuals are clearly distinguishable, as a whole or with respect to a specific distribution, in the expression of at least one characteristic, from the individuals of all other varieties that are a matter of common knowledge on the filing date of the application. The existence of another variety shall be a matter of common knowledge, in particular, if, on the day of the application,

(a) it is already entered in an official list of varieties,

(b) its entry in an official list of varieties had been applied for, subject to subsequent acceptance of the application, or

(c) individuals of the variety have been propagated for commercial purposes or individuals, other plant parts or harvested material of the variety and products directly obtained therefrom have already been offered, supplied to others, used, imported or exported.

(3) A variety shall be deemed to be homogeneous if its individuals, as a whole or with respect to a given distribution, are sufficiently uniform in the expression of each relevant characteristic, notwithstanding a small number of variations, taking into account the particular features of its propagation.

(4) A variety shall be deemed to be stable if its individuals, as a whole or with respect to a given distribution, correspond in each relevant characteristic to the expression that is characteristic of the variety after each propagation or each propagation cycle.

(5) A variety shall be deemed to be new if, on the filing date of the application, individuals of the variety have not yet been supplied to others for commercial purposes or, if so, only within the following periods of time:

(a) one year in Austria

(b) four years, or six years in the case of vine and trees, abroad.

Section 6

Effect of Variety Protection

(1) Variety protection shall have the effect that the owner of variety protection alone shall be entitled to
1. market propagating material of the protected variety or produce it for such purpose or

2. utilize plants or parts of plants of the protected variety, normally marketed for purposes other than those of propagation, for the commercial production of ornamental plants or cut flowers or

3. utilize propagating material of the protected variety for the commercial production of propagating material of another variety where propagating material of the protected variety must be used repeatedly to produce the propagating material of the other variety or

4. introduce propagating material of the protected variety into another State in which natural and legal persons and unincorporated commercial law companies having their place of residence or place of business in an EEA State and citizens of an EEA State are not granted variety protection or an equivalent protective right for varieties of the same species.

(2) The use of propagating material of a protected variety as initial material for creating a new variety and the marketing thereof shall not require the consent of the owner of variety protection, subject to subsection (1), item 3.

(3) Variety protection shall not extend to the conditioning and use of propagating material for

1. private and non-commercial breeding,
2. science and research,
3. cultivation and mutual agricultural aid,

when the propagating material originates from the own cultivation.

Section 7
Obligations of the Owner of Variety Protection

(1) The owner of variety protection shall be required to take the necessary measures to ensure the continued existence of the variety.

(2) The owner of variety protection shall be required, at the request of the Variety Protection Office, to provide free of charge to that Office the propagating material of the variety required for examination of the protected variety and also propagating material of hereditary components used in producing the variety and to provide any information required to assess the continued existence of the variety.

(3) The owner of variety protection shall enable the Variety Protection Office to verify that the continued existence of the variety is ensured and shall provide all necessary information.

Section 8
Duration and Termination of Variety Protection

(1) The duration of protection shall be 30 years in the case of grapevine and trees, including their rootstocks, and in the case of hops and 25 years in the case of all other species as from grant of variety protection.

(2) Variety protection shall terminate

1. on renunciation of protection by the owner of variety protection
2. on expiry of the term of protection,
3. on entry into force of revocation (Section 9),
4. on entry into force of a declaration of lack of title where no transfer takes place (Section 11(5)).

(3) Termination of variety protection as a result of renunciation shall take effect at the beginning of the day following communication of renunciation to the Variety Protection Office.

Section 9
Revocation of Variety Protection

Variety protection shall be revoked by the Variety Protection Office if the owner of variety protection, despite a written reminder and the grant of a reasonable additional time limit,

1. does not satisfy his obligations under Section 7
2. does not pay the required annual fee.

Section 10
Annulment of Variety Protection

Variety protection shall be annulled on request by the Nullity Section of the Patent Office if it transpires that the variety was not distinct (Section 5(2)) or was not new (Section 5(5)). The final declaration of nullity shall have retroactive effect as from the day of grant of variety protection.

Section 11
Declaration of Lack of Title and Ex Officio Transfer of Variety Protection

(1) Variety protection shall be withdrawn by the Nullity Section of the Patent Office, on request, from the owner of variety protection if it is proved that he was not entitled thereto (Section 4(1)).
(2) Together with the request for declaration of lack of title to variety protection, the petitioner may request the Nullity Section of the Patent Office to transfer the variety protection to himself ex officio.

(3) The right to declaration of lack of title and ex officio transfer of variety protection shall belong exclusively to the person who has the right to grant of variety protection and it shall lapse in respect of a bona fide owner of variety protection within 3 years of the time of entry in the Variety Protection Register.

(4) Any reciprocal claims to damages or reimbursement deriving from the declaration of lack of title and the transfer shall be assessed in accordance with civil law and asserted in civil proceedings.

(5) Where no transfer takes place, variety protection shall expire with the entry into force of the declaration of lack of title.

(6) Transfer shall become effective on entry in the Variety Protection Register.

Section 12

Voluntary Licenses

The owner of variety protection shall be entitled to permit other persons to use the protected variety (Section 6).

Section 13

Compulsory Licenses

(1) Where it appears justified to ensure that domestic plant production is adequately supplied with suitable propagating material and it is economically acceptable for the owner of variety protection, permission shall be granted by the Nullity Section of the Patent Office on request to commercially produce, market or repeatedly use in the production of another variety propagating material of a protected variety without the consent of the owner of variety protection. Permission shall only be granted where the applicant convincingly shows that the objectives of the compulsory license can be attained.

(2) The compulsory license shall be restricted or withdrawn by the Nullity Section of the Patent Office, on a request from the owner of variety protection, where the grounds for its grant no longer apply.

(3) The entitled person may renounce the compulsory license at any time.

(4) The owner of variety protection shall be required to make propagating material available to the person entitled under the compulsory license, to at least the extent necessary for the maintenance breeding that corresponds to the scope of the compulsory license.

(5) The owner of variety protection shall have a claim to appropriate remuneration from the person entitled under the compulsory licence. Both this remuneration and the necessary guarantee, where appropriate, shall be determined on request by the Nullity Section of the Patent Office.

Section 14

Variety Denomination

(1) A variety denomination shall be registered by the Variety Protection Office for each protected variety.

(2) A variety denomination may consist of three identifying elements at most (words, letters or groups of letters, numbers), but not exclusively of numbers.

(3) Denominations shall be excluded from registration where they

1. are similar to a denomination that is used or has been used, in Austria or in any other Union State, for a variety belonging to the same species as the filed variety or to a related species (Section 1(2)), unless the earlier variety is no longer protected and is no longer used and its denomination has acquired no special significance,

2. may cause offense,

3. are likely to mislead, particularly as regards identity, origin, properties or value of the variety,

4. consist exclusively of statements as to their nature or of names of plants,

5. contain the words "variety" or "hybrid."

(4) Where the variety has already been filed or protected in another Union State, only the variety denomination used in such state may be registered by the Variety Protection Office, except where excluded under subsections (2) and (3).

(5) Once the variety has been entered in the Variety Protection Register, the owner of variety protection may not assert, in respect of the variety concerned, any rights he may have in a mark that is similar to the variety denomination.

(6) The variety denomination shall be cancelled ex officio by the Variety Protection Office if it transpires that the denomination does not satisfy subsection (2), subsection (3), items 1-5, or subsection (4) or if the owner of variety protection himself requests cancellation and is able to prove a legitimate interest. A variety denomination shall further be cancelled by the Variety Protection Office on the basis of a final decision given as the result of a cancellation request under Section 16. In such cases, the Variety Protection Office shall invite the owner of variety protection to submit a new variety de-
Propagating material of a variety may only be marketed during the term of variety protection under the variety denomination registered with the Variety Protection Office. Where no variety denomination is registered for the protected variety, propagating material of the variety may not be marketed. Even after the expiry of variety protection, propagating material of the variety may only be marketed under the registered variety denomination.

Section 16
Request for Cancellation of a Variety Denomination

(1) The cancellation of a variety denomination may be requested from the Nullity Section of the Patent Office:

1. by the owner of a trademark for the same type of goods or services that was filed before registration of the variety denomination and which is still lawfully valid (Section 14 of the Trademark Protection Law 1970),

2. by any person who shows that an unregistered mark used by him for the same type of goods or services was already recognized by the trade circles concerned as an identification for the goods or services of his undertaking at the time of registration of a similar variety denomination (Section 14 of the Trademark Protection Law 1970) or

3. by an entrepreneur if his name, his trade name or the particular designation of his undertaking or a designation similar to one of such designations (Section 14 of the Trademark Protection Law 1970) has been registered as a variety denomination or as an element of such denomination and if the use of the variety denomination is likely to lead to confusion in commercial transactions with one of the above-mentioned signs of the petitioner's undertaking.

(2) Cancellation under subsection 1, item 2, must be requested from the Nullity Section of the Patent Office within three years of entry of the variety denomination in the Variety Protection Register, unless the mark was known to the owner of variety protection at the time of entry in the Variety Protection Register as identification of the goods or services of the petitioner's undertaking or should have been known to him.

(3) Once variety protection has expired, cancellation proceedings shall be conducted unilaterally by the Nullity Section of the Patent Office.

PART II
AUTHORITIES

Section 17
Variety Protection Office

The Federal Institute of Plant Production (Section 21 of the Federal Law on Federal Agricultural Institutes, BGBl Nr. 230/1982) shall act as the Variety Protection Office.

Section 18
Federal Minister for Agriculture and Forestry

Appeals from decisions taken by the Variety Protection Office shall be heard by the Federal Minister for Agriculture and Forestry. Where it is necessary to take expert evidence, the Federal Minister for Agriculture and Forestry may also call on institutes and other offices as experts.

Section 19
Nullity Section of the Patent Office; Supreme Patent and Trademark Chamber

(1) Appeals from final decisions of the Nullity Section of the Patent Office shall be heard by the Supreme Patent and Trademark Chamber. The Patent Law 1970 shall apply to proceedings before the Nullity Section of the Patent Office and before the Supreme Patent and Trademark Chamber. The provisions on fees in Section 168(1), items 3 and 4, of the Patent Law 1970 shall likewise apply.

(2) On a proposal by the Federal Minister for Agriculture and Forestry, in agreement with the Federal Minister for Economic Affairs, the Federal President shall additionally appoint such number of non-standing technically qualified members of the Patent Office and such number of technically qualified and legally qualified members of the Supreme Patent and Trademark Chamber as are necessary to assume the duties under this Federal Law. Only persons with qualifications in variety protection matters may be appointed.

(3) The composition of the Chamber in proceedings under Sections 10, 11 and 13 shall be governed by the Patent Law 1970, with the proviso that each Chamber of the Nullity Section of the Patent Office shall comprise a technically qualified member and each Chamber of the Supreme Patent and Trademark Chamber shall comprise a legally qualified and a technically qualified member ap-
pointed on the proposal of the Federal Minister for Agriculture and Forestry, in agreement with the Federal Minister for Economic Affairs. The composition in proceedings under Section 16 shall be governed by the Trademark Protection Law 1970.

**PART III**

**PROCEDURE**

Section 20

**Variety Application and Communication of the Variety Denomination**

(1) An application for variety protection in respect of the variety shall be filed with the Variety Protection Office.

