IPDEV Work Package 6:

ASSESSING THE ECONOMIC IMPLICATIONS OF DIFFERENT MODELS FOR IMPLEMENTING THE REQUIREMENT TO PROTECT PLANT VARIETIES

CASE STUDY ON BULGARIA

Produced by IP Bulgaria

Produced with support of the European Commission’s 6th Framework Programme for Research as part of the project “Impacts of the IPR Rules on Sustainable Development” (IPDEV)

Date: November 2006

Disclaimer: This report does not represent the views of the European Commission, the European Union or of its member states.
1. INTRODUCTION

1.1. Place of the agrarian sector in the national economy

The economy of Bulgaria in 2004 is characterized by stability and high growth which resulted in the positive development of the major macro economic indicators\(^1\).

The gross domestic product (GDP) in market prices in 2004 reached nominal value volume of 38 008 million BGN while for 2 003 it was 34 547 million BGN, for 2002 – 32 335 million BGN. Compared to 2003 the physical volume of GDP grew by 5.6% which was the highest growth since the beginning of the transitional period.

*The value volume of GDP for 2004 was calculated as 4 885 per capita, or 3 101 USD at average exchange rate of 1.575 BGN/USD. Compared to 2003 the GDP per capita was 4 416 BGN or 2 548 USD at average exchange rate of 1.733 BGN/USD.*

The gross added value created from the economic activities of the national economy in 2004 amounted to 32 942 million BGN in current prices by marking growth of 5.4% compared to the one reached in 2003. The situation for the individual sectors was as follows:

- For the industrial sector – 5.3% and the industry created 30% of the value added in economy
- For the service sector - 6% and its share in the total value added was 59.1%
- For the agrarian sector – 2.2% and its share in the value added was 10.9%.

The relative share of gross value added created in the agrarian sector kept the downward trend – from 13.4% in 2001, 12.1% in 2002, 11.6% in 2003 down to 10.9% in 2004.

![Diagram](image1.png)

**Fig.1.1**

The foreign trade balance of Republic of Bulgaria was negative in 2004 amounting to 3 900 million BGN, and was increased by 622 million BGN compared to the same period of the

---

previous year. The rate of increase of the import (14.1%) remained higher than those of the export (13.1%), which led to increase of the trade deficit. Major factors for the strong import of commodities were the increased consumption, related to the growth of the salaries and employment, the household credits, the delayed consumption over the last years with expectations for favourable periods. The foreign trade in agricultural commodities for 2004 ended up with a positive trade balance amounting to 247 004 thousand USD (389 031 thousand BGN, at average exchange rate of the U.S. dollar of 1.575 BGN).

Table I.1.
Major macro economic indicators over the period 2001-2004

<table>
<thead>
<tr>
<th>Indicators</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gross domestic product (GDP) – current prices million BGN</td>
<td>29 709</td>
<td>32 335</td>
<td>34 547</td>
<td>38 008</td>
</tr>
<tr>
<td>Including:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross value added (GVA) – million BGN</td>
<td>26 356</td>
<td>28 526</td>
<td>30 227</td>
<td>32 942</td>
</tr>
<tr>
<td>Gross value added – million BGN</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture, forestry and hunting</td>
<td>3 520</td>
<td>3 446</td>
<td>3 484</td>
<td>3 567</td>
</tr>
<tr>
<td>Fishing</td>
<td>13</td>
<td>14</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Change of the physical volume of GVA compared to the previous year</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture, forestry and hunting</td>
<td>+ 0.3%</td>
<td>+5.5%</td>
<td>-1.0%</td>
<td>+ 2.2%</td>
</tr>
<tr>
<td>Fishing</td>
<td>+ 1.9%</td>
<td>+4.8%</td>
<td>+1.7%</td>
<td>+4.4%</td>
</tr>
<tr>
<td>Share of the gross value added from sector agriculture and forestry and hunting in GVA for the economy as a whole</td>
<td>13.4%</td>
<td>12.1%</td>
<td>11.6%</td>
<td>10.9%</td>
</tr>
<tr>
<td>2. Growth of GDP in (compared to the previous year)</td>
<td>+ 4.1%</td>
<td>+4.9%</td>
<td>+4.5%</td>
<td>+5.6%</td>
</tr>
<tr>
<td>3. GDP per capita of the population</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>in BGN</td>
<td>3 754</td>
<td>4 109</td>
<td>4 416</td>
<td>4 885</td>
</tr>
<tr>
<td>in U.S. dollars</td>
<td>1 718</td>
<td>1 978</td>
<td>2 548</td>
<td>3 101</td>
</tr>
<tr>
<td>4. Foreign trade balance – million BGN</td>
<td>-2 250</td>
<td>-2 141</td>
<td>-3 279</td>
<td>-3 901</td>
</tr>
<tr>
<td>Including: **</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture – million BGN</td>
<td>+ 222.1</td>
<td>+ 498.46</td>
<td>+ 321.0</td>
<td>+ 389.0</td>
</tr>
<tr>
<td>5. Investments in expenditures for acquisitions and acquired tangible long-term assets – million BGN</td>
<td>12 663.9</td>
<td>14 379.5</td>
<td>16 086.5</td>
<td>15 430.5</td>
</tr>
<tr>
<td>Including</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investments in the agricultural sector (agriculturally. forestry. hunting and fishing) – million BGN</td>
<td>271.2</td>
<td>380.9</td>
<td>506.2</td>
<td>324.0</td>
</tr>
<tr>
<td>6. Inflation:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- average for the period</td>
<td>7.4%</td>
<td>5.8%</td>
<td>2.3%</td>
<td>6.1%</td>
</tr>
<tr>
<td>- at the end of the period</td>
<td>4.8%</td>
<td>3.8%</td>
<td>5.6%</td>
<td>4.0%</td>
</tr>
<tr>
<td>7. Exchange rate BGN/USD</td>
<td>2.185</td>
<td>2.077</td>
<td>1.733</td>
<td>1.575</td>
</tr>
<tr>
<td>8. Level of the unemployment - average annual value ***</td>
<td>18.08%</td>
<td>17.71%</td>
<td>14.24%</td>
<td>12.67%</td>
</tr>
<tr>
<td>Registered unemployed - total</td>
<td>662 260</td>
<td>602 524</td>
<td>500 664</td>
<td>450 566</td>
</tr>
<tr>
<td>9. Average annual salary of the employed people in the country</td>
<td>2 880</td>
<td>3091</td>
<td>3 280</td>
<td>3 618</td>
</tr>
<tr>
<td></td>
<td>in agriculture, forestry and hunting - BGN</td>
<td>2 227</td>
<td>2 307</td>
<td>2 431</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>in fisheries - BGN</td>
<td>1 295</td>
<td>1 347</td>
<td>1 498</td>
</tr>
</tbody>
</table>

*Source: NSI*

**Note:**

* Preliminary data
** Calculated as per the exchange rate of p. 7
*** As per the data from the Employment Agency

### 1.2. Development of the agricultural sector in 2004 and 2005

#### 1.2.1. Land relations, use of agricultural land, registered agricultural producers

**1.2.1.1. Land ownership**

In 2004 continued the work on the system for collection, summarizing and analyzing the land ownership data and the land relations in Bulgaria, maintenance of current data and coordination among the municipal services Agriculture and Forestry, the district directorates Agriculture and Forestry and MAF. This allows MAF to avail with up-to-date data for the land ownership as well as to follow the dynamics and the trends concerning the ownership and use of agricultural lands.

The ratio between the area of the agricultural lands and their number gives the idea for the land fragmentation per districts. (Fig. II.1). With that regard the districts can be differentiated into two major groups:

- Districts in which small area of agricultural land corresponds to a great number of the properties – Smolyan, Kurdzhali, Kyustendil, Pazardzhik, etc.
- Districts in which on a big in size area agricultural land corresponds to a small number of the properties – Dobrich, Pleven, Bourgas, Yambol, Shoumen, etc.

*Source: MAF*
The average area of one property in the agricultural lands per districts obtained as a ratio of the agricultural land and the number of the properties in the respective district is presented on Fig. II.2. The graph presents information for the period 2002-2004.

In 2002 the properties as a whole for all districts were with bigger area which gradually decreased in 2003 and 2004. This is a mainly the result of the process for division of the land estates among the heirs of the owners of the restored agricultural land. This process was most dynamic for the district with traditionally best developed agriculture and consolidated land ownership - district of Dobrich where the average area of one estate decreased almost two times from nearly 4 ha to 2 ha.

Depending on the geographical features and specificity in 2004 the area of the land estates varies widely for the different districts of the country - from average 0.26 ha for the district of Smolyan to 1.99 ha for the district of Dobrich.

**Average area of an estate in the agricultural lands for districts over the period 2002-2004**

![Graph showing average area of an estate in the agricultural lands for districts over the period 2002-2004](image)

*Source: MAF*

According to the opinion of the Minister of Agriculture and Forestry, Mr. Nihat Kabil posed at the conference “Bulgarian Agriculture in the EU”, held on May 9, 2006 in Sofia, “the most serious problem of the Bulgarian agriculture is the land’s fragmentation”. As to December 2005, Bulgaria records private agriculture estates of 7.6 Mio., located on about 0.5 ha.
1.2.1.2. Land market
The data for 2004 characterized a dynamic land market. 45 855 deals were concluded for 45 264 ha of lands for agricultural purposes with average price of 1 340 BGN/ha. The deals with agricultural lands which were concluded in order to change the purpose of use were 2 582, for 1 070 ha. The average price was 7 585 BGN/ha. Total of 48 437 deals for 46 333 ha were concluded in 2004 at the average land price of 3060 BGN/ha.

The general characteristics of the land market for 2004 were as follows:

- The supply and demand of agricultural lands was comparatively balanced for the country as a whole. In most of the case’s there were discrepancies in terms of the quality characteristics of the agricultural estates;
- A new tendency of the market of agricultural lands was the search of lands from categories I to III and differentiation of the offered prices for purchase and renting according to the land category;
- The demand was mainly for purchasing lands for agricultural purposes. For 2004 only 2.3% of the land sold was with the purpose of change of purpose of use;
- In terms of prices the market was stable;
- In 2004 the trend for low prices of the lands for agricultural production was kept. Exceptional growth had the prices of the estates close to the sea, mountain resorts, big cities;
- Stable rent payments and increasing the competitiveness between the tenants for ensuring land for development of the production.

The good farming 2003/2004 was one of the factors for intensifying of the demand of agricultural lands. An additional stimulus for the development of the market relations was the concluded negotiations with the European Union on Chapter Agriculture which determined the financial framework for support of the agricultural producers after 2007.

The differentiation of the agricultural lands market per regions of the country continues. The basis for the regional differences was the acting production structures, the profitability of the agricultural production and the distribution of the ownership. The tendency the land market in the major grain producing regions of the country to be more dynamic both in terms of the concluded deals and in terms of market prices continues.

1.2.1.3. Rent/lease relations in agriculture
In 2004 were concluded 264 726 rent contracts for 562 870 ha. In financial terms the rent was 50-100 BGN/ha (5–10 BGN/dca). The average size of the land rented by one tenant was 63.5 ha, and this indicator was the highest in the Northern Central region – 146 ha. The land of 363 481 owners was rented. The registered tenants and leaseholders were 8 858 which compared to 2003 marks an increase of 3.3 times.