(2) The application shall contain:

1. the name and address of the applicant for the variety and of his representative, where appropriate,
2. the species and, where appropriate, the type of use, the propagating system and a statement that certain hereditary components are used in each propagating cycle to produce the variety,
3. the provisional designation (subsection (6)) or the variety denomination (Section 14) and
4. the category of persons to which the applicant belongs in accordance with Section 3(1).

(3) The application shall be accompanied by:

1. a description of the characteristics that determine the distinctness of the variety,
2. evidence of the statements made under subsection (2), item 4, and
3. the powers of attorney (Section 3(2)), where the applicant acts through a representative.

(4) Where a variety is filed with the Variety Protection Office by more than one person, independently of each other, the earlier application shall take precedence over the subsequent applications. The day of receipt of the application at the Variety Protection Office shall be decisive. Where more than one application is received on the same day, they shall all have the same precedence.

(5) By derogation from the second sentence of subsection (4), where the applicant has already filed an application for variety protection for the variety in another Union State, the Variety Protection Office shall grant him precedence corresponding to the date of that application (priority right). However, the priority right shall only be acquired if:

1. it is explicitly claimed in the application filed with the Variety Protection Office,
2. at the time of assertion, not more than one year has passed since the application in the other Union State and
3. three months, at the latest, after assertion, proof is furnished of the earlier application by submitting copies of the application documents; the copies must have been certified by the foreign application authority.

(6) The provisional designation shall only be valid for the variety protection granting procedure. Section 14(3), items 2 and 3, shall be of application. Where the result of the variety examination (Section 23) is positive, the Variety Protection Office shall invite the applicant, in the case of a variety for which only a provisional designation has been given, to communicate a variety denomination within the meaning of Section 14 and shall set a reasonable time limit. Where the applicant does not comply with this invitation, the application for the variety shall be rejected by a decision of the Variety Protection Office.

(7) Where the provisional designation or variety denomination is not acceptable, the applicant shall be invited by the Variety Protection Office to communicate an acceptable designation or denomination within a reasonable period of time. Where no communication is made within the time limit, the application for the variety shall be rejected by a decision of the Variety Protection Office.

(8) The order of precedence of a variety denomination shall be governed by subsection (4), *mutatis mutandis*, with the proviso that in the event of communications of variety denominations for varieties of related species having the same precedence, lots shall be drawn by the Variety Protection Office to decide for whom the communicated variety denomination is to be registered should no agreement be achieved.

Section 21

**Plant Variety and Seeds Gazette**

(1) The Variety Protection Office shall publish a Plant Variety and Seeds Gazette to appear at least quarterly.

(2) In addition to the communications governed by Section 22 and to the publications required by Section 6 of the Seeds Law 1997, the Variety Protection Office shall communicate the withdrawal, refusal and rejection of published variety applications, the grant, termination, nullity and lack of title of variety protection, changes in the identity of the applicant or the owner of variety protection and the publication, change or cancellation of variety denominations and ordinances issued under this Law—notwithstanding their publication in the Federal Law Gazette—in the Plant Variety and Seeds Gazette.

(3) Additionally, decisions of courts and administrative authorities and information of general interest concerning variety protection matters may also be published.
Section 22

Publication of Applications

(1) The Variety Protection Office shall publish in the Plant Variety and Seeds Gazette, on the basis of the particulars provided by the applicant, those applications for varieties that are not automatically to be refused or rejected. The publication shall contain the species, the variety denomination or provisional designation (Section 20(6)), the date of the application, a claim to priority, where appropriate, the name and address of the variety applicant, and the file number of the application.

(2) The Variety Protection Office shall permit any person, on request, to inspect the application documents and the test results and shall allow the growing trials to be viewed (Section 23(1)). Access shall not be afforded to documents in accordance with Section 20(3), item 2, and to data on the hereditary components in the case of varieties whose plants are produced by crossing specific hereditary components.

Section 23

Variety Examination

(1) The Variety Protection Office shall examine, on the basis of its own growing trials or other suitable investigations, whether the variety meets the requirements of Section 5 (registration examination). The examination shall be carried out for as long as required to obtain a reliable assessment. The applicant shall provide to the Variety Protection Office, on demand, the propagating material of the variety needed for the examination, together with the hereditary components used in the production of the variety, free of cost, and shall further give full information on the maintenance of the variety and permit its verification. The applicant shall be required, for the purpose of verification, to permit the Variety Protection Office to visit his facilities, to take the necessary quantity of free samples of the variety and to inspect the records concerning maintenance of the variety.

Where the applicant fails to comply with these obligations, despite a written reminder and the stipulation of an appropriate additional time limit, the application shall be rejected by the Variety Protection Office.

(2) The Variety Protection Office may base its assessment on the results of other examination bodies in EEA States or in Union States in lieu of its own examinations where such examination bodies may be considered for registration examination in view of their technical facilities, their testing methods and the local growing conditions and where the results are available to the Variety Protection Office.

(3) Where the applicant may claim a priority right (Section 20(5)), the examination shall be postponed, at his request, by the Variety Protection Office for up to 5 years at most following the application in the other Union State. Withdrawal or refusal of the application in the Union State concerned shall cause the examination to be put in hand by the Variety Protection Office within a suitable period of time.

(4) After grant of variety protection, the Variety Protection Office shall verify that the continued existence of the protected variety is assured if there is any doubt whether the owner of variety protection has taken adequate steps to ensure the continued existence of the variety (Section 7(1)). The Variety Protection Office shall be entitled, for the purposes of verification, to visit facilities, take the necessary quantity of free samples of the variety and inspect the records concerning maintenance of the variety.

(5) The Variety Protection Office shall be entitled to communicate the results of variety examinations carried out by the Office itself or by other Austrian examination bodies to foreign bodies competent for the grant of variety protection or of an equivalent protective right.

Section 24

Objections to Variety Applications

(1) Any person may lodge a reasoned objection, in writing, with the Variety Protection Office on the grounds that

1. the variety does not satisfy the requirements of Section 5 or

2. the variety denomination is not acceptable (Section 14(2) to (4)) or

3. the applicant is not an entitled person (Section 4(1)).

(2) Objections under subsection (1), item 1, may be submitted during the whole duration of the procedure, objections under subsection (1), item 2, until expiry of three months after publication of the variety denomination in the Plant Variety Gazette and objections under subsection (1), item 3, until expiry of three months after publication of the variety application in the Plant Variety Gazette.

(3) Objections under subsection (1), items 2 and 3, must have been received at the Variety Protection Office by the last day of the time limit (subsection (2)) at the latest.

(4) The Variety Protection Office shall examine the objections lodged and take into account the result of such examination in taking its decision.

(5) The person lodging the objection shall be informed, if he so requests in writing, by the Variety Protection Office of the result of the examination under subsection (4). Where an objection under subsection (1), item 3, results in final rejection or refusal or withdrawal of a variety application, the person lodging the objection
shall be informed thereof by the Variety Protection Office in writing without delay. Where the person lodging the objection files an application for the variety within one month of service of the written communication and where he proves that he is the entitled person (Section 4(1)), he may require that the filing date be the date of the earlier application.

(6) Where an objection under subsection (1), item 2, is justified, the Variety Protection Office shall proceed in accordance with Section 20(7).

Section 25
Grant of Variety Protection

If an acceptable variety denomination has been communicated for the filed variety (Section 14(2) to (4)) and the other requirements for the grant of variety protection have been satisfied, the Variety Protection Office shall grant variety protection by entry in the Variety Protection Register. A certificate attesting thereto shall be issued to the owner of variety protection. If no entry is made in the Variety Protection Register, the Variety Protection Office shall issue a notification of refusal.

Section 26
Transfer of Variety Protection

(1) The legal transfer of variety protection shall take effect on entry in the Variety Protection Register.

(2) The order of precedence shall be determined by the chronological order in which requests for entry are received at the Variety Protection Office, on condition that the request results in an entry. Requests that are received at the same time shall enjoy the same precedence.

(3) Entry in the Variety Protection Register shall be effected on a written request to the Variety Protection Office by one of the persons concerned.

(4) The certificate on the basis of which the entry is to be effected shall be submitted, in the original, or in a duly certified copy, together with the request for entry. Where the certificate is not a public document, it shall be required to bear the duly certified signature of the person exercising his right.

(5) The request for entry and the certificate shall be subject to formal and substantive examination by the Variety Protection Office.

Section 27
Variety Protection Register

(1) The Variety Protection Office shall keep a Variety Protection Register.

(2) There shall be entered in the Variety Protection Register, together with the date of the entry:

1. the registration number,

2. the date of the application and, where appropriate, the date of priority,

3. the species, the type of utilization if necessary, the propagation system and a note that the variety is produced in each cycle of propagation with the use of certain hereditary components,

4. the variety denomination,

5. the name and address of the owner of variety protection and of his representative,

6. the day on which variety protection begins,

7. the name and address of owners of voluntary licenses and of compulsory licenses,

8. the right of use of the employer (Section 4(4)),

9. the note on pending procedures before the Nullity Section of the Patent Office and the Supreme Patent and Trademark Chamber (Sections 10, 11, 13 and 16),

10. the day and reason for termination of variety protection,

11. the declaration of nullity,

12. the declaration of lack of title and,

13. transfers.

(3) The Variety Protection Register shall be public. Inspection of the documents on which entry is based and viewing of the growing trials (Section 23(1) and (4)) shall be permitted by the Variety Protection Office to any person. Access shall not be available to documents submitted in accordance with Section 20(3), item 2, or, in the case of varieties of which the plants are produced by crossing certain hereditary components, to data concerning those hereditary components.

(4) On request, the Variety Protection Office shall issue certified extracts from the Variety Protection Register against reimbursement of costs.

(5) The capture and processing of data for the purposes of the automated keeping of the Variety Protection Register shall be permitted.

Section 28
Application Fees, Examination Fees and Annual Fees

(1) When applying for a variety, the applicant shall pay an application fee to the Variety Protection Office.
(2) The application fee shall be laid down by ordinance of the Federal Minister for Agriculture and Forestry, in agreement with the Federal Minister for Finance, as a lump sum corresponding to the average administrative costs—with the exception of the costs of variety examination (subsection (4))—normally incurred in connection with the processing of applications.

(3) Where the application fee or an examination fee that has become due has not been paid by the applicant despite a written reminder from the Variety Protection Office and the grant of a reasonable additional time limit, the variety application shall be rejected by the Variety Protection Office.

(4) Examination fees shall be paid by the applicant for variety examinations under Section 23(1) and (2) carried out by Austrian examination bodies.

(5) The examination fees shall be laid down by ordinance in a schedule of fees issued by the Federal Minister for Agriculture and Forestry, in agreement with the Federal Minister for Finance, in accordance with the average costs incurred for examinations as a result of experience.

(6) The examination fees shall be prescribed by the Variety Protection Office for each growing period that has been commenced. However, they shall be prescribed by the Variety Protection Office once only if complete test results are available to the Office at the beginning of the growing period following the application for variety protection, which results satisfy the requirements of Section 5(2) to (4) and have been obtained either by an examination body of an EEA State outside a procedure under this Federal Law or on the basis of an application for entry of the variety in the Breeding Book for Cultivated Plants (Section 4(1) of the Plant Breeding Law, BGBl. No. 34/1947). The costs of variety examinations in accordance with Section 23(2), carried out by examination bodies of Union States, shall constitute cash expenditure (Section 76 of the General Procedural Law).

(7) Annual fees shall be paid by the owner of variety protection to the Variety Protection Office for each year that has been commenced (protection year) during the term of variety protection. The annual fee for the first protection year shall be 1,000 Sch. For each further protection year up to the sixteenth year of protection, the annual fee in the case of wheat, barley, oats, rye, maize, potato, sugar beet, peas, seed rape and sunflower shall increase by 500 Sch., and for other species by 300 Sch., as against the annual fee for the preceding protection year in each case. From the seventeenth protection year onwards, the annual fee shall remain the same.

(8) The annual fee for the first protection year shall become due two months after grant of variety protection. The annual fee for each further protection year that has been commenced shall be due in advance on the anniversary of the date of grant of variety protection. Annual fees may be paid two months before they become due.

Section 29

Procedural Provisions

Where not otherwise laid down by this Federal Law, the Variety Protection Office shall apply the General Procedural Law.

PART IV

CIVIL LAW AND PENAL LAW PROVISIONS

Section 30

Civil Law Claims

Any person who has suffered an infringement of a right belonging to him under variety protection may take action for injunction, removal, publication of judgment, appropriate compensation, damages, surrender of profit and rendering of accounts; any person who has reason to suspect such infringement may also take action for injunction. Sections 147 to 154 of the Patent Law 1970 shall apply mutatis mutandis.

Section 31

Penal Infringement of Variety Protection

(1) Any person who violates variety protection (Section 6) shall be sentenced by the Court to a fine of up to 360 daily rates.

(2) The same penalty shall be imposed on the owner or director of an enterprise who does not prevent the infringement of variety protection committed by a person working for him or on his behalf in the course of the activities of the enterprise. Where the owner of the enterprise is a legal person, this provision shall apply to the bodies of the enterprise guilty of such omission. The enterprise shall be jointly and equally liable with the guilty party for the fines inflicted on the bodies.

(3) Prosecution shall take place only at the request of the injured party.


Section 32

Jurisdiction

(1) The Commercial Court of Vienna shall have exclusive jurisdiction for actions and injunctions under this Federal Law. Sections 7(2), first sentence, 7a and 8(2) of the Jurisdictional Rules shall be of application. This shall also apply to injunctions.
(2) Jurisdiction in penal matters under this Federal Law shall belong to the Provincial Courts competent to hear penal matters.

Section 33

Administrative Offenses

Where the act does not constitute a punishable act within the jurisdiction of the courts or is not liable to heavier penalties under other provisions, any person who:

1. markets propagating material of a variety without using the variety denomination required by Section 15,

2. infringes the marketing prohibition under Section 15,

3. uses a variety denomination entered in the Variety Protection Register or a similar denomination for a different variety of the same or of a related species,

4. in the course of marketing, claims non-existent variety protection or

5. fails to comply with the obligation under Section 13(4) to make propagating material available,

shall have committed an administrative offense and shall be sentenced by the district administrative authority to a fine of up to 100,000 Sch.

PART V

FINAL AND TRANSITIONAL PROVISIONS

Section 34

Citations of Other Federal Laws

Where citation is made in this Federal Law to other Federal Laws preference shall be to the current version of such laws.

Section 35

Provision on Entry Into Force

1. This Federal Law shall enter into force on March 1, 1993.

2. Section 21 paragraphs 1 and 2, Section 22 paragraph 1 and Section 35 paragraph 2 of the text of Federal Law BGBI.I No. 72/1997 enter into force in July 1, 1997.

3. Ordinances under this Federal Law may already be issued on the day following its promulgation. Such ordinances may take effect at the earliest on March 1, 1993.

Section 36

Transitional Provision

Varieties that, on the day of entry into force of this Federal Law, are entered in the Breeding Book for Cultivated Plants (Sections 8, 9 and 10 of the Plant Breeding Law) as elite, with or without reservation, shall be entered ex officio in the Variety Protection Register two months after entry into force of this Federal Law if the Variety Protection Office does not receive within one month of the entry into force of this Federal Law a written declaration of renunciation by the breeder. Where the variety denominations of such varieties do not comply with Section 14(2) to (4), Section 14(6) shall be of application. The period during which the variety was entered in the Breeding Book as elite, with or without reservation, shall be taken into account for the period of protection and for the calculation of the annual fees (Section 28(7)); however, calculation of the period of protection and of the annual fees shall only take into account the full years in which the variety was entered in the Breeding Book for Cultivated Plants. The expiry of the period of protection (Section 8(2), item 2, in conjunction with Subsection (1)) shall nevertheless not take place less than ten years after entry into force of this Federal Law.

Section 37

Implementation

The following shall be responsible for the implementation of this Federal Law:

1. in the case of Section 16, the Federal Minister for Economic Affairs,

2. in the case of Sections 30 to 32, the Federal Minister for Justice,

3. in the case of Section 3(2), last sentence, Sections 10, 11, 13 and Section 19(1) and (3), the Federal Minister for Economic Affairs, in agreement with the Federal Minister for Agriculture and Forestry,

4. in the case of Section 14(7) and Section 19(2), the Federal Minister for Agriculture and Forestry, in agreement with the Federal Minister for Economic Affairs,

5. in the case of Section 28(2) and (5), the Federal Minister for Agriculture and Forestry, in agreement with the Federal Minister for Finance, and

6. in the case of all other provisions of this Federal Law, the Federal Minister for Agriculture and Forestry.
CHAPTER I
GENERAL PROVISIONS

Article 1
Scope

(1) The present Law is to arrange the relations concerning the creation, protection and use of new plant varieties and animal breeds.

(2) The provisions of this law apply to:

- created or discovered and developed, plant varieties of any botanical genus and species, including clone, line, hybrid, and rootstock, irrespective of the method (artificial or natural) of their production, hereinafter referred to as "varieties."

- created or discovered and developed, breeds, lines or hybrids of farm animals, irrespective of the method of their production, hereinafter referred to as "breeds."

Article 2
Authorities Participating in the Procedure of Securing Legal Protection

The State Variety Commission and the State Breed Commission of the Ministry of Agriculture and Food Industry and the Patent Office are the authorities that participate in the procedure of securing legal protection of the new varieties and breeds.

Article 3
National Treatment

The provisions of this Law apply equally to foreign citizens of countries, parties to international treaties in this field, to which the Republic of Bulgaria is a party, such countries being hereinafter referred to as "Contracting States."

Article 4
Right to Authorship

(1) The authorship in a plant variety or animal breed arises with its being created or discovered and developed.

(2) The person who has created or discovered and developed, a plant variety or animal breed is the author (breeder) of this plant variety or animal breed.

(3) When several persons have created or discovered and developed a plant variety or animal breed jointly, they are co-authors of the variety or the breed.

(4) The right to authorship is personal, and not transferable.

(5) The author or co-authors of the plant variety or animal breed has the right to be identified as such in the application, in the certificate and in publications on the variety or the breed.

Article 5
Representation

(1) The applicant, the certificate owner, as well as their assignees have the right to perform acts before the Patent Office, the State Variety Commission and the State Breed Commission either personally or through a local intellectual property representative, registered with the Ministry of Agriculture and Food Industry in accordance with rules set by the Minister.

(2) Applicants with permanent residence or with company main office abroad are obliged to perform acts before the Patent Office, the State Variety Commission and the State Breed Commission through intellectual property representatives.

Article 6
Assignment of Rights

(1) All rights stipulated by this Law are transferable, unless otherwise provided for in the Law.

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1 Published in State Gazette No. 84 dated October 4, 1996.
2 Translation provided by the Bulgarian authorities
(2) Any assignment of rights as per the preceding paragraph is registered in the Patent Office and published in the Official Bulletin of the Office.

CHAPTER II
LEGAL PROTECTION OF PLANT VARIETIES

PART I
CONDITIONS FOR THE GRANT OF LEGAL PROTECTION

Article 7
Requirements (criteria)

(1) Legal protection for plant varieties is granted when the variety is:
- new;
- distinct;
- homogeneous;
- stable.

(2) The plant variety should bear a variety denomination related to its generic designation as per Article 12.

Article 8
Novelty

(1) The variety is deemed to be new if, at the date of filing the application for a certificate, the same or propagating material of the variety or harvest thereof has not been offered for sale, sold, or otherwise used commercially, or has been offered with the consent of the breeder:
- in the territory of the Republic of Bulgaria for not more than one year;
- in the territory of any other country for not more than:
  - 6 years when concerning trees or vines;
  - 4 years when concerning any other plant species.

(2) Any variety test does not affect its novelty and cannot be used to the prejudice of the breeder's right.

Article 9
Distinctness (Distinguishability)

(1) The variety is deemed to be distinct when it clearly differs from any other variety which is a variety of common knowledge by the date of filing an application with the Patent Office.

(2) A variety shall be deemed to be a variety of common knowledge if, by the filing date of the application, it has been made by cultivation, is an object of marketing, trade or any other kind of realization, or is an object of a breeder's right, has been entered in the registers of varieties, included in a reference collection or in a publication containing its precise description, or has become well known in some other way.

(3) An application for the grant of a breeder's right or for entry of another variety into the Official Register of Varieties in any country shall be deemed to render the variety well-known as from the filing date of the application, provided the application has resulted in the grant of a breeder's right or in the entry of the variety in the Official Register of Varieties.

(4) The indications allowing to define the characteristics and the peculiarities of the variety must be capable of clear and precise description.

Article 10
Homogeneity (Uniformity)

(1) The variety is deemed to be homogeneous when, irrespective of the presence of minor deviations, the plants are identical in their basic features, including the peculiarities of their sexual or vegetative reproduction.

(2) The deviations from any species are determined in accordance with the methods approved by the State Variety Commission.

Article 11
Stability (Steadiness)

The variety is stable when it remains unchanged in terms of its basic features after multiple reproduction (propagation) or, if the breeder has defined peculiar propagation cycle for the variety bred, and at the end of each cycle the variety has kept a conformity to the description specified for it.

Article 12
Denomination

(1) Any new variety is given a denomination which is related to its genus or species and serves for its identification. The denomination may consist of one or two words, or of a combination of words, letters and numerals, but not exceeding a four-digit number.
(2) The variety denomination should also satisfy the following requirements:

- it should differ from any other denomination used in the country for this species or for species close to it, or from a denomination which designates a variety already existing in each Contracting State, including after the expiration date of the certificate;

- it should exclude any possibility for misleading or misunderstanding with regard to the features, the nature or the identity of the specific variety or the personality of the breeder;

- it should not infringe earlier acquired rights of third parties who have obtained the right to such denomination, if the breeder may be granted right to the same denomination as per item 4. In this case the Patent Office requires from the breeder to propose another variety denomination;

- any person offering for sale or for commercial use in any Contracting State a reproducing material of a protected variety or of a variety in a process of examination is obliged to use the Variety denomination even after the lapse of the protection of this variety, as far as it does not contradict to earlier acquired rights for its use, as per the preceding paragraph.

(3) When a variety is offered for sale or for commercial use, a trademark, an appellation of origin or other designation may be added to the registered variety denomination. After the addition of such designations the variety denomination must be clearly and easily distinguishable.

PART II

DOCUMENT FOR PROTECTION

Article 13

Certificate

(1) The legal protection of a variety is provided by a certificate.

(2) The certificate certifies for the existence of a registered plant variety, the priority, the right to authorship and the exclusive right of the certificate owner on the variety.