2.1.4. Land consolidation
At present the land consolidation is done by the freely expressed desire on behalf of the land owners. Two projects on land consolidation by agreement are being implemented at the Ministry of Agriculture and Forestry subject to agreement. The implementation of the projects showed that the land consolidation is a long and complicated process connected with legal and financial commitments for the owners. The work on the projects started at the end of 2002. Five territories belonging to settlements (TBS) were included. They were chosen under different criteria. The TBSs are situated in differential graphical regions of the country with specific agricultural characteristics. The activities on the consolidation of agricultural lands on
the TBSs of the selected settlements for 2003 are described in detail in the Agrarian Report 2004.

1.2.1.5 Registers of producers of agricultural products
According to the provisions of the Law for support of the agricultural producers a register of the agricultural producers was established and is functioning at the MAF.

In 2004 the number of the registered agricultural producers was 66 772 – physical and legal bodies. By 19.09.2005 the registered agricultural producers, physical and legal bodies were 64 127. In that regard it has to be underlined that the registration is more an obligation than a recommendation as it is the necessary condition for access to the financial support by State Fund Agriculture and SAPARD program.

Over the period 2007-2009 around 1.8-2 billion Euro in the form of direct financing will be received in the country. 1.5 of them under different forms of subsidies will directly reach the Bulgarian producers. Every agricultural producer will receive around 1000 Euro as annual support. This money is for the so called semi-subsistence farms - small farms which produce for their own consumption and for the market. In order to have access to these subsidies the agricultural producer will have to be registered with a special form in the national register. A national register of the tobacco producers and the areas in Bulgaria was established and is functioning at Fund Tobacco (according to the Law on tobacco and tobacco products). In the regional offices of the Fund there is a register of the tobacco producers and of the areas under tobacco by municipalities. The number of the registered producers of raw tobacco of the last tree years is shown below.

Table II.2. Registered tobacco producers according to the Law on tobacco and tobacco products

<table>
<thead>
<tr>
<th>Tobacco Producers</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total:</td>
<td>62 789</td>
<td>61 917</td>
<td>65 965</td>
</tr>
</tbody>
</table>

Source: Fund Tobacco

1.2.2. Usage of areas with agricultural purpose

The areas with agricultural purpose\(^2\) in 2004 was 5 786 thousand ha and covered 51.1% of the territory of the country. In 2003 the area with agricultural purples was 5 782 thousand ha. Its relative share of the territory of the country remained unchanged over the last two years.

The used agricultural area\(^3\) in 2004 was 5 330 thousand ha or 48.0% of the territory of the country. In 2003 the used agricultural land was 5 326 thousand ha – 48.0%. As a whole the relative share of the used agricultural land remained unchanged compared to the total area of the country.

\(^2\) The area with agricultural purpose is the used agricultural land and the non-cultivated lands

\(^3\) The used agricultural area includes:
- the cultivated land,
- perennials,
- permanent grasslands,
- family gardens,
- green house areas.
The **cultivated lands**\(^4\) in Bulgaria in 2004 were 3,263 thousand ha and represented 61.2% of the used agricultural land. In 2003 the cultivated lands were 3,238 thousand ha – 60.8% of the total used land in the country. There was an increase of 0.8% of the cultivated land in 2004 compared to the previous year. In 2004 fallow land was observed on 438 thousand ha or 13.4% of the cultivated land. Compared to the previous 2003 the fallow lands decreased by around 4%.

The **non-cultivated lands**\(^5\) in 2004 amounted to 455 thousand ha and were 7.9% of the areas with agricultural purpose. The non-cultivated lands kept almost the same size compared to the previous year.

### Table II.3. Cultivated land used agricultural area and area with agricultural purpose over the period 2000-2003.

<table>
<thead>
<tr>
<th>Code</th>
<th>Planted crops</th>
<th>2000 Area (ha)</th>
<th>2001 Area (ha)</th>
<th>2002 Area (ha)</th>
<th>2003 Area (ha)</th>
<th>2004 Area (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>Wheat</td>
<td>1,121,838</td>
<td>1,366,594</td>
<td>1,382,890</td>
<td>903,345</td>
<td>1,044,006</td>
</tr>
<tr>
<td>24</td>
<td>Barley</td>
<td>226,808</td>
<td>293,128</td>
<td>392,765</td>
<td>285,372</td>
<td>333,484</td>
</tr>
<tr>
<td>25</td>
<td>Rye and triticale</td>
<td>26,501</td>
<td>23,843</td>
<td>24,065</td>
<td>19,141</td>
<td>15,852</td>
</tr>
<tr>
<td>26</td>
<td>Oats</td>
<td>40,605</td>
<td>52,726</td>
<td>46,218</td>
<td>47,392</td>
<td>42,467</td>
</tr>
<tr>
<td>27</td>
<td>Maize</td>
<td>626,961</td>
<td>444,955</td>
<td>360,116</td>
<td>488,488</td>
<td>415,971</td>
</tr>
<tr>
<td>28</td>
<td>Rice</td>
<td>3,571</td>
<td>3,897</td>
<td>5,232</td>
<td>5,644</td>
<td>5,397</td>
</tr>
<tr>
<td>29</td>
<td>Other cereals</td>
<td>7,934</td>
<td>7,831</td>
<td>6,274</td>
<td>19,141</td>
<td>15,852</td>
</tr>
<tr>
<td>30</td>
<td>Sugar beet</td>
<td>1,940</td>
<td>1,343</td>
<td>2,188</td>
<td>400</td>
<td>1,041</td>
</tr>
<tr>
<td>31</td>
<td>Industrial textile crops</td>
<td>10,231</td>
<td>14,689</td>
<td>6,436</td>
<td>3,293</td>
<td>3,735</td>
</tr>
<tr>
<td>32</td>
<td>Sunflower</td>
<td>591,979</td>
<td>398,478</td>
<td>477,276</td>
<td>674,883</td>
<td>598,203</td>
</tr>
<tr>
<td>33</td>
<td>Tobacco</td>
<td>48,247</td>
<td>52,165</td>
<td>42,016</td>
<td>41,875</td>
<td>48,974</td>
</tr>
<tr>
<td>34</td>
<td>Industrial oil-bearing crops</td>
<td>9,541</td>
<td>20,748</td>
<td>12,871</td>
<td>20,308</td>
<td>20,517</td>
</tr>
<tr>
<td>35</td>
<td>Other industrial crops</td>
<td>25,010</td>
<td>40,002</td>
<td>55,873</td>
<td>71,295</td>
<td>96,078</td>
</tr>
<tr>
<td>36</td>
<td>Potatoes</td>
<td>25,585</td>
<td>21,377</td>
<td>22,889</td>
<td>22,781</td>
<td>24,562</td>
</tr>
<tr>
<td>37</td>
<td>Beans, peas, broad beans</td>
<td>10,351</td>
<td>6,800</td>
<td>6,223</td>
<td>6,091</td>
<td>5,801</td>
</tr>
<tr>
<td>38</td>
<td>Lentils, chick peas and other leguminous</td>
<td>4,067</td>
<td>3,427</td>
<td>6,023</td>
<td>8,111</td>
<td>3,875</td>
</tr>
<tr>
<td>39</td>
<td>Fresh vegetables</td>
<td>44,678</td>
<td>52,400</td>
<td>50,772</td>
<td>46,381</td>
<td>37,765</td>
</tr>
<tr>
<td>40</td>
<td>Nurseries</td>
<td>4,271</td>
<td>4,527</td>
<td>4,299</td>
<td>3,901</td>
<td>4,842</td>
</tr>
<tr>
<td>41</td>
<td>Fodder crops arable crops</td>
<td>695</td>
<td>311</td>
<td>508</td>
<td>194</td>
<td>484</td>
</tr>
<tr>
<td>42</td>
<td>Other fodder annual crops</td>
<td>8,913</td>
<td>7,680</td>
<td>7,985</td>
<td>9,820</td>
<td>6,547</td>
</tr>
<tr>
<td>43</td>
<td>Lawns sown with leguminous</td>
<td>86,561</td>
<td>89,277</td>
<td>86,474</td>
<td>97,469</td>
<td>93,044</td>
</tr>
<tr>
<td>44</td>
<td>Lawns sown with cereals</td>
<td>6,264</td>
<td>5,523</td>
<td>3,999</td>
<td>3,548</td>
<td>4,900</td>
</tr>
<tr>
<td>49</td>
<td>Fallow lands</td>
<td>467,573</td>
<td>438,757</td>
<td>273,911</td>
<td>455,798</td>
<td>437,674</td>
</tr>
</tbody>
</table>

---

\(^4\) **Cultivated land** are the areas which are included in the crop rotation in the year under observation, the temporary lawns with cereals, leguminous and fallow land

\(^5\) **Non-cultivated land** – includes abandoned perennials, fallow lands and fields which were not cultivated for more than three years but to which can be used in the crop rotation if some funds are provided
1.2.3. Production and economic results in 2004 and 2005

1.2.3.1. Plant growing production

1.2.3.1.1. Grain production

According to Agro statistics Directorate data, areas under cereals in 2004 amounted to 1 875 000 ha, which was 57.5% of the cultivated land in the country. Compared to the previous year the areas under cereals increased by 5.8%. The increase was registered in all regions of the country. Production of cereals from harvesting year 2004 increased by 96% compared to the previous year. The increase was due to the larger size of the sown areas and to the higher average yield from the crops resulting from the appropriately carrying out agro technical activities, the good wintering and the favourable agro-climatic conditions.

Wheat

In 2005 the areas sown with the major food crop in our country, wheat, were 1 044 000 ha (55.7% of the areas under cereals). Compared to 2003 they increased by 15.6%. The harvested areas in 2004 were 1 039.7 thousand ha. That was 23.6% more compared to the previous year. In 2004 the wheat production increased by around 98% compared to 2003 reaching 3 961 000 tons.

Table II.6. Wheat production from harvesting years 2003-2004

<table>
<thead>
<tr>
<th>Areas /harvested/ [ha]</th>
<th>Average Yield [tons/ha]</th>
<th>Production [tons]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total for the country</td>
<td>841 014</td>
<td>1 039 679</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”

Rye and triticale

The high average yields in 2004 contributed for the increase of the production of rye and triticale compared to the previous year despite the less sown areas. Rye production increased by 43.2% (up to 16 976 t), and that of triticale by 51.2% (up to 27 643 t).
Table II.7. Rye and triticale production from harvesting years 2003-2004

<table>
<thead>
<tr>
<th>Areas /harvested/ [ha]</th>
<th>Average Yield [tons/ha]</th>
<th>Production [tons]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rye</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Triticale</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total for the country</td>
<td>9 801</td>
<td>11 887</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”

Barley
For harvest 2003 areas under barley were 333 485 ha which was 17% more compared to the previous year.

Table II.8. Barley production from harvesting years 2003-2004

<table>
<thead>
<tr>
<th>Areas /harvested/ [ha]</th>
<th>Average Yield [tons/ha]</th>
<th>Production [tons]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total for the country</td>
<td>270 612</td>
<td>328 924</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”

Oats
Areas under oats for harvest 2003 reached almost 43 400 ha which was 8.4% less compared to the preceding year.

Table II.9. Oats production from harvesting years 2003-2004

<table>
<thead>
<tr>
<th>Areas /harvested/ [ha]</th>
<th>Average Yield [tons/ha]</th>
<th>Production [tons]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total for the country</td>
<td>37 616</td>
<td>43 002</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”

Grain Maize
The favourable agro-meteorological conditions, the improved agrotechics and the use of certified seeds in 2004 contributed for obtaining the highest yields from maize since 1989. On average 5.54 t/ha were harvested in 2004 which was almost 2 times more than the previous harvest.

According to the data of Agrostatistics Directorate the total area sown with maize in the spring of 2004 amounted to 415 971 ha, 385 930 of which with grain maize. Compared to 2003 the areas under grain maize decreased by 10.2%.
### Table II.10. Maize for grain production from harvesting years 2003 and 2004

<table>
<thead>
<tr>
<th></th>
<th>Areas /harvested/ [ha]</th>
<th>Average Yield [tons/ha]</th>
<th>Production [tons]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total for the country</td>
<td>414 680</td>
<td>383 217</td>
<td>2.80</td>
</tr>
</tbody>
</table>

*Source: MAF, “Agrostatistics”*

### Sorghum

The areas under sorghum during the last years vary between 3 000 and 5 000 ha. In 2004 the sown areas (3 286 ha) decreased by 10.5% compared to 2003. The grain production increased by 8.99% compared to 2003 - up to 6 400 t.

### Rice

According to the data of Agrostatistics Directorate in 2004 the production of paddy in the country increased by 18.8% compared to the previous year - up to 28 116 t.

### 1.2.3.1.2. Oil-bearing crops

Areas under oil-bearing crops in 2004 were 612 655 ha of which 605 294 were harvested. The decrease of the harvested areas compared to 2003 was 10.2%.

#### Sunflower

The harvested areas of sunflower in 2004 were 592 000 ha, including 554 000 ha with oil-bearing sunflower and 38 000 ha with black-and-white sunflower. Compared to 2003 the total areas show a decrease of around 67 000 ha. The production of sunflower seeds in 2004 was 1 079 000 t (incl. 1 026 000 t of oil-bearing sunflower) which was 290 069 t more or 36.8% more than the previous year.

### Table II.11. Sunflower production over the period 2000 – 2004

<table>
<thead>
<tr>
<th>Year</th>
<th>Areas /harvested/ [ha]</th>
<th>Average Yield [tons/ha]</th>
<th>Production [tons]</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>592 765</td>
<td>1.82</td>
<td>1 078 832</td>
</tr>
<tr>
<td>2003</td>
<td>659 632</td>
<td>1.20</td>
<td>788 763</td>
</tr>
<tr>
<td>2002</td>
<td>471 013</td>
<td>1.37</td>
<td>645 369</td>
</tr>
<tr>
<td>2001</td>
<td>389 741</td>
<td>1.04</td>
<td>405 087</td>
</tr>
<tr>
<td>2000</td>
<td>591 979</td>
<td>1.01</td>
<td>598 852</td>
</tr>
</tbody>
</table>

*Source: MAF, “Agrostatistics”*

### Rape

The winter oil-bearing rape comes second in importance after the sunflower. In 2004 the areas sown with it were 13 169 ha which was 7.7% less than in 2003. 11 250 ha of them were harvested or 11.3% less than in 2003. The production of oil-bearing rape in 2004 increased by 98.3% compared to 2003 - up to 22 388 t.

### Peanuts

In 2004 the areas under peanuts amounted to 942 ha, which was 10.5% less compared to 2003. The production amounted to 1 322 t – 19.9% less compared to the previous year.
1.2.3.1.3. Technical Crops
The trend for decrease of areas under fibre crops observed over the last years continued in 2004. According to the data of Agrostatistics Directorate the overall harvested area under fibre crops in 2003 was 2 374 ha which was 27.7% less compared to 2003. Cotton had the largest share among the Bulgarian fibre crops - 94.7 % of the total harvested area.

<table>
<thead>
<tr>
<th>Years</th>
<th>Harvested areas (Total ha)</th>
<th>% of the cotton from the total area</th>
<th>% of the flex from the total area</th>
<th>% of the hemp from the total area</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>3 259</td>
<td>96.4</td>
<td>3.6</td>
<td>0</td>
</tr>
<tr>
<td>2004</td>
<td>2 374</td>
<td>94.7</td>
<td>5.3</td>
<td>0</td>
</tr>
</tbody>
</table>

*Source: MAF, “Agrostatistics”*

Cotton
The areas under cotton in 2004 were 2 619 ha. They decreased by 18.1% compared to 2003. The harvested areas amounted to 2 249 ha.
In 2004 were produced 2 587 t of cotton or 37.8% less compared to the previous year.

Flax
The harvested areas under fibre flax increased from 117.3 ha in 2003 to 125 ha in 2004. The production of flax from harvest 2004 was 209 t, at average yield from hectare 1.67 t.
In 2004 hemp was not grown in the country.
Over the last several years there is a global trend of increasing natural fibre demand in everyday life and industry at the expense of synthetic fibre, which will influence the Bulgarian situation as well. The country has favourable soil and climatic conditions for growing fibre crops and a well developed textile industry.

Sugar beet
In 2004 sugar beet production increased by 190.5% compared to the previous year reaching 26 367 t. The areas under sugar beet in 2004 were 1 109 ha – around 2.8 times more compared to 2003 (when they were 400 ha).

<table>
<thead>
<tr>
<th>Total for the country</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Areas /harvested/ [ha]</td>
<td>394.00</td>
<td>1 082.80</td>
</tr>
<tr>
<td>Average Yield [tons/ha]</td>
<td>23.05</td>
<td>24.35</td>
</tr>
<tr>
<td>Production [tons]</td>
<td>9 076.00</td>
<td>26 367.00</td>
</tr>
</tbody>
</table>

*Source: MAF, “Agrostatistics”*

Hops
Hops production in Bulgaria is concentrated along the banks of river Chepinska in the TBS of Velingrad, Rakitovo and Kostandovo. In 2004 the harvested areas with hops were 273 ha – 2.8% less compared to 2003, which was compensated by the higher average yield of 1.01 t/ha.
Total hops production in 2004 was 276 tons, which could not meet the needs of the brewery industry in the country. The American varieties of – Nugget, Chinook and CFJ-8/Cascade/ are grown. Nugget is well accepted at the market in price terms. Hops producers are united in consortium “Bulhops”.

**Tobacco**

According to data of “Agrostatistics” the total acreage under tobacco in 2004 increased almost 17% compared to the previous year and amounted to 48 980 ha. Around 1 800 ha or 3.7% of the areas under tobacco were reported as not harvested. The total tobacco production (raw, in leaves) in 2004 was estimated at 69 569 t, which exceeded harvest 2003 by 13% and was the highest level since 1998. Production of Oriental tobacco increased by 19.2% compared to 2003 reaching 50 300 t. This was due to the larger acreage of the harvested areas – 34 960 ha or 21% above the level of 2003. The average yield was about the same as that of the previous year – 1.44 t/ha.

**Table II.14. Areas, yields and production of tobacco by types - 2001-2004.**

<table>
<thead>
<tr>
<th></th>
<th>Harvest 2001</th>
<th>Harvest 2002</th>
<th>Harvest 2003</th>
<th>Harvest 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PRODUCTION - thousand tons</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Including Oriental</td>
<td>39.6</td>
<td>46.5</td>
<td>42.1</td>
<td>50.4</td>
</tr>
<tr>
<td>Virginia</td>
<td>12.7</td>
<td>11.7</td>
<td>14.1</td>
<td>14.3</td>
</tr>
<tr>
<td>Burley</td>
<td>5.5</td>
<td>4.1</td>
<td>5.4</td>
<td>4.9</td>
</tr>
<tr>
<td><strong>HARVESTED AREAS – thousand ha</strong></td>
<td>45.49</td>
<td>39.37</td>
<td>41.44</td>
<td>47.15</td>
</tr>
<tr>
<td>Including Oriental</td>
<td>31.67</td>
<td>27.95</td>
<td>29.01</td>
<td>34.97</td>
</tr>
<tr>
<td>Virginia</td>
<td>8.89</td>
<td>7.69</td>
<td>8.29</td>
<td>8.88</td>
</tr>
<tr>
<td>Burley</td>
<td>4.93</td>
<td>3.73</td>
<td>4.14</td>
<td>3.30</td>
</tr>
<tr>
<td><strong>AVERAGE YIELD – t/ha</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Including Oriental</td>
<td>1.25</td>
<td>1.66</td>
<td>1.45</td>
<td>1.44</td>
</tr>
<tr>
<td>Virginia</td>
<td>1.43</td>
<td>1.52</td>
<td>1.70</td>
<td>1.61</td>
</tr>
<tr>
<td>Burley</td>
<td>1.12</td>
<td>1.09</td>
<td>1.30</td>
<td>1.49</td>
</tr>
</tbody>
</table>

*Source: MAF, “Agrostatistics”*

Production of tobacco type “Virginia” from harvest 2004 amounted to 14 300 tons or 6% more compared to the previous year despite the decreased average yield by 5%. 4 900 t of tobacco type “Burley” were produced in 2004. The obtained average yield of 1.49 kg/dekar could not compensate the less harvested acreage. This resulted into 9% lower production compared to the previous year.

1.2.3.1.4. **Medicinal and aromatic crops**

The areas under the main medicinal and aromatic crops (oil-bearing rose, lavender, mint and coriander) in 2004 amounted to 86 419 ha. Compared to 2003 they increased by 21 665 ha or by 33.5%. In 2004 were produced total of 94 506 t of medicinal and aromatic crops. This was 42 479 t or 81.6% more compared to 2003. The increase of the areas and the production in 2004 were due to the increased interest in growing these crops and the good agro-climatic conditions.

1.2.3.1.5. **Vegetables**

In 2004 open field vegetable growing occupied around 109 000 ha. Compared to 2003 in terms of acreage it decreased by 14.7 %. The green houses also decreased from 856 ha in
2003 to 780 ha in 2004 or by 8.9%. The major part of the open field vegetables belonged to potatoes, tomatoes, peppers, water melons and beans. In 2004 the areas under tomatoes and peppers decreased by around 21% compared to the previous year while the areas under potatoes increased by 3%, of aubergines – by 22% and lentils by 25%.

*Table II.15. Areas used for vegetable production – harvest 2004*

<table>
<thead>
<tr>
<th>Main Areas</th>
<th>Unit</th>
<th>Areas used - Harvest 2004.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open fields</td>
<td>ha</td>
<td>103 506.9</td>
</tr>
<tr>
<td>Glass green houses</td>
<td>ha</td>
<td>337.0</td>
</tr>
<tr>
<td>Polyethylene green houses</td>
<td>ha</td>
<td>442.9</td>
</tr>
<tr>
<td>Total area of the green houses:</td>
<td>ha</td>
<td>779.9</td>
</tr>
<tr>
<td>Total area:</td>
<td>ha</td>
<td>104 286.8</td>
</tr>
</tbody>
</table>

*Source: MAF, “Agrostatistics”*

The overall vegetable production in 2004 was 1 590 000 tons which was a decrease by 13.4% compared to the previous year. The reason for that were the decreased acreage and the low average yield for some crops.

Tomato production decreased by 45% compared to 2003, going down to 237 000 t. Considerable decrease was reported for pepper production – 42% less, down to 124 900 t. The production of aubergine increased by 24% and of potatoes – by 27%.