(3) The certificate is granted by the Patent Office after an expert examination of the variety - object of the application.

(4) The certificate has a duration limit as from its date of grant:

- 30 years for tree and vine varieties;
- 25 years for all other varieties.

Article 14

Right to Apply

(1) The right to apply belongs to the author or to his assignee.

(2) The applicant is considered to have the right to apply, unless otherwise instituted by the court.

(3) In cases when several authors have jointly created or discovered and developed a variety, the right to apply belongs to them jointly. The refusal of one or several of them to participate in the process of application or in the procedure of grant of a certificate is not an obstacle to the rest of them to perform acts as stipulated by the Law, or to exercise their rights.

(4) When a variety is bred under the conditions of Article 16, the right to apply belongs to the employer if he files an application within three months from the date of receiving a written notification by the author about the variety having been made. Otherwise the right to apply moves to the author.

(5) In case of a variety made on a contract basis, the right to apply belongs to the person assigning the task, unless otherwise provided for in the contract. If the task assignor does not exercise this right of his within the time limits as per paragraph 4, the right to apply moves to the author of the variety.

(6) The employees of the Patent Office and of the State Variety Commission have no right to file applications for plant varieties or to be mentioned as co-authors for the period of their labor relations with these state authorities and for three years after the termination of these relations, excluding the cases when the variety is a result of natural mutations, established during the examination as to substance, as per Article 38, paragraphs 1 and 2.

Article 15

Right to a Certificate

(1) The right to a certificate belongs to the person who has the right to apply as per Article 14.

(2) When several persons have made a variety independently, the right to a certificate belongs to the person who has first filed an application for this variety with the Patent Office.

Article 16

Service Variety

(1) A service variety is a variety made or discovered and developed in the performance of duties arising from employment or other legal relations of the author of the variety, unless otherwise provided for by a contract.
(2) The variety is a service variety as per paragraph 1, when during the process of its creation the author has been:

- performing duties inherent to his position;

- performing duties beyond the ones specified in item 1, when such duties have been specifically assigned to him and he has been expected to make the new variety;

- using material or financial resources, provided by the employer or the person who has assigned the task.

(3) When the variety is a service variety only with regard to one or to several of the authors, or the performers respectively, the provisions of paragraphs 1 and 2 and of Article 14 are applicable only to these authors, their employers or task assignors.

(4) Within three months of the creation of the variety, the author is obliged to notify in writing the employer, the task assignor, respectively, about that fact.

(5) The person who has created a service variety has the right to authorship as per Article 4, paragraphs 2, 3 and 4, and the right to an equitable remuneration of not less than 4%, if no provisions for such have been made in the respective contract. The remuneration is determined taking into account in particular the following:

- the profit determined by all kinds of realizations of the variety for the period of the effect of the certificate;

- the value of the variety;

- the contribution of the employer and/or the task assignor in terms of capital investments for the creation of the variety, materials, equipment, knowledge, experience, personnel and other assistance provided;

- the conditions of employment of the author.

(6) When the interests of the employer impose that the variety be applied for after the three-month time period as per Article 14, paragraph 4, the author has the right to an equitable remuneration for the time of suspension of the act of filing the application, as well as to all rights arising from the certificate granted for that variety later. These relations between the employer and the author are arranged by a contract before the expiration of the three months.

(7) When a variety certificate application is filed by the author within three years from the termination of the labor contract or of any other legal relations as per paragraph 1, the employer, the task assignor, respectively, may claim for the right to obtain the certificate, except for the case when he has been notified by the author of the variety created and has not exercised the right under Article 14(4). This right may be exercised within one year from the publication for the application as per Article 36.

(8) The remuneration to the author is payable by the employer, and when the employer is not the certificate owner it is payable by the certificate owner.

(9) In case of remuneration as per paragraphs 5, 6 and 8, irrespective of whether it is negotiated in a contract or specified in accordance with the rules regulated, which is considered unfair in view of the real profit gained and the value of the variety, such remuneration may be increased upon the author’s request. In case of refusal on the part of the employer, the dispute is settled through the court.

(10) When a service variety is created or discovered and developed outside the country, the rights of the author, if any, are determined in accordance with the operative rules, regulating the relations with the employer.

Article 17
Provisional Protection

(1) For the period from the publication for the application for grant of a certificate for a variety with the Patent Office until the grant of a certificate, a provisional protection is provided to the applicant against illegal acts of other persons.

(2) The scope of the provisional protection is determined by the description and the embodiment, insofar as the certificate granted does not extend the latter.

(3) The applicant is entitled to an equitable remuneration payable by the person who, during the period specified in paragraph 1, has performed acts which, after the grant of a certificate, require the certificate owner’s consent in accordance with Article 18.

PART III
BREEDER’S RIGHTS

Article 18
Scope of the Exclusive Right of the Certificate Owner

(1) The exclusive right of the certificate owner with regard to reproductive or vegetative propagating material of a variety protected by a certificate includes the right to use, the right to dispose of the certificate and the prohibition of other persons to use it without his consent. The right to use covers the following activities:

- production or reproduction (propagation);
- preparation for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing;
Article 19

Limitation on the Breeder's Rights

(1) Irrespective of the provisions of Article 18, paragraph 1, for the purposes of stimulating agricultural production, farmers have the right to use for their own needs for the purpose of reproduction in their own farms the product of harvest they have obtained through planting in their own farm, propagating material of a variety other than the hybrid or the artificially obtained variety, protected by a certificate.

(2) The provisions of the preceding paragraph apply only to plant species in accordance with a list specified by the Ministry of Agriculture and Food Industry.

Article 20

Exceptions to the Breeder's Right

The breeder's right does not extend to:

- acts done privately with a view to personal needs and for non-commercial purposes;
- acts done for experimental purposes;
- acts done for the purposes of breeding other varieties except when the provisions of Article 18(3) apply and the acts under the preceding item.

Article 21

Exhaustion of the Breeder's Right

The right of the breeder does not extend to acts concerning the material of the protected variety, or material derived from it, or of a variety specified in the provisions of Article 18, paragraph 5, which has been sold or otherwise marketed by the certificate owner or with his consent in the territory of the country, unless such acts:

- involve further propagation of the variety;
- involve an export of material of the variety, allowing its propagation in a country which does not protect varieties of the plant genus or species to which the variety belongs, except when the exported material is for final consumption purposes.

Article 22

Contractual License

(1) The variety applied for or protected by a certificate may be a subject to a license contract.

(2) The license contract may grant exclusive, non-exclusive, full or limited license.
(3) License contracts are recorded in the Register of the Patent Office, and enter into effect from their registration date. A publication for them is made in the Official Bulletin.

Article 23

Compulsory License

(1) The Ministry of Agriculture and Food Industry may grant a compulsory license for a protected variety in favor of any person involved upon his request, if at least one of the following conditions is satisfied:

- the variety has not been used for a period of five years from the filing date of the certificate application or three years from the date of grant of the certificate, and when the public interest requires the granting of a compulsory license, the time limit which expires later being valid;

- the variety has not been used to a degree sufficient to satisfy the national needs or social necessities within the time limits as per the preceding item, except when the certificate owner proves that he was not in a position of doing this;

- declared national state of emergency - for the time of its duration and when the variety contributes to overcoming such state.

(2) The petitioner as per the preceding paragraph has to prove that he is in a position to use the variety within the limits of the compulsory license requested.

(3) The compulsory license may be only non-exclusive and untransferable.

(4) The compulsory license may be terminated if the licensee, within one year after its grant, has made no steps towards preparation for the use of the variety. In any case, the compulsory license shall be terminated if, within a time limit of two years after its grant, the licensee has not started to use the variety.

(5) The certificate owner may ask for cancellation or change of the conditions for the grant of a compulsory license as per paragraph 1 after the expiration of one year, if the conditions for the compulsory license decision have changed in the meantime.

(6) For a granted compulsory license, the breeder is entitled to an equitable compensation payable by the user. When there is no agreement, the compensation due is determined through the court.

(7) Compulsory license is not granted in favor of a certificate infringer.

Article 24

Service License

(1) The Ministry of Agriculture and Food Industry may order the grant, only in cases of emergency, for the needs of national defense and security, of a service license for the use of a certain variety which is the object of a certificate application or of a certificate already granted.

(2) The service license is ordered upon the request of the Ministry of Defense or the Ministry of Internal Affairs. Such order determines all conditions for the service license including those related to the equitable compensation for the use of the variety.

(3) Where there is no agreement regarding the compensation payable to the breeder, the latter is determined through the court.

Article 25

Special Treatment

(1) The Minister of Agriculture and Food Industry approves, in some extreme cases only, a List of a limited number of varieties being subject to certificate applications, which cannot be distributed or used freely without special authorization, when they are of interest to the national defense and security or the social health care.

(2) The breeder has the right to an equitable compensation. Where there is no agreement, the compensation to be paid is determined through the court.

Article 26

Legal Protection Abroad

(1) Bulgarian natural persons and legal entities have the right to choose any other Contracting State as per Article 3, in which they would file their first application for granting legal protection of a variety.

(2) The applicant may file an application for legal protection in any other state after having applied as per the preceding paragraph without waiting for the grant of a title of protection by the country as per the preceding paragraph.

(3) The applicant as per paragraphs 1 and 2 cannot apply for legal protection abroad without a special permission in case his variety is in the List as per Article 25(1).
Article 27

Lapse of the Certificate

(1) The certificate lapses in cases of:

- expiration of the time for which it has been granted;

- written refusal by the certificate owner, considered from the day of deposit with the Patent Office. The refusal of one of the certificate co-owners does not terminate its effect with respect to the others;

- in cases when the certificate owner:
  - is not in a position to provide, within one year for annual species and two years for perennial species from the request of the State Variety Commission, authentic sowing or planting material, allowing the reproduction of the variety already created with its morphological and biological characteristics as defined at the moment of the grant of the certificate, the Patent Office being notified thereof;
  - does not provide the competent authorities, within the prescribed time limit, with reproductive material, documents or instructions considered necessary for exercising control over the new variety or does not allow the Institute of Introduction and Plant Resources to take a sample for the storage of the variety;

(2) A certificate which has lapsed for failure to pay the due maintenance annuity for the certificate under Article 42, paragraphs 2 and 3.

Article 28

Infringements of the Certificate Owner’s Rights

(1) Any use of the variety covered by the scope of the certificate protection as per Article 18, which has been made without the consent of the certificate owner, constitutes an infringement.

(2) Any person who performs the acts as per the preceding paragraph with a certificate protected variety produced by other persons in infringement of the certificate, is responsible for infringement only if the person has acted deliberately.

(3) The owner of a certificate for a variety and the exclusive licensee can bring an action for infringement of rights, unless otherwise specified.

(4) The licensee as per Article 22, the compulsory licensee as per Article 23 and the licensee as per Article 24 may bring an action for infringement of rights stemming from the certificate, if the certificate owner does not exercise his own right to bring an action within six months from the date of receipt of a written invitation from the licensee.

(5) Any licensee may take part in the court proceedings for infringement of rights stemming from the certificate, when the action has been entered by the certificate owner. The same applies also to the certificate owner, when the action has been entered by the licensee as per paragraphs 3 and 4.

(6) The action for infringement of rights to the variety may also be entered by the applicant before the grant of a certificate, after the publication for the application has been performed by the Patent Office.