*Table II.16. Areas, yields and production of vegetables – harvest 2004*

<table>
<thead>
<tr>
<th>Vegetables</th>
<th>Open fields (ha)</th>
<th>Production (tons)</th>
<th>Average yield (t/ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Total</td>
<td>From open fields</td>
</tr>
<tr>
<td>I. Fruit vegetables</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tomatoes</td>
<td>12 265.8</td>
<td>237 597</td>
<td>201 386</td>
</tr>
<tr>
<td>Peppers - sweet</td>
<td>10 800.1</td>
<td>124 907</td>
<td>122 858</td>
</tr>
<tr>
<td>Aubergines</td>
<td>1 613.4</td>
<td>40 097</td>
<td>40 077</td>
</tr>
<tr>
<td>Cucumbers and gherkins</td>
<td>3 094.2</td>
<td>86 560</td>
<td>55 834</td>
</tr>
<tr>
<td>Pumpkins</td>
<td>1 164.1</td>
<td>16 023</td>
<td>15 971</td>
</tr>
<tr>
<td>Watermelons</td>
<td>6 128.5</td>
<td>100 176</td>
<td>99 833</td>
</tr>
<tr>
<td>Melons</td>
<td>5 243.7</td>
<td>27 356</td>
<td>27 321</td>
</tr>
<tr>
<td>Sweet corn</td>
<td>318.9</td>
<td>1 537</td>
<td>1 537</td>
</tr>
<tr>
<td>Other fruit vegetables (zucchini, okra)</td>
<td>1 029.2</td>
<td>18 140</td>
<td>18 109</td>
</tr>
<tr>
<td>II. Legumes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Green beans</td>
<td>1 738.1</td>
<td>14 489</td>
<td>14 409</td>
</tr>
<tr>
<td>Green peas</td>
<td>1 050.2</td>
<td>3 266</td>
<td>3 266</td>
</tr>
<tr>
<td>Green broad beans</td>
<td>82.3</td>
<td>339</td>
<td>339</td>
</tr>
<tr>
<td>Dried vegetables</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dried beans</td>
<td>7 019.8</td>
<td>8 985</td>
<td>8 985</td>
</tr>
<tr>
<td>Lentils</td>
<td>2 569.4</td>
<td>1 644</td>
<td>1 644</td>
</tr>
<tr>
<td>Chick peas</td>
<td>4 450.4</td>
<td>3 916</td>
<td>3 916</td>
</tr>
<tr>
<td>III. Brassicas</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabbage</td>
<td>5 128.4</td>
<td>116 862</td>
<td>116 658</td>
</tr>
</tbody>
</table>
Other brassicas (salads, lettuce, spinach, parsley, celery, savoury, parsnip, dill, cabbage, collards, kale, Brussels sprouts, kohlrabi, broccoli, green onions, green garlic)  

|            | 5 792.1 | 77 580 | 76 361 |

IV. Root and tuber crops

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Potatoes</td>
<td>30 675.5</td>
<td>573 179</td>
<td>573 018</td>
</tr>
<tr>
<td>Carrots</td>
<td>1 422.3</td>
<td>33 955</td>
<td>33 950</td>
</tr>
<tr>
<td>Bulb onions</td>
<td>3 989.6</td>
<td>44 553</td>
<td>44 553</td>
</tr>
<tr>
<td>Bulb garlic</td>
<td>916.9</td>
<td>5 483</td>
<td>5 483</td>
</tr>
<tr>
<td>Leeks</td>
<td>1 269.1</td>
<td>19 953</td>
<td>19 950</td>
</tr>
<tr>
<td>Seed onions</td>
<td>3 041</td>
<td>1 905</td>
<td>1 904</td>
</tr>
</tbody>
</table>

Other root crops (turnip, radish, red beet, celery, parsnip)  

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>V. Strawberries</td>
<td>1 965.7</td>
<td>11 504</td>
<td>11 499</td>
</tr>
</tbody>
</table>

V. Cultivated mushrooms  

VI. Other vegetables  

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total:</td>
<td>108 649.9</td>
<td>1 589 503</td>
<td>1 517 022</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”  

* Total area includes also the areas under second crops

1.2.3.1.6. Fruit

Orchards

Main fruit trees in the country are: apples, pears, plums, cherries, morello cherries, apricots, peaches, raspberries and walnuts. The young plantations (0 – 5 years) take 3-4 % of the areas, whereas the decommissioned ones occupy 20% of the harvested orchards. The agro technical and phytosanitary condition of the young plantations is good and that of fruit-bearing vary from satisfactory to well-performing. In 2004, there was a growing interest in creation of cherry, hazelnut, walnut and raspberry plantations due to the ensured domestic and the international markets.

Areas

In 2004 the harvested areas with orchards were 38 454 ha – 3.3% less compared to 2003. Main reason for the decrease was the uprooting of the unfit fruit trees. From the main harvested fruit trees the largest was the share of the plums and wild plums - 28.5%, followed by those with walnuts - 13.6%, cherries - 13.2%, apples - 11.8% and apricots - 11.5%.

Table II.18. Area of the harvested fruit trees in 2004

<table>
<thead>
<tr>
<th></th>
<th>Apple(s)</th>
<th>Pears</th>
<th>Apricots</th>
<th>Peaches and nectarines</th>
<th>Plums</th>
<th>Cherries</th>
<th>Morello cherries</th>
<th>Walnuts</th>
<th>Raspberries</th>
<th>Other fruits</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>4 519</td>
<td>336</td>
<td>4 429</td>
<td>3 562</td>
<td>10 967</td>
<td>5 071</td>
<td>1 546</td>
<td>5 233</td>
<td>1 048</td>
<td>1 743</td>
<td>38 454</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”
Table II.19. Area of the harvested fruit trees in 2003 (ha)

<table>
<thead>
<tr>
<th></th>
<th>Apples</th>
<th>Pears</th>
<th>Apricots</th>
<th>Peaches and nectarines</th>
<th>Plums</th>
<th>Cherries</th>
<th>Morello cherries</th>
<th>Wallnuts</th>
<th>Raspberries</th>
<th>Other fruits</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>4 711</td>
<td>358</td>
<td>4 530</td>
<td>3 655</td>
<td>10 912</td>
<td>5 043</td>
<td>1 479</td>
<td>5 937</td>
<td>1 109</td>
<td>2 029</td>
<td>39 764</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”

Production
167 273 000 tons of fruits were produced in 2004, which was 8.7% more than in 2003. Most considerable was the production of plums and wild plums – 49 200 t, apples – 39 400 t, peaches – 22 500 t, cherries – 21 400 t and apricots – 18 500 t.

Table I I.20. Fruit Production, harvest 2004.

<table>
<thead>
<tr>
<th></th>
<th>Apples</th>
<th>Pears</th>
<th>Apricots</th>
<th>Peaches and nectarines</th>
<th>Plums</th>
<th>Cherries</th>
<th>Morello cherries</th>
<th>Wallnuts</th>
<th>Raspberries</th>
<th>Other fruits</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>39 393</td>
<td>1 795</td>
<td>18 458</td>
<td>22 484</td>
<td>49 165</td>
<td>21 369</td>
<td>3 325</td>
<td>4 502</td>
<td>5 606</td>
<td>1 176</td>
<td>167 273</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”

Table II.21. Fruit Production - harvest 2003.

<table>
<thead>
<tr>
<th></th>
<th>Apples</th>
<th>Pears</th>
<th>Apricots</th>
<th>Peaches and nectarines</th>
<th>Plums</th>
<th>Cherries</th>
<th>Morello cherries</th>
<th>Wallnuts</th>
<th>Raspberries</th>
<th>Other fruits</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>38 372</td>
<td>1 035</td>
<td>18 527</td>
<td>16 544</td>
<td>46 364</td>
<td>17 243</td>
<td>3 108</td>
<td>6 029</td>
<td>4 083</td>
<td>2 563</td>
<td>153 868</td>
</tr>
</tbody>
</table>

Source: MAF, “Agrostatistics”

Average yields
In 2004 the average yields of fruit trees were higher than in 2003. The increase of the yields was for all fruit tree species, excluding raspberries. The greatest was the increase for the walnuts – five times, pears - 84.5% and peaches - 39.5%.

1.2.4. Structure of exports and imports per commodity groups

Exports
According to the data of NSI in 2004 the exports of processed goods was at the rate of 1 054 988 000 USD. (Table VI.11). The main commodity groups, forming the agricultural export structure in 2004 according to the Titles of Custom Tariff are respectively:
• **Title I – “Live animals & products from animal origin”**

The relative share of exports of these products represented 17.31% from the total agricultural exports. In comparison to 2003, the exports of commodities, covered by this title, increased by 32.26% in value terms. During the observed period, the most significant increase was marked for the exports of meat and harslets from all livestock categories intended for direct consumption - (by 49.66%). Growth of exports was registered also for milk and dairy products (by 16.30%), fish and crustaceans (by 8.27%). The trade balance under this Title was at the rate of 13 997 000 USD and it marked a decrease by 41.62% in comparison to the preceding year;

• **Title II – “Products from vegetal origin”**

In 2004 the commodities under this title took 35.40% from agricultural exports. The biggest share from the total exports under this title belonged to plants – 14% (wheat, barley, maize), followed by oleaginous seed – 11.11% (mainly maize and motley sunflower), fruits and vegetables – 8.11%. The positive balance under Title II accounted for 137 289 000 USD, and it increased by 15.4% as compared to 2003.

• **Processed products - Title III - "Fats and fats from animal and vegetal origin” and Title IV - Products of industry, non-alcoholic and alcoholic drinks and types of vinegar, tobacco and processed substitutes of tobacco”**

The processed products took 47.29% in the structure of agricultural exports of the country. In 2004 the export of goods with higher added value increased in value term by 33.97% as compared to 2003, and the biggest increase was marked for fats and oils dorm vegetal origin (by 121.05%), processed tobaccos and cigarettes (by 96.73%), sugar and sugar products (by 26.26%) etc. In 2004 the positive trade balance of processed products was at the rate of 95 718 000 USD and it increased more than twice, as compared to the previous year.
### Table VI.11. Structure of agricultural foreign trade of Bulgaria in 2003 and 2004