Article 29

Actions for Infringement of Rights Stemming from a Certificate

(1) The actions for infringement of rights, stemming from a certificate may be:

- action to ascertain the fact of the infringement;

- action for compensation of the damages suffered and benefits lost;

- action to stop the infringer from acts infringing the certificate owner’s rights.

(2) In case actions for infringement as per the preceding paragraphs are respected by the court, the court can decree also reprocessing or destruction of the subject of infringement, as well as of the tools of the infringement if the latter is done deliberately.

Article 30

Provision of Proofs

The type of proofs and the order of their gathering and provision as per the preceding Article is performed in accordance with the Civil Procedure Code.

Article 31

Invalidity of the Certificate

(1) The certificate granted is declared invalid when it is ascertained that:

- the conditions specified in Articles 8 and 9 were not complied with at the time of the grant of the certificate;
the breeder’s right has been granted to a person who is not entitled to it, unless it is transferred to a person who is so entitled.

(2) On the basis of an enforced court decision as per item 2 of the preceding paragraph, the Patent Office grants a new certificate to the person named in the decision, at his request, without terminating the effect of the certificate declared invalid.

(3) The invalidation of a certificate does not affect:

- effective awards concerning infringement of the certificate;
- license contracts concluded and performed before the invalidation of the certificate, unless otherwise agreed.

PART IV
EXAMINATION OF VARIETIES

Article 32
Filing of a Certificate Application

(1) The certificate application for a variety is filed with the Patent Office and is recorded in the Variety Applications Register.

(2) Filing date of the application is the date of receipt by the Patent Office of the following documents:

- a request for grant of a certificate for a variety with identification data for the applicant and the author of the variety;
- a description of the variety;
- a proposal for a denomination of the variety;
- filled in technical questionnaire for the species;
- paid fees for filing and publication of the application.

(3) The certificate application should relate to one variety only.

(4) The documents as per paragraph 2 are submitted in Bulgarian. The variety denomination, the technical questionnaire and the description accompanied by illustrating materials are submitted in three copies. The names of the applicant and the author, as well as the variety denomination are filled also in Latin.

(5) In case of an applicant filing an application through an intellectual property representative, a power of attorney is attached to the application.

Article 33
Withdrawal of the Application

The application for a variety certificate may be withdrawn through a written declaration by the applicant, unless there is a certificate already granted. In case of withdrawal of the application, the applicant loses the priority right as per Article 34.

Article 34
Priority Right

(1) The applicant who has filed a certificate application in accordance with Article 32 enjoys the priority right from the filing date.

(2) In case the applicant has filed earlier applications for legal protection of one and the same variety in Contracting States prior to his application with the Patent Office, he may claim Convention priority for a period of twelve months considered from the date of the initial application filing.

(3) The priority right as per the preceding paragraph is recognized if the applicant has made a declaration for a claimed priority when filing his application with the Patent Office and has paid the relevant fee. The priority right is proved within three months from the date of filing the application with the Patent Office by copies of the documents constituting the initial application, as well as by samples or other proofs. The copies must be certified by the office in which the initial application has been filed. Any failure to observe the above time limits and unpaid fees for the claimed priority result in the loss of the latter.

(4) The applicant as per the preceding paragraph is given the opportunity within a period of two years after the expiration of the term of priority or in case the initial application has been rejected or withdrawn, to submit for examination additional information, documentation or material.

Article 35
Preliminary Examination

(1) The application for a variety certificate registered in the Patent Office is subject to preliminary examination within one month from its filing date in order to check:

- the formal regularity of the application and the documents attached to it according to Article 32;
- the contents of the documents enclosed;
- the compliance of the denomination of the plant variety to the requirements of Article 12. With the con-
sent of the Patent Office, the applicant may give a provi-
sional proposal for a denomination instead of the variety
denomination for the needs of the examination.

(2) The Patent Office notifies the applicant of the
shortcomings found and gives him three months to cor-
rect them. If the applicant fails to respond within the
specified period of time, the application is deemed to be
abandoned and the examination for it is terminated. In
such case the applicant loses the priority right as per Ar-
ticle 34(1).

Article 36
Publication for the Application

(1) The Patent Office makes a publication for the
application in the Official Bulletin immediately after the
expiration of the fourth month, but not later than the sixth
month from the filing date of the application.

(2) The Patent Office does not allow access to ma-
terials related to a certificate application prior to the pub-
lication for it, unless there is a written permission by the
applicant.

(3) The access to materials related to applications
as per paragraph 2 is admissible to the Ministry of Agri-
culture and Food Industry under Articles 23, 24 and 25,
and to the Ministry of Defense and the Ministry of Inter-
nal Affairs in accordance with Articles 24 and 25.

Article 37
Submission of the Application for Examination as to
Substance

Within one month after performing the preliminary
examination of the application, the Patent Office submits
the application to the State Variety Commission for ex-
amination as to substance, notifying the applicant to pay
the due fees to the State Variety Commission.

Article 38
Examination as to Substance

(1) For each application for a certificate the State
Variety Commission undertakes an examination within a
period of two to four years in order to establish whether
the plant variety complies with the requirements of Arti-
cle 7. When necessary, this time limit may be prolonged
upon the applicant’s request.

(2) For the purposes of examination, the State Va-
riety Commission tests the variety in its own or other
experimental stations, specialized institutions, laborato-
ries and offices, and describes and proves the features
which allow to define and distinguish the new variety.

(3) The applicant provides, free of charge, sowing
and planting material necessary for the variety testing, as
well as any additional information and documentation
specified in the regulations of Work of the State Variety
Commission.

(4) If during the process of examination it is found
that the denomination applied for in the Patent Office
does not comply with the requirements of Article 12(1)
and (2), the applicant is given two months to propose a
new denomination. In case of failure to observe the time
limit specified, the application is considered abandoned
and the proceedings related to it are terminated.

(5) The examination with respect to the denomina-
tion should establish whether the variety denomination
applied for is identical to that of the application for the
same variety in other Contracting States.

(6) When the State Variety Commission judges
that the variety does not comply with the requirements of
Article 7, it notifies in writing the applicant giving the
grounds for this judgment, and invites him to respond
within three months. If the applicant fails to respond
within this time limit or unreasonably maintains his ap-

clication, the State Variety Commission refuses to make
a conclusion for the recognition of the variety, sending a
report to the Patent Office.

(7) The State Variety Commission makes a deci-
sion for the recognition of the variety when, as a result of
the examination as to substance, it finds out that the va-
riety applied for complies with the requirements of Arti-
cle 7 and, within one month, prepares a report to the
Patent Office.

(8) When the variety meets also the requirements
for economic properties in accordance with the Work
Regulations of the State Variety Commission, it is regis-
tered in the Register of Varieties and in List A of the
Official Variety List of the country. The decision for the
registration of the variety in List A is made by an expert
commission of the State Variety Commission and is ap-
proved by the Minister for Agriculture and Food Indus-
try.

(9) When the variety does not meet the require-
ments of the preceding paragraph, it is registered in the
Register of Varieties and in List B of the Official Variety
List.

(10) Within the terms specified in paragraph 7, the
State Variety Commission submits to the Patent Office its
report, the formalized description, the abstract, and a
copy of the decision for the recognition of the variety.
The State Variety Commission may correct or supple-
ment the description at any time in correspondence with
the development of the agronomic science. Those cor-
rections and additions do not affect the scope of protec-
tion.

(11) The State Variety Commission may use the
results of an earlier examination of the same variety car-
ried out by competent authorities in the country or abroad.

(12) The State Variety Commission may enter into agreements with competent authorities of Contracting States for the performance of examination of foreign plant varieties in the country, as well as to assign the use of the results of such examinations by the competent authorities of the Contracting States.

(13) All actions for protection after the performed examination as to substance are carried out by the Patent Office on the basis of the decisions and reports of the State Variety Commission.

Article 39
Prolongation of Terms

Upon applicant's request, filed before the expiration of the time limits as per Article 35(2), Article 38(4) and (6), these time limits may be prolonged by three months but not more than twice. On request of prolongation of time limits the applicant pays fees.

Article 40
Grant of a Certificate

The Patent Office grants a certificate based on the decision for the recognition of the variety and if within three months from the notification of the applicant of the decision the fees are paid for the grant and publication of a certificate.

Article 41
Publication for a Certificate Granted

(1) A publication for a granted variety certificate is made in the Official Bulletin of the Patent Office.

(2) Any changes of the legal status of the application and the certificate are published in the Official Bulletin.

(3) The granted certificate is entered in the Register of Variety Certificates of the Patent Office.

Article 42
Fees

(1) For all actions under this Law before the Patent Office and the State Variety Commission due fees are payable at rates regulated by the Council of Ministers.

(2) An annual fee is payable for keeping the certificate in force.

(3) The annual fee for the first and for any of the following years is payable not later than the last day of the month in which the certificate has been granted.

(4) The funds raised as per paragraphs 1, 2 and 3 are used for financial support of the specified authorities.

CHAPTER THREE
LEGAL PROTECTION OF ANIMAL BREEDS

Article 43
Examination of the Animal Breeds

(1) The application for an animal breed certificate is filed with the Patent Office and is entered into the Register of animal breeds applications, whereupon examination is performed by the State Breed Commission in accordance with the Work Regulations of this Commission.

(2) In the procedure of the substantive examination of the breed the State Breed Commission studies and analyses the following specific requirements:

- breeding purpose;
- brief characteristics of the initial breeds;
- description of the methods for the creation of the breeds;
- productive qualities and morphological features of the breeds;
- adaptability and resistance against diseases;
- number, race and genealogical structure;
- region of distribution.

(3) The examination as to substance for foreign animal breeds is done with their generation, born in our country.

(4) The State Breed Commission, after a decision is taken for the recognition of the breed, submits within one month to the Patent Office its report, the formalized description, the abstract and a copy of the decision for recognition of the breed, notifying the breeder to the due fees to the Patent Office.

Article 44
Legal Protection

The legal protection of animal breeds is provided by a certificate, which has a duration of 30 years from the date of its grant.
Article 45  
Provisions for Animal Breeds

(1) The provisions for plant varieties are also applicable to animal breeds, unless otherwise specified in this Chapter.

(2) The provisions of Chapters IV and V are also applicable to animal breeds and in compliance with the specific peculiarities, stipulated in this Chapter.

CHAPTER FOUR  
DISPUTES

Article 46  
Kinds of Disputes

Disputes related to the creation, protection and rights stemming from the certificate, are considered through administrative channels or through the court.

Article 47  
Disputes Considered Through Administrative Channels

(1) Through administrative channels are considered:

- appeals against decisions for the suspension of the proceedings on applications for grant of certificates as per Article 35;
- appeals against decisions for the refusal to grant a variety certificate;

- appeals against decisions for the suspension of the proceedings as per Article 38, paragraph 4, regarding the compliance of the variety denomination to the provisions of Article 12;

- requests for invalidation of a certificate granted as per Article 31;

- appeals against a refusal to renew the certificate as per Article 27(2);

- appeals against decisions on the grant or refusal to grant a compulsory license.

(2) The appeals and requests as per the preceding paragraph are considered by specialized commissions appointed by the President of the Patent Office and consisting of a state examiner and a lawyer from the Patent Office and an expert from the Ministry of Agriculture and Food Industry. The commissions as per paragraph 1(6) are appointed by the Minister for Agriculture and Food Industry.