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>000 USD</td>
<td>%</td>
<td>000 USD</td>
<td>%</td>
<td>000 USD</td>
<td>%</td>
<td>000 USD</td>
<td>%</td>
<td>000 USD</td>
<td>%</td>
<td>000 USD</td>
</tr>
<tr>
<td>a</td>
<td></td>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>458 221</td>
<td>45.67</td>
<td>469 747</td>
<td>44.53</td>
<td>103 770</td>
<td>286 830</td>
<td>47.96</td>
<td>358 823</td>
<td>44.41</td>
<td>125 100</td>
<td>72 391</td>
</tr>
<tr>
<td>b</td>
<td>Products from meat, fish or crustaceae, molluscs, or other invertebrates</td>
<td>10 539</td>
<td>1.35</td>
<td>11 505</td>
<td>1.09</td>
<td>109 16</td>
<td>8 585</td>
<td>1.44</td>
<td>8 477</td>
<td>1.05</td>
<td>98 737</td>
<td>1.94</td>
<td>93 028</td>
</tr>
<tr>
<td>c</td>
<td>Sugar and sugar based sweetes</td>
<td>17 790</td>
<td>2.27</td>
<td>22 462</td>
<td>2.13</td>
<td>126 26</td>
<td>54 793</td>
<td>8.16</td>
<td>63 610</td>
<td>7.67</td>
<td>116 909</td>
<td>37 053</td>
<td>-41 148</td>
</tr>
<tr>
<td>d</td>
<td>Cix and cixos products</td>
<td>18 260</td>
<td>2.32</td>
<td>16 697</td>
<td>1.58</td>
<td>91 39</td>
<td>37 928</td>
<td>6.34</td>
<td>36 705</td>
<td>4.79</td>
<td>102 05</td>
<td>29 668</td>
<td>-22 018</td>
</tr>
<tr>
<td>e</td>
<td>Foodstuffs prepared on the basis of cereals, flours, starch, biscuits, or milk, dough based pastries</td>
<td>52 223</td>
<td>6.67</td>
<td>64 667</td>
<td>6.13</td>
<td>123 63</td>
<td>21 891</td>
<td>3.66</td>
<td>29 119</td>
<td>3.66</td>
<td>133 02</td>
<td>30 332</td>
<td>35 548</td>
</tr>
<tr>
<td>f</td>
<td>Food products from vegetables fruits or other plants</td>
<td>55 782</td>
<td>7.22</td>
<td>65 404</td>
<td>6.29</td>
<td>117 29</td>
<td>36 398</td>
<td>6.59</td>
<td>37 367</td>
<td>6.43</td>
<td>150 62</td>
<td>20 384</td>
<td>28 037</td>
</tr>
<tr>
<td>g</td>
<td>Different types of foodstuffs</td>
<td>18 371</td>
<td>2.36</td>
<td>19 197</td>
<td>1.82</td>
<td>104 46</td>
<td>44 294</td>
<td>7.41</td>
<td>61 602</td>
<td>7.55</td>
<td>175 73</td>
<td>25 917</td>
<td>-41 825</td>
</tr>
<tr>
<td>h</td>
<td>Non-alcoholic and alcoholic</td>
<td>81 731</td>
<td>10.44</td>
<td>89 739</td>
<td>8.51</td>
<td>109 78</td>
<td>22 162</td>
<td>3.71</td>
<td>30 582</td>
<td>4.09</td>
<td>149 16</td>
<td>59 562</td>
<td>56 677</td>
</tr>
<tr>
<td>i</td>
<td>By-products or leftovers from the food processing industry, good for animal feeding</td>
<td>31 677</td>
<td>4.64</td>
<td>34 770</td>
<td>3.49</td>
<td>116 08</td>
<td>35 941</td>
<td>6.01</td>
<td>45 706</td>
<td>5.66</td>
<td>127 17</td>
<td>4 264</td>
<td>-8 936</td>
</tr>
<tr>
<td>j</td>
<td>Tobacco and processed tobacco substitutes</td>
<td>72 842</td>
<td>9.30</td>
<td>143 304</td>
<td>13.58</td>
<td>196 75</td>
<td>25 838</td>
<td>4.32</td>
<td>41 744</td>
<td>5.17</td>
<td>161 56</td>
<td>47 034</td>
<td>101 559</td>
</tr>
</tbody>
</table>

**Source** “Customs Agency”

**Leading positions in the export list'2004 belong to:**

- Tobacco, Oriental type - 36 312.8 tons, value 198 467 000 USD;
- Wheat - 513 188.3 t, value 61 736 000 USD;
- Black oleaginous and motley sunflower seeds – 252 759.1 tons, valued at 69 087 000 USD;
- Wine with alcoholic contents <= 13%, volume up to 2 - 43 519.9 tons, valued at 40 771 000 USD;
- Lamb meat - 6 928.4 t, valued at 34 312 000 USD.
Imports
In 2004 in the country were imported agricultural commodities which total amount figured out at 807 984 000 USD.

- **Title I- "Live animals & products from animal origin”**

The relative share of imported products figured out at 20.87% from the total agricultural imports. Largest share under this title belongs to fish and crustaceans (11.22% from the total agricultural imports). In 2004 the volume of goods imported under this title goods increased by 35.11% as compared to 2003. Highest growth of imports was registered at the live animal imports - by 199.75%, followed by meats and harslets for direct consumption– by 47.78% and milk and dairy products – by 38.8%;

- **Title II - “Products from vegetal origin”**

In 2004 the commodities under this title took 29.22% from the imports of agricultural products. Largest share from the total imports under this title belongs to cereals – 8.97%, followed by fruits for direct consumption – 6.6% etc.;

- **Processed products - Title III - "Fats and fats from animal and vegetal origin” and Title IV - "Products of industry, non-alcoholic and alcoholic drinks and types of vinegar, tobacco and processed substitutes of tobacco”**

Processed products took 49.91% in the structure of agricultural imports. In 2004 the imports of processed goods in value term increased by 22.11% as compared to the previous year. It should be noticed that the growing rates of exports of these goods outstripped their rates of imports (increase by 33.97%).

**Leading commodities in the agricultural imports'2004 in value term:**
- Raw sugar from sugar can, intended for refinement - 279 708 t, value 52 602 000 USD;
- Others victuals, not mentioned elsewhere - 8 812.2 t, value 26 354 000 USD;
- Wheat - 114 543 tons, value 24 634 000 USD;
- Soy-been oil-cakes - 86 279 tons, value 26 354 000 USD;
- Cattle meat - 31 495 24 tons, value 24 421 000 USD.

2. IP LAWS AND REGULATIONS

2.1. The sui generis protection of plant variety

2.1.1. International treaties
The Republic of Bulgaria has ratified the following international treaties regarding plant variety law:
- International Convention for the Protection of New Varieties of Plants (UPOV Convention), of December 2, 19616.

---

6 As revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991; ratification by the Law on Ratification of the UPOV Convention adopted by the 38-th National Assembly on February 5, 1998,
• Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS Agreement)\(^7\).
• European Patent Convention signed in Munich, 5 October 1973\(^8\).

Since 1995 Bulgaria has been only an associated Member of the European Community. It means that the system of Community plant variety rights, which is established on the basis of the Council Regulation (EC) No. 2100/94 of 27 July 1994, does not yet have effect within the territory of Bulgaria.

**2.1.2. National sources of legislation**

Until 1st of June 1993 the protection of the plant variety rights was granted by the former Law on Invention and Innovation of 1968. Under this Law the protection was realized only through the inventor’s certificate of authorship. As mentioned in Chapter 2, the new Law on Patents of 18 March 1993 abolished this Law. By virtue of Article 7 of the Law on Patents, varieties of plants and breeds of animals are excluded from protection. More than three years after this exclusion the Bulgarian legislation has not provided any plant variety protection. As a Member of WTO and TRIPS Bulgaria is committed, however, to provide for "the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof"\(^{10}\).

The new Bulgarian Law on Protection of New Plant Variety and Animal Breeds (hereinafter referred to as "Plant Variety Law") entered into force three months later than its publication in the Official Journal, namely on January 4, 1997\(^{11}\). This Law introduces a *sui generis* system of plant variety protection and brings it in accordance with the relevant international standards, in particular with the UPOV Convention and the system of Community plant variety protection (Council Regulations (EC) No. 2100/94). The Plant Variety Law extends protection to the rights of plant varieties and animal breeds owned also by foreign nationals and legal persons from states participating in international treaties to which Bulgaria is a party or from other states on the grounds of reciprocity.

The Law on Sowing and Planting Materials\(^{12}\), which was amended by virtue of § 8 of the transitional and final provisions of the Plant Variety Law, can also be determined as a source of legislation. By virtue of Article 5, paragraph 2 of the Law on Sowing and Planting Materials the National Agrarian and Industrial Union issued Regulations of Work of the State Official Journal No. 21 of 20.02.1998; the Bulgarian text is published in Official Journal No. 49/1998; in force for Bulgaria since 24 April 1998.

\(^{7}\) Ratification by the Law on Ratification of the Marrakech Agreement adopted by the 37-th National Assembly on October 24, 1996 and published in Official Journal No. 93 of 1 November 1996.


\(^{10}\) Article 27, paragraph 3 (b) of TRIPS Agreement.


Variety Commission of 1981\textsuperscript{13}. These Regulations are still not in force and the said Union does not exist any more. Therefore, the functions of the State Variety Commission prescribed in the Act of the Council of Ministers pursuant to § 7 of the transitional and final provisions of the Plant Variety Law, are performed now by the Executive Agency for Variety Testing, Approbation and Seed Control. So the new Regulations have been adopted by the Decree No. 372 of 13 October 1997 of the Council of the Ministers\textsuperscript{14}.

Pursuant to § 9 of the transitional and final provisions of the Plant Variety Law the Ministry of Agriculture and Forests enacted Regulations on the Intellectual Property Agents\textsuperscript{15} authorizing these Agents to perform actions before the Patent Office, the Executive Agency for Variety Testing, Approbation and Seed Control and the State Breed Commission. These Agents differ from the Patent Agents and they have to pass successfully a separate examination to be registered as such.

For its part the Patent Office has issued an Instruction on Drafting, Filing and Preliminary Examination of Certificate Applications for Plant Varieties and Animal Breeds\textsuperscript{16}. For all actions under the Plant Variety Law before the Patent Office and the Executive Agency for Variety Testing, Approbation and Seed Control, respectively, the State Breed Commission is due fees payable at Scale of Charges, adopted by the Council of Ministers. There are two different Scales of Charges with respect to the plant variety protection. The first one is the Scale of Charges payable before the Patent Office\textsuperscript{17} and the other one is the Scale of Charges payable before the Executive Agency and the State Breed Commission\textsuperscript{18}.

2.1.3. Subject matter of protection

The Plant Variety Law governs the legal protection of plant varieties, where applications for certificates have been filed at the Patent Office following the Law's coming into force on January 4, 1997. This Law also governs the protection of plant varieties, where applications for inventor’s certificate of authorship have been filed under the former Law on Inventions and Innovations prior to coming into force of the new Law on Patents on June 1, 1993 and such applications have not been finally decided or for which there is no document for protection granted on condition that for these applications or certificates of authorship there is a request of transformation filed with the Patent Office by virtue of § 2 and within the term specified in § 3(2) of the transitional and final provisions of the Plant Variety Law.

The subject matter of protection covers created or discovered and developed plant varieties of all botanical genera and species, including clone, line, hybrid between genera or species and root stock, irrespective of the method (artificial or natural) of their production.

Paragraph 1 of the additional provisions of the Plant Variety Law contains a legal definition of the term "plant variety", which is in conformity with the definition given by the Article 5,

\textsuperscript{13} Published in Official Journal No. 41 of 26 May 1981.
\textsuperscript{14} Published in Official Journal No. 95 of 20 October 1997.
\textsuperscript{16} Instrukcija za oformjane, podavane i predvaritelnja ekspertiza na zajavki za sertifikati za sortove rastenija i porodi shivotni, adopted of the grounds of § 9 of the transitional and final provisions of the Plant Variety Law and published in InSo No. 1 of 1997.
\textsuperscript{17} Tarifa za taksite, subirani ot Patentnoto vedomstvo, published in Official Journal No. 43 of 1996, completed about the fees for the plant variety protection in No. 21 of 1997.
\textsuperscript{18} Tarifa za taksite, subirani ot Durshavnata sortova komisija i Durshavnata komisija za porodi shivotni, published in Official Journal No. 21 of 1997.
paragraph 2 of the UPOV-Convention. According to it "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 met: (a) can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes; (b) can be distinguished from any other plant grouping by the expression of at least one of the said characteristics and (c) is considered as a unit with regard to its suitability for being propagated unchanged.