(3) With regard to the requests as per paragraph 1, item 4, it is possible to organize ex officio proceedings by the Patent Office and the State Variety Commission.

(4) The proceedings as per paragraphs 1 and 2 are initiated after the payment of a fee, excluding the cases of ex officio proceedings.

(5) The commission as per paragraph 2 take decisions within three months in relation to appeals under paragraph 1, items 1, 2, 3 and 5, and within 6 months in relation to requests under paragraph 1, item 4.

Article 48  
Terms of Appeal

(1) Appeals as per Article 47(1), items 1, 2, 3, 5 and 6 are filed within three months from the date of receipt of the decision.

(2) The requests as per Article 47(1), item 4 are admissible during the entire term of effect of the certificate.

Article 49  
Renewal of Time Limits

Time limits exceed because of special, unforeseen circumstances may be renewed upon the applicant's request. The request is filed within three months after the elimination of the reason for exceeding the time limit, but not later than one year after the expiration of the exceeded time limit. The decision on the renewal of the time limit is taken by the President of the Patent Office.

Article 50  
Court Control

The decisions of the commissions of the Patent Office or of the Ministry of Agriculture and Food Industry are subject to appeal before the Sofia Civil Court under the Administrative Proceedings Law.

Article 51  
Court Disputes

(1) The Sofia Civil Court considers:

- disputes for authorship (co-authorship);

- disputes for the right to apply and the right to a variety certificate;

- disputes for infringement of the applicant's rights and the exclusive rights of the variety certificate owner.
When the claim is presented by the applicant before the grant of the certificate, the proceedings are suspended until the publication of the certificate by the Patent Office:

- disputes related to the conclusion, realization and termination of license contracts;
- disputes related to the service nature of the variety as per Article 16 and the amount of remuneration payable to the author of a service bred variety;
- disputes related to the amount of the compensation, due to the certificate owner as per Articles 23, 24 and 25.

(2) Claims as per paragraph 1(5) are lodged within one year after the grant of the certificate.

CHAPTER FIVE
ADMINISTRATIVE PENALTY PROVISIONS

Article 52
Sanctions

(1) Any person who without the consent of the certificate owner performs any of the actions specified in Article 18, is sanctioned with a penalty from 100 000 up to 1 000 000 lev, and with a penalty from 1 000 000 to 10 000 000 lev when repeating the infringement. The propagation material shall be confiscated.

(2) The infringement is ascertained with an act drawn up by an official appointed by the Minister for Agriculture and Food Industry. The administrative penalty does not exclude criminal liability and other sanctions under the laws of the country.

(3) The act shall be drawn up and the penal injunction shall be issued, appealed against and implemented under the Administrative Violations and Penalties Law.

Additional Provisions

§ 1. Within the meaning of this Law:

"Plant variety" is a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully satisfied:

- can be defined by the expression of the features, characterizing a given genotype or a certain combination of genotypes;
- can be distinguished from any other plant grouping by the expression of at least one of the specified characteristics;
- is considered as a unit with regard to its suitability for being propagated unchanged.

"Propagating material" is a whole plant, seeds, planting material, as well as parts of this plant, insofar as they contain at least one cell and are used for reproduction of the whole plant, irrespective of the method of their production - artificial or natural.

"Animal breed" is a group of animals of common origin and of one species, similar in genetically determined economic and biological properties and morphological characteristics, demanding similar requirements as to natural and production conditions.

"Breeder" is the person:

- who has created or discovered and developed the plant variety or the animal breed;
- the employer or task assignor to the person as per the preceding item on the basis of a contract between them;
- assignee to the persons as per the preceding items.

"Economic properties of the variety" are properties conditioning the suitability of the variety to be used as an object of reproduction and as a material for the production of plant products having specific destination and quality.

"Official variety list" is a catalogue consisting of:

- list A for varieties recommended (allowed) to be used in the country;
- list B for varieties for which certificates have been granted under the present Law.

Transitional and Final Provisions

§ 2. Applications for inventors' certificates for plant varieties and animal breeds, for which there is no document for protection granted or final decision for rejection issued before the entry into force of this Law, may be transformed into certificate applications. The transformation is carried out after filing a request with the Patent Office within the terms specified in paragraph 3(2) by the persons and under the order of the provisions of Article 14.

§ 3.(1) Inventors' certificates for plant varieties and animal breeds issued prior to the entry into force of this Law, which in accordance with paragraph 2(2) of the Patent Law have been excluded from transformation as per Article 7 of the Patent Law, may be transformed into certificates after filing a request with the Patent Office.

(2) The requests are filed within 6 months after the entry into force of the Law, and the Patent Office issues a
PLANT VARIETY PROTECTION No. 84

§ 6. Property and non-property rights of authors of recognized and introduced inventors' certificates, which have arisen prior to the entry into force of this Law and have not been transformed as per paragraph 3(1), are settled until their exhaustion under the order of the Law which has been in force when they have arisen.

§ 7. (1) The status of the State Variety Commission and the State Breed Commission is arranged by the Rules of the Council of Ministers.

(2) The State Breed Commission is constituted in case of necessity and its members are approved by the Minister for Agriculture and Food Industry.

§ 8. The Law on Sowing and Planting Materials (publ. State Gazette No. 12 of 1958, rev. State Gazette No. 99 of 1963, No. 36 of 1979, No. 103 of 1990) is changed as follows:

- in Article 2 the words "regional varieties" are replaced by "of the varieties registered in List A of the Official Variety List".

- in Article 3 the text "approved by the Ministry of Agriculture and Forests" is replaced by "registered in List A of the Official Variety List".

- Article 5 is canceled.

- Article 6 is canceled.

- in Article 8, paragraph 1, the words "regional, bred and local varieties" are replaced by "varieties registered in List A of the Official Variety List".

- in Article 8, paragraph 2, the word "not regional" is replaced by "not registered in List A of the Official Variety List.

§ 9. The Minister for Agriculture and Food Industry and the President of the Patent Office issue regulations and instructions and give directions for the execution of the provisions of this Law.

§ 10. This Law enters into force three months after its publication in the State Gazette.

§ 11. The execution of this Law is assigned to the Minister for Agriculture and Food Industry and the President of the Patent Office.

This Law was accepted by the 37th People's Assembly on September 19, 1996, and is signed with the state seal.
GERMANY

Law Amending the Plant Variety Protection Law,1,2,3

July 17, 1997

Article 1

Amendment of the Plant Variety Protection Law

The Plant Variety Protection Law of December 11, 1985 (BGBl.I p. 2170), as last amended by Article 40 of the Law of October 25, 1994 (BGBl.I p. 3082) is amended as follows:

1. In Article 1 the present wording shall become paragraph 1 and the following paragraph added thereafter:

“(2) Protection under this Law shall not be granted for a variety that is the subject matter of a Community plant variety right.”

2. Article 2 shall be amended as follows:

(a) The following item shall be inserted after item 1:

“1a “Variety” shall mean a grouping of plants or parts of plants, as far as such parts are capable of producing entire plants, within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are met, can be:

(a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes,

(b) distinguished from any other plant grouping by the expression of at least one of those characteristics and

(c) considered as a unit with regard to its suitability for being propagated unchanged.”

(b) Item 6 shall be worded as follows:

“6. “Union member” shall mean a State or intergovernmental organization that is a member of the International Union for the Protection of New Varieties of Plants.”

3. Articles 3 to 6 shall be worded as follows:

“Article 3

“Distinctness

“(1) A variety shall be deemed to be distinct if it is clearly distinguishable by reference to the expression of at least one significant characteristic from any other variety that is a matter of common knowledge on the filing date. The Federal Office of Plant Varieties shall communicate on request for every species those characteristics it deems significant for the distinctness of varieties of that species; the characteristics must be capable of precise recognition and description.

“(2) A variety shall be deemed to be a matter of common knowledge if, in particular,

“1. it has been entered in an official register of varieties,

“2. its entry in an official register of varieties has been applied for and the application has been granted or

“3. propagating material or harvested material of the variety has already been marketed for commercial purposes.”

“Article 4

“Uniformity

“A variety shall be deemed to be uniform if, apart from variations due to the particular features of its propagation, it is sufficiently uniform in the expression of those characteristics that are significant for distinctness.”

“Article 5

“Stability

“A variety shall be deemed to be stable if the expression of the characteristics significant for distinctness

1 Original title in German: “Gesetz zur Änderung des Sortenschutzgesetzes (vom 17. Juli 1997)"
2 Published in Bundesgesetzesblat Jahrgang 1997 Part I No. 51, issued in Bonn on July 24, 1997
3 Translated by the Office of the Union
remain unchanged after each propagation or, in the case of a cycle of propagation, after each such cycle.

“Article 6
“Novelty
“(1) A variety shall be deemed to be new if plants or parts of plants have not been disposed of to others for commercial purposes with the consent of the person entitled or of his legal predecessor prior to the filing date, or only within the following periods of time:

“1. Within the European Community, one year;
“2. Outside the European Community, four years or, in the case of vines (vitis L.) and tree species, six years.

“(2) Novelty shall not be effected by disposal

“1. to an official body for statutory purposes,
“2. to others on the basis of a contractual or other legal relationship solely for the production, reproduction, multiplication, conditioning or storage on behalf of the person entitled,

“3. between companies or firms within the meaning of the second paragraph of Article 58 of the Treaty establishing the European Community if one of them belongs entirely to the other or if both belong entirely to a third such company or firm; this shall not apply in respect of cooperative societies;

“4. to others if the plants or parts of plants have been produced for experimental purposes or for breeding new varieties and no reference has been made to the variety at the time of disposal,

“5. for the purpose of display at an official or officially recognized exhibition within the meaning of the Convention on International Exhibitions of November 22, 1928 (Law of May 5, 1930, RGGI. 1930II p. 727) or at an exhibition in a Contracting State that was officially recognized as equivalent on its territory or any disposal that is related to such exhibitions.

“(3) Propagating material of a variety that is repeatedly used for the production of another variety shall only be deemed as disposed of within the meaning of paragraph (1) if plants or parts of plants of the other variety have been disposed of.”

“3. consists exclusively of figures insofar as it is not used for a variety that

“is exclusively intended for the repeated production of another variety.”

(bb) in item 4, the words “Union State” shall be replaced by the words “another Union Member.”

(b) paragraph (3) shall be amended as follows:

(aa) in item 1, the words “Union State” shall be replaced by the words “another Union Member.”

(bb) in item 2, the words “organs of the European Communities” shall be replaced by the words “the European Community.”

5. In Article 8(1), the third sentence shall be deleted.

6. Article 10 shall be worded as follows:

“Article 10
“Effect of Variety Protection
“(1) Subject to Articles 10a and 10b, variety protection shall have the effect that the owner of variety protection alone shall be entitled:

“1. (a) to produce, to condition for the purpose of propagation, to place on the market, to import or export propagating material of the protected variety or

“(b) to stock such material for any of the purposes mentioned in item (a),

“2. To carry out any acts mentioned in item 1 with respect to other plants or parts of plants or directly obtained products thereof if propagating material was used in their production without the consent of the owner of variety protection and the owner of variety protection had no opportunity to exercise his right in relation to such utilization.

“(2) The effect of variety protection under paragraph (1) shall also extend to:

“1. varieties which are essentially derived from the protected variety (initial variety), where this initial variety is not itself an essentially derived variety,

“2. varieties which cannot be clearly distinguished from the protected variety or

“3. varieties whose production requires the repeated use of the protected variety.