2.1.4. Conditions of protection

Identical to what is specified in Article 5, paragraph 1 of the UPOV-Convention Article 7, paragraph 1 of the Plant Variety Law stipulates the same substantial condition of legal protection, namely: novelty, distinctness, uniformity and stability of the variety. The grant of the breeder’s right is also dependent on the condition that the variety shall be designated by a denomination in accordance with the provisions of Article 12 of this Law. Although, this formal condition is independently settled as per Article 7, paragraph 2, it is often deemed as a fifth condition for protection of plant varieties.\(^{19}\)

The condition of novelty is grounded on Article 6, paragraph 1 of the UPOV-Convention. By virtue of Article 8, paragraph 1 of the Plant Variety Law the variety shall be deemed to be new if, at the date of filing of the application for a breeder’s right, the same or propagating material of the variety or harvest thereof has not been offered for sale, sold or otherwise commercially used, or has not been offered with the consent of the breeder: (a) in the territory of the Republic of Bulgaria for not more than one year before the filing date and (b) in the territory of any other country for not more than four years or, in the case of trees and vines, for not more than six years before the said date.

It is no more possible to use the so-called "world-wide novelty" which was typical for the former Law because of the systematically separating of the distinctness as a per se condition from the novelty of the variety. The fact that the variety itself is already well known has not any influence over its novelty. It means that the novelty of the variety cannot be affected by publications (articles, reports or any other papers, pictorial presentation or other ways of disclosure), as well as by variety tests or any other actions without commercial effect. The novelty of the variety is available also in cases where these actions have been performed with a commercial purpose, but only within the frames of the terms of privilege mentioned above. These terms of privilege are independent from the Convention priority term for a period of twelve months as per Article 34, paragraph 2 of the Plant Variety Law and they shall not be prolonged by it.

As per the new Plant Variety Legislation the condition "distinctness" has an independent meaning and significance for the protection of the new plant varieties. By virtue of Article 9, paragraph 1 of the Plant Variety Law the variety shall be deemed to be distinct if it clearly differs from any other varieties whose existence is a matter of common knowledge at the date of filing of the application with the Patent Office. At that time the condition of distinctness shall be examined in reference to the expression of the characteristics that result from a particular genotype or combination of genotypes. In this connection Article 9, paragraph 4 requires that the indications allow defining the characteristics and the peculiarities of the variety must be capable of clear and precise description.

\(^{19}\) See, for example, paragraph 1(1) of the German Law on Plant Variety Protection of 11 December 1985, published in BGBl. Teil I, Nr. 59 of 17 December 1985, last amendment in BGBl. Teil I, Nr. 51 of 24 July 1997.
As for the other varieties, in particular, it shall be deemed to be a matter of common knowledge if, at the filing date of the application, it: (a) has been made by cultivation; (b) is an object of trade or any other kind of realization; (c) is a matter of a breeder’s right; (d) has been included in a reference collection or in a publication containing its precise description or (e) has become well known in some other way. The filing of an application for the granting of the breeder’s right or for the entering of another variety in the official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of filing of the application provided that the application leads to the granting of a breeder’s right or to the entering of the said other variety in the official register of varieties.

The "uniformity" of the variety is arranged in Article 10 of the Plant Variety Law as a third substantive condition. According to it, the variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its sexual or vegetative propagation; the plants of the variety are sufficiently identical in the expression of their relevant characteristics. By these relevant characteristics is to be understood those ones, which are included in the examination for distinctness, as well as any other ones used for the variety description.

It is well known that in the vegetative propagation the uniformity can be easier achieved than in the sexual one. Thus, for example, in the sexual propagation of plant varieties the examination for uniformity requires many vegetative periods in contrast to the vegetative propagation, where one or two periods are enough.

On account of the fact that in the vegetable world an absolute uniformity of the plants cannot be achieved, the presence of minor variation in the relevant characteristics of the variety shall not be taken into consideration. By virtue of Article 10, paragraph 2 of the Plant Variety Law these variations from any species are determined in accordance with the methods adopted by the State Variety Commission.

The fourth condition of legal protection requires that the variety shall be stable in its repeated sexual reproduction or vegetative propagation. This substantial condition goes without saying, because a variety can exist only if it is stable at the time. By virtue of Article 11 of the Plant Variety Law, which is based on Article 9 of the UPOV - Convention the variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

On the merits the presence of these four substantial conditions mentioned above should be enough for the legal protection of the plant varieties. For the issue of a certificate it is also needed, however, that any new plant variety for which is filed an application should bear a variety denomination, which is related to its genera or species and serves for its identification. The requirements for this formal condition are contained in Article 12 of the Plant Variety Law, which is based on Article 20 of the UPOV - Convention. As per this article the variety denomination may consist of one or two words, or of a combination of words, letters and figures, but not exceeding a four-digit figure. This also means that the denomination may not consist solely of figures, because of the existent tradition in Bulgaria for designation of new plant varieties and their connection with the corresponding genera or species.

20 This criterion is similar to the criteria "industrial applicability" of the invention pursuant to the patent law, where the repeated reproduction of the subject of the invention is a needed condition for its patentability.
The variety denomination should also satisfy the following requirements: (a) it must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or of the breeder; (b) it must be different from any other denomination which designates, in the country or in the territory of any Contracting State, an existing variety of the same plant species or of a closely related species; (c) it shall not affect prior rights of third persons who have obtained the right to use such denomination. If, in such a case, the use of the variety denomination is forbidden to a person who, pursuant to Article 12, paragraph 2, item 4 of the Plant Variety Law, is obliged to use it, the Patent Office shall require the breeder to propose another denomination for the variety.

In conformity with the UPOV - Convention the Bulgarian legislator has also obligated the breeder to use the denomination of the variety, if he, within the territory of one of the Contracting States, offers for sale or markets propagating material of a protected variety or of a variety in a process of examination even after the expiration of the breeder's right in that variety, except where prior rights prevent such use as per item 4 mentioned above. When a variety is offered for sale or marketed, a trademark, a designation of origin or another similar indication may be associated with a registered variety denomination. After the association of such indication the denomination must nevertheless be clearly and easily recognizable.

2.1.5. Formalities (procedure for grant and obtaining protection)

The application for a plant variety may be filed by Bulgarian applicants personally or through a local representative registered at the Ministry of Agriculture and Forests in accordance with the Regulations of the Intellectual Property Agents. Foreign applicants are obliged to file an application only through an intellectual property representative. If one of the applicants is a Bulgarian applicant, the application may be filed at the choice of the applicants personally or through a local representative.

Under Article 32, paragraph 1 of the Plant Variety Law and Article 1, paragraph 2 and Article 12, paragraph 4 of the Instruction the filing of an application may be done at the choice of the applicant at the Patent Office directly, by the post-office and through a fax. In the last case the applicant must file the original documents of the application within the term of one month from the filing date. Filing date of the application is the date of receiving at the Patent Office of the following documents: (a) a request for the grant of a plant variety right; (b) a description of the variety; (c) a completed technical questionnaire for the species; (d) a provisional denomination for the variety and (e) paid fees for filing and publishing of the application. All these documents must be submitted in Bulgarian. The names of the applicant and the breeder (author), as well as the variety denomination must be filed also in Latin. The variety denomination, the technical questionnaire and the description accompanied by illustrating materials (in case of need) are submitted in three copies.

Furthermore, it is needed for the examination: (a) a written statement about the authors, if they are not the applicants; (b) a power of attorney, if the application has been filed through a local representative and (c) a priority certificate (copies of the earlier application that have been certified by the authorities responsible for such application) submitted to the Patent Office within three months of the date of the application, if the applicant claimed for a right of priority.

By virtue of Article 34 of the Plant Variety Law the applicant who has filed an application in accordance with Article 32 of the same Law enjoys a right of priority from the filing date. If the applicant has already applied for a property right for the variety in a Contracting State and
the date of the application is within 12 months of the filing date of the earlier application, the applicant shall enjoy a right of priority (Convention priority) for the earlier application if the last one still exists on the date of the application. The right of priority is recognized if the applicant has given a written statement mentioned above and has paid the relevant fee.

The application for a variety certificate may be withdrawn by the applicant before granting a certificate, but the right of priority shall lapse if the applicant withdraws the application.

The filed application is recorded in the variety application register if the conditions of Article 32 of the Plant Variety Law are fulfilled. The application registered at the Patent Office is subject to formal examination as per Article 35 of this Law within one month from its filing. The Patent Office shall examine whether: (a) the application has effectively been filed pursuant to Article 1, paragraph 2 and Article 12, paragraph 4 of the Instruction mentioned above; (b) the application complies with the conditions laid down in Article 32 of the Law; (c) the variety denomination complies with the requirements of Article 12 of the Law and (d) the fees due pursuant to Article 42 of the Plant Variety Law have been paid within a time limit specified by the Patent Office. At last, the Office gives the applicant an opportunity within a period of three months to correct any deficiencies that may have been identified. If the applicant fails to respond, the application is deemed abandoned and the applicant loses the right of priority as per Article 34, paragraph 1 of the Plant Variety Law.

About the regular application is making a publication in the Official Bulletin of the Patent Office immediately after the expiration of four months, but not later than six months from the filing date of the application.

Within one month after performing the preliminary examination, the Patent Office submits the application to the Executive Agency for Variety Testing, Approbation and Seed Control for examination as to substance pursuant to Article 37 of the Plant Variety Law. For this rendering of service the applicant is notified to pay the due fees to the State Variety Commission.

By virtue of Article 38 of the Law for the purposes of the examination as to substance, the Executive Agency for Variety Testing, Approbation and Seed Control tests the variety within a period of two to four years in order to establish whether the plant variety complies with the conditions laid down in Article 7 of the Plant Variety Law and also describes and proves the features which allow to define and distinguish the new variety. In accordance with the Work Regulations of the this Agency, the applicant provides, free of charge, sowing and planting material, as well as any additional information and documentation which are needed for testing of the variety.

The Executive Agency for Variety Testing, Approbation and Seed Control decides to recognize the variety when, as a result of the examination as to substance, it finds out that the variety complies with the conditions laid down in Article 7 mentioned above and, within one month from the decision, submits to the Patent Office a written report, a copy of the decision for the recognition, the final description and the abstract of the variety. On the ground of the decision taken by the Agency, the Patent Office grants a certificate if, within three months from the notification of the applicant, the fees for the grant and publication of the certificate are paid. When the variety also complies to the conditions for economic properties pursuant to the Work Regulations of the Executive Agency for Variety Testing, Approbation and Seed
Control, it is registered in the Register of the Varieties and in the List A (the Official Variety List of the country).

2.1.6. Ownership and transfer (assignment - licenses)
The entitlement to apply for the grant of a breeder’s right, the right under an application and the breeder’s right are treated in all respects as items of moveable property, and the Bulgarian Plant Variety Law is, except where otherwise provided in this Law, applicable thereto. So Article 6, paragraph 1 of the Law provides that all rights mentioned above are transferable to one or more successors in title, except the right of authorship, which is personal, without notice and intransferable pursuant to Article 4, paragraph 4. Therefore the transfer by assignment leads to change of the holder of the breeder’s right.