“(3) A variety shall be deemed to be an essentially derived variety if:
“1. the initial variety or another variety that is itself derived from the initial variety has been predominantly used for its breeding or discovery

“2. it is clearly distinguishable and,

“3. except for the differences that result from the method of derivation used, it conforms essentially to the initial variety in the expression of the characteristics that result from the genotype or combination of genotypes of the initial variety.”

7. The following Articles shall be inserted after Article 10:

“Article 10a

“Limitation of the Effect of Variety Protection

“(1) The effect of variety protection shall not extend to the acts referred to in Article 10(1) where carried out

“1. privately and for non-commercial purposes,

“2. for experimental purposes in relation to the protected variety,

“3. for the breeding of new varieties and to acts referred to in Article 10(1) in respect of such other varieties excepting the varieties referred to in Article 10(2).

“(2) The effect of variety protection shall also not extend to harvested material that a farmer has obtained on his own holding by sowing propagating material of a protected variety of the species contained in the list at annex, with the exception of hybrids and synthetic varieties, and has used it as propagating material (farm saved seed) on condition that the farmer complies with the obligations laid down in paragraphs (3) and (6). For the purpose of farm saved seed, the harvested material may be conditioned by the farmer or by an undertaking (conditioner) acting on his behalf.

“(3) A farmer who avails himself of the possibility of using farm saved seed shall be required to pay the owner of variety protection an equitable remuneration. Remuneration shall be deemed equitable where it lies notably lower than the amount agreed for the production of propagating material of the same variety in the same area on the basis of an exploitation right under Article 11.

“(4) Agreements between owners of variety protection and farmers as to the equitable nature of remuneration may be based on corresponding agreements between the professional organizations. They may not exclude competition in the seed sector.


“(6) Farmers availing themselves of farm saved seed and any conditioners acting for them shall be required to provide the owners of variety protection with information as to the volume of farm saved seed.

“(7) The Federal Ministry of Food, Agriculture and Forestry shall be empowered to amend the list of species contained in the annex by statutory order where necessary to adapt it to the Community Plant Variety List.

“Article 10b

“Exhaustion of Variety Protection

“Variety protection shall not extend to acts concerning plants, parts of plants or directly obtained products (material) of the protected variety or of a variety to which variety protection under Article 10(1)(1) also extends, that has been placed on the market by the owner of variety protection or with his consent, unless such acts

“1. involve further production of propagating material where the aforementioned material was not intended for that purpose on disposal or

“2. involve an export of material of the variety permitting propagation of the variety to a country that does not protect varieties of the species to which such variety belongs: this provision shall not apply if the exported material is intended for sowing.

“Article 10c

“Suspension of Variety Protection

“If the owner of variety protection granted under this Law obtains a Community plant variety right for the same variety, the variety protection granted under this Law may not be asserted for the duration of the Community plant variety right.”

8. Article 11 shall be worded as follows:

“Article 11

“Legal Succession, Exploitation Rights

“(1) The right to variety protection, the claim to granting of variety protection and the variety protection itself shall be transferable to natural and legal persons or to unincorporated trading companies that meet the requirements of Article 15.

“(2) Variety protection may be the subject of exclusive or non-exclusive exploitation rights in part or in whole.
“(3) Where a person entitled to exploit contravenes a limitation of the right of exploitation under paragraph (2), variety protection may be invoked against him.”

9. In the first sentence of Article 12(1), the reference “first sentence, items 1 to 3,” shall be deleted.

10. In Article 14(3), the words “in another Union State” shall be replaced by the words “by another Union member.”

11. Article 15 shall be worded as follows:

“Article 15
Scope of Application in Respect of Persons

“(1) The rights afforded by this Law may only be acquired by

1. Germans within the meaning of Article 116(1) of the Basic Law and natural and legal persons and unincorporated trading companies having their place of residence or an establishment within the country,

2. Nationals of another Contracting State or of a State that is a Union member and natural and legal persons and unincorporated trading companies having their place of residence or establishment in such State and

3. Other natural and legal persons and unincorporated trading companies where the State to which they belong or in which they have their place of residence or establishment affords corresponding protection to German nationals or persons having their place of residence or establishment in Germany according to a notification of the Federal Ministry of Food, Agriculture and Forestry in the Bundesgesetzblatt.

“(2) A person who has neither a place of residence nor an establishment in a Contracting State may only participate in procedures governed by this Law or assert rights under this Law if he appoints a representative (representative in procedures) having his place of residence or business premises in a Contracting State.”

12. Article 18(2) shall be amended as follows:

(a) item 3 shall be worded as follows:

“3. Modification of the variety denomination in accordance with Article 30,”

(b) item 4 shall be deleted.

13. Article 20 shall be worded as follows:

“Article 20
Composition of the Opposition Boards

“(1) The opposition boards shall in each case comprise the President or another member of the Federal Office of Plant Varieties designated by the President as Chairman, two further members of the Federal Office of Plant Varieties designated by the President as assessors and two honorary assessors. The members of the Federal Office of Plant Varieties shall comprise two technical members and one legal member.

“(2) The honorary assessors shall be appointed by the Federal Ministry of Food, Agriculture and Forestry for a term of six years; they may be reappointed. Where an honorary assessor retires prematurely, his replacement shall be appointed for the remaining term of office. The honorary assessors should possess special technical knowledge in the field of plant varieties. Owners or employees of breeding establishments and employees of breeders’ associations shall not be appointed. An alternate shall be appointed for each honorary assessor; the first to fourth sentences shall apply mutatis mutandis.

“(3) The opposition boards shall be capable of taking decisions in the presence of the Chairman and of one assessor, one of whom must be legally qualified, and of an honorary assessor.”

14. In Article 28(1), item 2, (2) and Article 32, item 1, the word “important” shall be replaced in each case by the word “significant.”

15. Article 30 shall be worded as follows:

“Article 30
Amendment of the Variety Denomination

“(1) A variety denomination recorded on grant of variety protection shall be amended if

1. grounds for exclusion under Article 7(2) or (3) existed at the time of entry and continue to exist,

2. grounds for exclusion under Article 7(2), items 5 or 6, have subsequently occurred,

3. a conflicting right can be proved and the owner of variety protection agrees to the entry of another variety denomination,

4. the owner of variety protection has been prohibited by a final legal decision from using the variety denomination or

5. any other person required to use the variety denomination under Article 14(1) has been prohibited from using the variety denomination by a final legal decision and the owner of variety protection is a subsidiary
party to the litigation or was informed of the proceedings, insofar as he was not prevented from asserting his rights by circumstances referred to in the second half sentence of Article 68 of the Code of Civil Procedure.

"Where a variety denomination is amended in accordance with item 1 in the first sentence there shall be no claim to compensation for financial disadvantage under Article 48(3) of the Law on Administrative Procedure.

"(2) The Federal Office of Plant Varieties shall require the owner of variety protection to propose another variety denomination within a specified period of time if it ascertains the existence of grounds for amendment in accordance with paragraph (1). If that period of time expires without result, the Office may lay down a variety denomination ex officio. At the request of the owner of variety protection or of another person, the Federal Office of Plant Varieties shall lay down a variety denomination if the petitioner can prove a justified interest. Articles 24, 25 and 28 (1), item 1, and (4) shall apply mutatis mutandis to the laying down of the other variety denomination and its notification."

16. In Article 31(4), item 1, the reference "(3)" shall be replaced by the reference "(2)."

17. In Article 33(2), first sentence, the words "for payment of fees" shall be replaced by the words "for the generation and payment of fees."

18. In Article 34(3), the reference "Article 30(3)" shall be replaced by the reference "Article 30(2)."

19. Article 37 shall be amended as follows:

(a) paragraph (1), item 1, shall be worded as follows:

"1. Commits with material enjoying variety protection any of the acts referred to in Article 10(1) or."

(b) Paragraph (3) shall be worded as follows:

"(3) The owner of variety protection may require equitable remuneration from any person who has performed with material enjoying variety protection one of the acts referred to in Article 10(1) in the time between publication of the application and grant of variety protection."

20. In Article 38, the present paragraph (5) shall be replaced by the following paragraph:

"(5) Paragraphs (1) to (4) shall also apply to all actions to assert a claim under the legal relationships regulated in Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ No. L227 page 1) in its applicable version."

21. Article 39(1) shall be worded as follows:

"(1) Any person who,

1. in contravention of Article 10(1), and in conjunction with paragraph (2), produces, conditions for the purposes of propagation, places on the market, imports, exports or stores propagating material of a variety protected under this Law, a plant, a part of a plant or a product or who,

2. in contravention of Article 13(1), and in conjunction with paragraph (2), first sentence, also in conjunction with paragraph (4), first sentence, or paragraph (5), of Council Regulation (EC) No. 200/94 of 27 July 1994 on Community Plant Variety Rights (OJ No. L227 page 1) propagates, conditions for the purposes of propagation, offers for sale, places on the market, imports, exports or stores material of a variety protected by a Community plant variety right,

"shall be liable to imprisonment of up to three years or to a fine."

22. Paragraph 40(1) shall be worded as follows:

"(1) Any person who intentionally or by negligence,

1. in contravention of Article 14(1), markets propagating material of a variety protected under this Law without stating the variety denomination or without stating it in the prescribed manner,

2. in contravention of Article 14(3), uses a variety denomination of a variety protected under this Law or a designation that may be confused with it for another variety of the same or of a related species or,

3. in contravention of Article 17(1), also in conjunction with paragraph (3), of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights (OJ No. L227 page 1), fails to use the denomination of a variety protected by a Community plant variety right, does not use it correctly, completely or in the prescribed manner,

"shall be deemed to have committed an offense."

23. Article 41 shall be amended as follows:

(a) the following paragraph shall be inserted after paragraph (2):

"(3) If a Community plant variety right has been granted for a variety and has been terminated by relinquishment without the existence of grounds for a declaration of nullity or cancellation, an application for grant of variety protection under this Law may be filed within three months of the relinquishment taking effect. The holder of the Community plant variety right or his successor in title shall enjoy the date of the application for
grant of the Community plant variety right as priority for the variety protection application under this Law. The priority shall lapse if the applicant does not file within the aforementioned period the documents concerning the application for grant of the Community plant variety right, its grant and the relinquishment. If variety protection under this Law is granted for the variety, the duration of the granted protection shall be reduced by the number of complete calendar years that have elapsed between the grant of the Community plant variety right and the grant of variety protection under this Law."

(b) The present paragraph (3) shall become (4) and the following paragraph shall be added after that paragraph:

"(5) By derogation from Article 6(1), a variety shall also be deemed new if plants or parts of plants of the variety have not been marketed for commercial purposes with the consent of the entitled person or of his legal predecessor prior to the filing date or has only been marketed for commercial purposes within the following periods of time:

1. one year within the country,
2. four years or, for vine (vitis L.) and tree species, six years outside the country,

if the filing date is not later than one year after the entry into force of Article 1 of the Law of July 17, 1997 (BGBI.I p. 1854).

(6) The prescription in Article 10(1) shall not apply to essentially derived varieties for which variety protection has been sought or granted prior to the entry into force of Article 1 of the Law of July 17, 1997 (BGBI.I p. 1854)."