Any transfer by assignment of these rights shall be made in writing and shall have effect against third parties, if it has been entered in the Register of the Patent Office and published in its Official Bulletin pursuant to Article 6, paragraph 2 of the Plant Variety Law.

As a rule the assignment of the breeder’s right is related to the achievement of certain aims. Where there is doubt as to, for example, the period of time of assignment or the level of rights assigned, these issues will be determined in accordance with what is needed for the achievement of the aims of the assignment. Hence, a partial transfer of exclusive rights is also admissible. If some of the clauses of the contract of assignment are unclear, the contracting parties have to find out whether all rights have been transferred or the aim of the contract could be achieved only with the transfer of the right of use.

A variety for which a certificate is sought or has been obtained may be the subject of a licensing contract. The applicant or the holder may grant to a third party an exclusive or non-exclusive right of exploitation of the variety relating to all or any part of the rights provided for in Article 18 of the Plant Variety Law. Any licensing contract based upon an application automatically expires when the application is not granted.

In the case of an exclusive license the licensor is not entitled to grant licenses for the same subject, the same period of time and the same territory to other persons. He himself has no right to use the licensed variety, unless an explicit clause of the licensing contract allows him to do that. The exclusive license has to be explicitly stipulated as such by the contracting parties. Without this settlement between the parties the licensing contract has to be taken in consideration as non-exclusive.

By virtue of Article 587, paragraph 2 of the Commercial Law, the licensing contract shall be in writing. In addition, to be valid pursuant to Article 22, paragraph 3 of the Plant Variety Law any license shall also be entered in the Register of the Patent Office, and a notice thereof shall be published in the Bulletin. The licensing contract has effect with respect to others as from the date it is recorded in the Register.

2.1.7. Scope of exclusive rights
The exclusive right in a variety comprises the right to dispose of the certificate, the right to use the variety and the right to prohibit other persons from using it without the consent of the owner of the certificate. By virtue of Article 18, paragraph 1 of the Plant Variety Law the right of use includes the following acts: (a) production or reproduction (multiplication); (b)

---

21 In regard to the licensing contracts the provisions of articles 587 to 599 of the Commercial Law are applicable.
conditioning for the purpose of propagation; (c) offering for sale; (d) selling or other marketing; (e) exporting; (f) importing; (g) stocking for any of the purposes mentioned in items (a) to (f). Subject to articles 19, 20 and 21, these acts in respect of the propagating materials of the protected variety require the authorization of the breeder. The breeder may make his authorization subject to conditions and limitations.

The authorization of the breeder is also needed for the acts mentioned above in respect of harvested material, including entire plants and part of plants, obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material. This provision also applies to the acts referred to in items (a) to (g) in respect of products made directly from harvested material of the protected variety. In this case the authorization is required when the product is obtained through the unauthorized use of the harvested material, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

The scope of the breeder's right includes also varieties: (a) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety; (b) which are not clearly distinguishable in accordance with Article 9 of the Plant Variety Law and (c) whose production requires the repeated use of the protected variety. The so-called "derived variety" shall be deemed to be essentially derived from another variety ("the initial variety") when: a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; (b) it is clearly distinguishable from the initial variety and (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.22

2.1.8. Limitation of the scope of protection - compulsory licenses
One of the limitations of a breeder's right, which was introduced by the legislator in Article 19, paragraph 1 of the Plant Variety Law, is generally known as a "farmer privilege". The provision of the said article restricts the breeder’s rights in relation to varieties of specified plant genera and species23 in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, a propagating material of the protected variety, when this variety is not a hybrid or a synthetic variety. Furthermore, the farmers are not obliged to pay any reasonable compensation to the breeder. The so formulated "farmer privilege" provision is really in accordance with the interest of the farmers, but the legitimate interest of the breeders are not safeguarded. In this respect Article 19, paragraph 1 essentially differs from the provisions of Article 15, paragraph 2 of the UPOV - Convention and of Article 14, paragraph 3 of the Council Regulation (EC) No. 2100/94, where only the small landowner is excluded from the payment of a reasonable compensation.

22 Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a soma clonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.
23 The "farmer privilege" Provision may be applicable only to plant genera and species, which are included in a list, confirmed by the Ministry of Agriculture and Forests.
The legal protection of the variety is also limited in reference to acts, which are compulsory exceptions to the breeder’s right. In accordance with Article 20 of the Plant Variety Law the breeder’s right shall not extend to acts: (a) done by the farmer privately and for non-commercial purposes; (b) done for experimental purposes and (c) done for the purpose of breeding other varieties, and, except where the provisions of Article 18, paragraph 5 (derived variety) apply, acts referred to in Article 18, paragraphs 1 to 4. The provision of Article 20 is, as it is evident, a standard provision, which is based on the Article 15, paragraph 1 of the UPOV - Convention.

The next limitation of the variety protection refers to the exhaustion of the breeder’s right. In this case Article 21 of the Plant Variety Law fully reproduces Article 16, paragraph 1 of the UPOV - Convention. According to this article the breeder’s right shall not extend to acts concerning any material\textsuperscript{24} of the protected variety, or of a variety covered by the provision of Article 18, paragraph 5 of the Plant Variety Law, which has been sold or otherwise marketed by the certificate owner or with his consent in the territory of the State, or any material derived from the said material, unless such acts: (a) involve further propagation of the variety in question or (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genera or species to which the variety belongs, except where the exported material is for final consumption purposes.

The legislator has provided in Article 23 of the Plant Variety Law a limitation of the exclusive right of the breeder in cases where it is necessary to safeguard the public interest. It is a matter of a legal opportunity of the Ministry of Agriculture and Forests to grant a compulsory license in respect of the breeder's right provided that at least one of the following conditions is fulfilled: (a) failure to use the variety for a period of five years from filing of the application for a certificate or of three years from the grant of the certificate ("period of sole rights")\textsuperscript{25} and the public interest requires the grant of such license; (b) insufficient use of the variety to satisfy the needs of the national market within the time limits mentioned above, unless the certificate owner proves valid reasons for that; (c) declared national state of emergency - for the time period of its duration, and the variety is conducive to overcome this emergency state.

The compulsory license may confer on the licensee only a non-exclusive right to perform all or any of the breeder's right. At that, the licensee is not entitled to transfer his rights to other persons. The compulsory license may be assigned only together with the enterprise wherein the variety is being used as a subject to this license. A compulsory license may be granted if the applicant who seeks the grant of such a license must be financially and otherwise in a position to exploit the variety in a competent and businesslike manner within the limits of the license. It is not granted in favour of an infringer of the certificate.

The compulsory license may withdrawn by the Ministry of Agriculture and Forests pursuant to Article 42, paragraph 2 of the Plant Variety Law, if the licensee, within a time limit of one year after its grant, has still not begun with the preparation for using the variety. In any case the compulsory license is terminated if within a time limit of two years after its grant the licensee fails to start using the variety. After one-year time limits from the grant of the compulsory license the owner of the certificate may, by means of a request filed with the Patent Office, require a withdrawal of the compulsory license or modification of the licensing

\textsuperscript{24} For the purposes of this article, "material" means, in relation to a variety, propagating material, harvested material, including entire plants and part of plants, and any product made directly from the harvested material.

\textsuperscript{25} The time limit, which expires later, is valid.
conditions if meanwhile the circumstances under which the license was granted have been changed.

When granting a compulsory license, the licensee is obliged to pay to the owner of the certificate an equitable remuneration and to render adequate security for this payment. The City Court of Sofia pursuant to Article 51, paragraph 1, item 6 of the Plant Variety Law, settles disputes concerning remuneration sums for the grant of a compulsory license.

The legislator has introduced in Article 24 the so-called "official license". After that, the Ministry of Agriculture and Forests may, only in exceptional cases, grant an official license for using a variety subject to an application or a certificate issued where the variety is needed for the defence and security of the country. In this case, the breeder is fully entitled to ask for a fair compensation.

The Ministry of Agriculture and Forests is authorized, only in special cases, to affirm a list including a limited number of varieties which are subject of applications for certificate and which may not be propagated and free used without a special permission when these varieties have interest for the defence and security of the country or for the care of public health. The breeders of such varieties have also every right to receive an equitable compensation.

2.1.9. Duration of protection
By virtue of Article 13, paragraph 4 of the Plant Variety Law the legal protection of a variety expires at the end of the twenty-fifth year following the grant, and for trees and grapevine, it expires at the end of the thirtieth year.

For the time period between the publication of the application and the grant of the breeder's right, ad interim protection is provided pursuant to Article 17, paragraph 1 and its scope of protection is defined by the description and illustrations in so far as the certificate granted does not extend the latter. In such a case, the owner of the certificate is entitled to equitable remuneration payable by any person who, during the said period, has carried out acts as per Article 18, which require the breeder's authorization provided that a certificate is granted.

2.1.10. Overlapping and relation to other intellectual property laws
As mentioned above a legal protection of the plant varieties has been granted under the former Law of Inventions and Innovations of 1968. By the new Law on Patents of 1993 varieties of plants and essentially biological processes for obtaining them are excluded from protection. As we saw the new Plant Variety Law of 1996 introduces a *sui generis* system of plant variety protection. The Law is based on the 1991 version of the UPOV Convention,26 which allows the concurrent protection of a plant variety by breeders’ rights and by patent. Thus, like in the U.S., the patent protection and plant breeders’ rights may overlap27.

2.2. Patent protection for plant varieties

26 In the 1991 version of the convention, Art. 31 organizes the conflicts likely to arise in bilateral relations between members from the application of the national treatment principle to two different versions of the rights. Accordingly, a Belgian citizen in Bulgaria will benefit from the scope of rights of the 1991 version, whereas a Bulgarian citizen in Belgium will receive 1972 version breeders’ rights.

27 Note that the protection conferred by the UPOV Convention covers the seeds (“propagating material”), just like patents do, but not the genes or combination of genes, nor the process.
As mentioned above, the EPC is in force for Bulgaria since 1 July 2002. By reason of that Article 7 of the Law on Patents repeats certain exclusions in the Article 53 of the European Patent Convention namely: “3. Plant or animal varieties or essentially biological processes for obtaining them. This provision does not apply to microbiological processes or the products thereof.”

The EC Directive 98/44 on the protection of inventions relating to biotechnology, inserted into a new Chapter VI entitled "Biotechnological inventions" in Part II of the EPC Implementing Regulations, is also taken into account by the Law on Amendments of the Law on Patents of 1993, which is still in the Bulgarian parliament for adoption.

2.3. General conditions in the Law on seed and propagating material

Since 1944 till now in Bulgaria have been active three Laws on seed and propagating material. The first law on seed and propagating material is in force since 14.02.1958 with follow changes in the years 1963, 1979, 1990, 1996, 1997, 1998. This law is consistent with the specificity of a socialist agricultural economy – a strong centralization and administrative control over the production of generative material, obligatory dividing into districts, the free trade with such material till 1990 in actual fact was forbidden, there existed a very strong regime of import and export. By the changes after 1990 were made some attempts to adapt it to an active market economy in the agricultural field. In this respect very important is the Regulation No3 on production, billet and trade with seed and propagating material and licensing of juridical and natural persons engaged in this activity.