24. In Article 16(1), Article 17(1), Article 32 and Article 33(1), first sentence, in each case

(a) the words "of the Federal Minister" shall be replaced by the words "of the Federal Ministry,"
(b) the words "Federal Minister" shall be replaced by the words "Federal Ministry,"
(c) the words "the Federal Minister" shall be replaced by the words "the Federal Ministry,"
(d) the words "Federal Ministers" shall be replaced by the words "Federal Ministries."

Article 2
New Version of the Law

The Federal Ministry of Food, Agriculture and Forestry may notify the wording of the Plant Variety Protection Law in the version applicable as from the entry into force of this Law in the Bundesgesetzblatt.

Article 3
Entry into Force

This Law shall enter into force on the day following its promulgation.

ANNEX
Species for which propagating material may be saved:

1. Cereals
1.1 Avena sativa L. Oats
1.2 Hordeum vulgare L. sensu lato Barley
1.3 Secale cereale L. Rye
1.4 x Triticeaececale Wittm. Triticale
1.5 Triticum aestivum L. emend. Fiori et Paol. Tender Wheat
1.6 Triticum durum Desf. Durum Wheat
1.7 Triticum spelta L. Spelt

2. Fodder plants
2.1 Lupinus luteus L. Yellow Lupin
2.2 Medicago sativa L. Lucerne
2.3 Pisum sativum L. Field Pea
2.4 Trifolium alexandrinum L. Berseem Clover

2.5 Trifolium resupinatum L. Persian Clover
2.6 Vicia faba L. (partim) Field Bean
2.7 Vicia sativa L. Common Vetch
3. Oil and fiber plants
3.1 Brassica napus L. (partim) Rape
3.2 Brassica rapa L. var. silvestris (Lam.) Briggs Turnip Rape
3.3 Linum usitatissimum L. Flax, except Fiber Flax

4. Potatoes
4.1 Solanum tuberosum L. Potato
HUNGARY

Law No. XXXIII on the Protection of Inventions by Patents\(^1\)\(^2\)

April 25, 1995

Part IV

Patent Protection for Plant Varieties and Animal Breeds

**Article 105**

1. A plant variety shall be patentable if it is distinct, uniform, stable and new and has been given a denomination suitable for registration.

2. The variety shall be deemed to be distinct if it clearly differs by one or more morphological or other measurable characteristics from any other variety whose existence is a matter of common knowledge at the date of priority.

3. The variety shall be deemed to be uniform if the relevant characteristics of its individuals are identical.

4. The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or at the end of each cycle of propagation.

5. The variety shall be deemed to be new if it has not been offered for sale or marketed with the consent of the breeder or his successor in title:

   a. in the country earlier than one year before the date of priority;

   b. abroad earlier than four years or, in the case of trees and vines, earlier than six years before the date of priority.

6. The denomination must, at the date of priority, be such that the variety may be identified. In particular, it may not consist solely of figures except where this is an established practice for designating varieties, it must not be liable to mislead, it must be different from the denomination of an existing variety of the same or closely related plant species and its use must not be contrary to public policy or morality.

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**Article 106**

**Rights and Obligations Deriving from Patent Protection for Plant Varieties**

1. A patent granted for a plant variety shall confer on the patentee the exclusive right in respect of:

   a. the production for the purposes of commercial marketing, the offering for sale or the marketing of the propagating material, as such, of the plant variety;

   b. the repeated use of the plant variety for the commercial production of another variety;

   c. the commercial use as propagating material of ornamental plants marketed for purposes other than propagation.

2. Entire plants, seeds or other parts thereof suitable for propagation shall be considered propagating material.

3. The propagating material of the patented plant variety may be exported only by the authorization of the patentee to a country in which the plant variety does not enjoy protection similar to that provided by this Law.

4. Patent protection shall have a duration of 15 years from the date of the grant of a patent or, in the case of trees and vines, of 18 years from such date.

5. The patentee shall be required to maintain the plant variety during the period of patent protection.

6. Where a plant variety has been qualified by the State, the inventor shall be entitled, at the patentee's discretion, to remuneration or to other compensation under the provisions on State qualification of plant varieties.

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\(^1\) Published in *Magyar Közlöny*, 1995, p.1670

\(^2\) Translation provided by the Hungarian authorities
Article 107
Substantive Examination of Applications Concerning Plant Varieties

(1) A patent application may only seek patent protection for a single plant variety.

(2) The substantive examination of the application carried out by the Hungarian Patent Office shall ascertain:

(a) whether the plant variety meets the requirements laid down in Article 105 and is not excluded from patent protection under Article 6(2);

(b) whether the application complies with the requirements prescribed by this Law.

(3) The distinctness, uniformity and stability of the plant variety shall be assessed in the course of qualification by the State or on the basis of the results of experimental testing carried out for the purposes of patent procedure. The experimental testing shall be carried out in the territory of the country by an organization designated in special legislation.

(4) The results of experimental testing carried out by a competent foreign organization may be taken into consideration in the patent procedure with the consent of such organization subject to reciprocity. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive. The Hungarian Patent Office shall notify the organization mentioned under paragraph (3) of the acceptance of the results of foreign testing.

(5) The cost of experimental testing shall be borne by the applicant.

(6) The results of experimental testing may be filed by the applicant within four years following the date of priority.

Article 108
Revocation of Patent Granted for a Plant Variety; Cancellation of Variety Denomination

(1) A patent granted for a plant variety shall be revoked

(a) ex tunc, if the plant variety was not distinct or new or was excluded from patent protection under Article 6(2),

(b) with effect from the date at which the relevant decision has become final, if the patentee does not comply with the obligations provided for in Article 106(5).

(2) The variety denomination shall be cancelled if it was not suitable for registration and another variety denomination shall be given.

Article 109
Application of General Provisions

(1) The patented plant variety may be put into public production only after having been qualified by the State.

(2) In any other matters, the provisions of Chapters I to XII shall apply mutatis mutandis to plant varieties and their patent protection.

CHAPTER XIV
PROVISIONS CONCERNING ANIMAL BREEDS

Article 110
Conditions of Patent Protection for Animal Breeds; Right to Grant of Patent

(1) An animal breed shall be patentable if it is distinct and new and has been given a denomination suitable for registration. Where an animal breed does not fall within the scope of the Law on Livestock Breeding, patentability shall also be subject to reproducibility of the animal breed.

(2) The animal breed shall be deemed distinct if it clearly differs in one or more assessment characteristics from any other breed whose existence is a matter of common knowledge at the date of priority.

(3) The animal breed shall be deemed reproducible if its assessment characteristics remain unchanged through several generations.

(4) The animal breed shall be deemed new if it has not been offered for sale or marketed with the consent of the breeder or his successor in title earlier than one year before the date of priority.

(5) The denomination must, at the date of priority, enable the animal breed to be identified. In particular, it may not consist solely of figures except where this is an established practice for designating breeds, it must not be liable to mislead, it must be different from the denomination of an existing breed of the same or a closely related animal species and its use must not be contrary to public policy or morality.

(6) In the case of State approved breeds, the right to a patent shall belong to the person applying for approval or to his successor in title.
Article 111

Rights and Obligations Deriving from Patent Protection of Animal Breeds

(1) A patent granted for an animal breed shall confer on the patentee an exclusive right in respect of

(a) the production for the purposes of commercial marketing, the offering for sale or the marketing of the propagating material, as such, of the animal breed,

(b) the repeated use of the animal breed for the commercial production of another breed.

(2) The animal itself (individual), sperms, ova, eggs suitable for hatching, embryos, or any other biological units or parts influencing or controlling propagation (e.g. parts of genes, cells) shall be considered propagating material.

(3) The propagating material of the patented animal breed may be exported only with the authorization of the patentee to a country in which the animal breed does not enjoy protection similar to that provided by this Law.

(4) Patent protection shall have a duration of 20 years from the date of filing of the application.

Article 112

Substantive Examination of Applications concerning Animal Breeds

(1) A patent application may only seek patent protection for a single animal breed.

(2) The substantive examination of the application carried out by the Hungarian Patent Office shall ascertain:

(a) whether the animal breed meets the requirements laid down in Article 110(1) to (5) and is not excluded from patent protection under Article 6(2),

(b) whether the application complies with the requirements prescribed by this Law.

(3) The distinctness and reproducibility of the animal breed shall be assessed in the course of State approval or on the basis of the results of experimental productivity testing carried out for the purposes of patent procedure. The experimental testing shall be carried out in the territory of the country by an organization designated in special legislation.

(4) The result of experimental productivity testing carried out by a competent foreign organization may be taken into consideration in the patent procedure with the consent of such organization and subject to reciprocity. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive. The Hungarian Patent Office shall notify the organization mentioned under paragraph (3) of the acceptance of the results of foreign testing.

(5) The results of experimental productivity testing may be filed by the applicant within four years following the date of priority.

(6) The cost of experimental productivity testing shall be borne by the applicant.

Article 113

Revocation of Patent Granted for an Animal Breed, Cancellation of Denomination

(1) A patent granted for an animal breed shall be revoked ex tunc if the animal breed was not distinct or new or was excluded from patent protection under Article 6(2).

(2) The denomination shall be canceled if it was not suitable for registration and another denomination shall be given.

Article 114

Application of General Provisions

(1) A patented animal breed falling within the scope of the Law on Livestock Breeding may be put into public production only after State approval.

(2) In any other matters, the provisions of Chapters I to XII shall apply mutatis mutandis to animal breeds and their patent protection.
### CALENDAR

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Abbreviations:  
(A) = Arabic, (C) = Chinese, (D) = Dutch, (E) = English, (F) = French, 
(G) = German, (I) = Italian, (J) = Japanese, (P) = Portuguese, (R) = Russian,  
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| 273                | International Convention for the Protection of New Varieties of Plants, texts of 1961 and 1972 only  
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| 295                | International Convention for the Protection of New Varieties of Plants, text of 1978 only  
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| INF/7              | Rules of Procedure of the Council, as of October 15, 1982                              
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| INF/9              | Agreement between the International Union for the Protection of New Varieties of Plants and the Swiss Federal Council to determine the legal status in Switzerland of that Union (Headquarters Agreement)  
                      (E), (F), (G), (S)                                                           |

1 Unless otherwise indicated, copies are available on request at the price of 10 Swiss francs each, including surface mail, from the Office of UPOV, 34, chemin des Colombettes, P.O.Box 18, CH-1211 Geneva 20, Switzerland.
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| 842                | Model Law on the Protection of New Varieties of Plants  
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| 879                | The First Twenty-Five Years of the International Convention for the Protection of New Varieties of Plants  
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Test Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability  
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<td>Apfel (nur für Ziersorten und Unterlagen)</td>
<td>Manzano (únicamente para variedades ornamentales y por-tainjertos)</td>
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<td>Fresa (variedades de multiplicacion vegetativa)</td>
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<td>Agrumes (variétés d'oranger, de mandarinier, de citronnier et de limettier, de poêle; à l'exclusion des variétés porte-greffes)</td>
<td>Zitrus (Sorten von Orange, Mandarine, Zitrone und Grapefruit; Unter-lagssorten ausge-schlossen)</td>
<td>Citricos (variedades de naranjo, manda-rino, limonero, limero y pomelo; excepto las varie-dades portainjer-tos)</td>
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<td>Ostasiatische Pflaume (nur fruchttragende Sorten)</td>
<td>Ciruelo japonés (variedades fruta-les únicamente)</td>
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<td>Euphorbia mili Desmoulins &amp; its hybrids</td>
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