In 2000 has been passed a new law on seed and propagating material, which was harmonized partial with the operative European legislation in this field.

Since March 2003 in our country is active a new Law on the seed and propagating material which is harmonized with the EU-directives related to the production and trade with seed and propagating material, variety testing and keeping a variety register. The law has been developed on the grounds of European legislation, which includes 11 main directives - 10 directives which related to the trade with seed and propagating material of different kinds of agricultural plants and the Directive of the general European catalogue of the agricultural vegetables varieties.

The main changes made in the law are in the certification part of the seed and propagating material carrying out of field examination, sampling and laboratory analyses and realizing the subsequent control of the seed.

The Law on the seed and propagating material regulates the matter related to:

- variety testing;
- carrying out of the official variety list of Republic of Bulgaria;
- variety maintenance;
- production and billet with the purpose of trade, storage, packing, labelling, trade, import, export of seed and propagating material from agricultural plants.
- control on the seed and propagating material.

According this law:

---

• The Minister of agriculture and woodlands realizes the fulfilment and control on the territory of Bulgaria over the above mentioned activities related to the seed and propagating material by the Executive agency of variety testing, sampling and seed control (HACAC) and the National services for plant protecting (HCP3);
• Executive agency of variety testing, sampling and seed control carries out variety testing; keeps a register of the declared for testing and recognized varieties, certification of the seed and propagating material; carries out subsequent control for examination the authenticity and purity of the variety, controls the seed and propagating material which is produced, traded, imported, and exported etc.
• The National services for plant protecting control the health status of the seed and propagating material, carry out phytosanitary control, control, the activity of the private laboratories.

2.3.1. Official variety list of Bulgaria
The use of an agricultural variety on the territory of Republic of Bulgaria is possible only after its enrolment in the official variety list of Bulgaria. The exclusions of this principle are permissible only for generative material from plant sorts explicitly mentioned in a law.

The Law on the seed and propagating material gives the legal regulation of the official variety list and the means of enrolment of a variety therein. The maintenance and the control over the varieties, enrolled in the official variety list of Bulgaria aims to retain the social interest and to guarantee the quality and the security of the produced and traded seed and propagating material on the territory of the country. This result is guaranteed by the principle put, in the law, that the seed and propagating material is traded only, if it is from the varieties, enrolled in the official variety list. The official variety list is issued yearly by the Executive agency of variety testing, sampling and seed control.

2.3.1.1. Content of the Official variety list
The list is constituted of a list “A” and a list “B” as well as application lists.

List A
There are enrolled corn, fodder, oil-bearing and fibre crops, beetroot, potatoes, tobacco, fruits vegetable crops and vines, which are distinct, uniform and stable (PXC) and meet all requirements for biologic and economic qualities (CK) for soil climatic conditions of Bulgaria in their comparing to the standard varieties show better results with regard to yields and/or production quality related to some characterizations.

List B
There are enrolled follow varieties:
• Varieties of ornamental, medicinal herbs and aromatic plants, which are distinct, uniform and stable and which aren’t been tested for their biological and economic properties.
• Varieties of vegetable crops and vines and, which are distinct, uniform and stable and which at present are tested for their biological and economic properties in the Executive agency of variety testing, sampling and seed control. These varieties are enrolled simultaneously in the requirements for Biologic and economic properties (БCK) they are subject of a continuous enrolment in the variety list A, if they don’t meet these requirements, they are stricken of from the variety list.

Enclosure lists
There are enrolled practical established well-known varieties (native, foreign, or of an unknown origin) which aren’t been tested for distinctiveness, uniformity and stability, but which have an economic importance for the country. The varieties enrolled in the enclosure list have to be tested for distinctiveness, uniformity and stability till 1 of January 2007.

2.3.1.2. Variety list and regime of trade with the seed and propagating material

The principle situation is that in the seed and propagating material is dealt only of it is of the varieties, enrolled in the official variety list.

Exception to this principle are:

1. The seed and propagating material of ornamental, medicinal herbs and aromatic plants in which may be dealt without enrolment in the list B of the Variety list if they meet the follow requirement:
   - if in the seed and propagating material of these vegetables is dealt only by designation of species (without designation of variety);
   - if the trade variety of these plants is protected by a certificate for a new variety in Bulgaria;
   - if the varieties of these plants are included in a list of the producer or seed and propagating material dealer, who realizes his activity in the country and/or in a member-state of the European union. The list of the seed-dealer has to include information described in detail in art.13, §5 of the law.

2. The production and the trade with generative material of fruits:
   - if the trade variety of these plants is protected by a certificate in Bulgaria;
   - if the varieties of these plants are included in a list of manufacturer or dealer, who realizes his activity in the country and/or in a member-state of the European union.

3. The production and the trade with seed of plant varieties, listed in art 30, §3 of the law and the regulations quoted therein, when seed of these species are dealt without variety designation.

2.3.1.3. Variety data, which are enrolled in the official variety list

In the official variety list are enrolled:

1. Botanical sort and plant species;
2. Variety designation by code and/or name, written in Cyrillic and in Roman alphabet;
3. Specific economic variety sings, which are designated by symbols;
4. Name and address of the enrolment applicant (an applicant with a main office abroad appoints an address on the territory of the country);
5. Name and address of the variety breeder;
6. Name and address of a person (persons, who perform the variety maintenance;
7. Year of recognizing and enrolment of the variety in the official variety list.

2.3.1.4. Variety testing and enrolment of the varieties in the official variety list

The varieties are enrolled in the official variety list after their “variety testing”. Variety testing is an activity connected with completing a complete genetic, morphological, biometric, chemical engineering, phyto- and entomological, taste, biological, economic and production valuation of plant varieties used in competitive trials under field and laboratory conditions. The variety testing is carried out on the grounds of a contract concluded between the applicant and the Executive agency of variety testing, sampling and seed control.

There are carried out two kinds of variety testing – variety testing for Distinctiveness, uniformity and stability and variety testing for Biologic and economic properties:
1. Variety testing for distinctiveness, uniformity and stability with the purpose of enrolment the varieties in the official variety list is carried out in the territorial sections for variety testing of the Executive agency of variety testing, sampling and seed control.

2. The variety testing for Biologic and economic properties with the purpose of enrolment the varieties in the official variety list is carried out in the territorial sections for variety testing of the Executive agency of variety testing, sampling and seed control, but it can be carried out also by natural or juridical persons, who have got permission from the Minister of agriculture and woodlands.

The test for distinctiveness, uniformity and stability is carried out according to the method of the Executive agency of variety testing, sampling and seed control, synchronized with the methods of UPOV. About results of the variety testing is made a report, which is examined by a commission of experts, appointed by the executive director of the Executive agency of variety testing, sampling and seed control. The commission of experts decides about recognizing and enrolment the variety in the official variety list.

The enrolment of the varieties in the official variety list occurs on the grounds of a order of the Minister of agriculture and woodlands whereby is established also the variety enjoins. The Executive agency of variety testing, sampling and seed control can recognize results of the variety testing for distinctiveness uniformity and stability, carried out in a member-state of the UPOV with the purpose of enrolment the variety in the official variety list.

2.3.1.5. Enrolment term
The varieties are enrolled for a time of 20 years for fruit species and vines and 10 years for the other vegetable species. After expiry of this period the varieties may be enrolled for the next period if they still meet the requirements of distinctiveness, uniformity and stability.

2.3.1.6. Enrolment of varieties of the General catalogue of the European Union
The law provides a concessive procedure for including the varieties enrolled in the General catalogue of the European Union for corn, fodder, oil-bearing, and fibre crops beetroot and potato plants and the General catalogue of the European Union for vegetables in the official variety list of Bulgaria. They are enrolled in the variety list without testing for distinctiveness uniformity and stability (DUS). The legislator has accepted that the initially test DUS, whereupon they are enrolled in the European catalogue is reliable also for their enrolment in the Bulgarian list.

Related to the testing for biological and economic properties, for soil-climatic conditions of Republic of Bulgaria the European varieties are subject of a testing through the proper channels.

For the variety breeder is important that either he or third persons may use the variety on the territory of Bulgaria, if it isn’t enrolled in the official variety list, the exceptions of this principle are explicitly listed in the law. The means of enrolment require to be submitted therein information about presence of certificate for a variety as well as to be appointed the data about the proprietor. Thereby are made public the legal protection of the variety and the breeder’s data.

As result thereof-each third person, variety user knows that this variety has legal protection or not and has to ask the owner’s consent for its using, if there is such protection.

2.3.2. Variety maintenance
The variety maintenance is a combination of activities performed till obtaining a class basic material which ensure uniformity of each reproduction with the prototype, enrolled in the official variety list.

On this stage is most important the variety breeders part. He controls over quality and quantity of the produced so called pre-basic and basic variety seeds. Usually he or licensed by him producers produce these seeds and bears also responsibility for their conformity with the variety properties. In a new variety protected by certificate these means allow the breeder to exercise his rights over the protected variety completely and to obtain a equitable reward for the intellectual product (new variety) established by him.

According to the law the variety maintenance can be performed only by:

1. variety breeder;
2. natural or juridical persons concluded the contract for variety maintenance with the breeder and the natural persons have to have agricultural education, but the juridical persons have to have concluded a contract with a persons of a higher agricultural education;
3. for a well-known variety by natural or juridical persons suited the qualify to s.2.

The persons to s.2 and s.3. are obliged to ensure scientific management of the respective craft.

The variety maintenance gives to the owner of the protected certificate a very effective means for control over variety using. The pre-basic (superelite) and the basic (elite) seeds may be produced only by the breeder / or by persons whom he has authorized these powers. As of these seeds is produced the sowing material offered on the market, the breeder can receive in time reward for variety using by the market means of the most-pure seeds produced and dealt by him.

2.3.3. Certification, production and trade with seed and propagating material

The certification of seed and propagating materials a procedure on which ground the competent control body Executive agency of variety testing, sampling and seed control issued a quality certificate hereby verifies that the seed and/or propagating material meet the certain requirements (for variety authenticity, variety, purity and health status and seed properties). The principle condition in the law there is, that the seed and propagating material may be traded if therefore is issued a quality certificate.

In the respective section below about propagating material we examine the certification procedure and which varieties may be dealt without certificate of the control body.

The certification submits a good means for breeder’s rights protection. Through the governmental agency ИАСАС (Executive agency of variety testing, sampling and seed control) passes the control of all the content of dealt generative variety material. This gives to the breeder opportunity to obtain in one appointed form precise information about content of trade with material of his variety which would allow the breeder immediately to find out the infringers of his rights over the variety also the infringer of the rules for trade with certified material.

So of an X-quantity basic seeds may be established not more then Y-quantity certified seeds second propagation which are to be offered on the market. It is supposed that the breeder knows about the quantity X, as the production of the elite material is to be under his control. The appearance of material Y and its certification by the Executive agency of variety testing, sampling and seed control is a quantity, larger then the normal means that either there an
unregulated producer of elite material appeared or that there is certified material, which isn’t of a second propagation (e.g. 3th propagation). This control system of the law and the grave sanction for producers and dealers of uncertified material would give a better protection of breeder’s rights.

We consider that the Executive agency of variety testing, sampling and seed control, has to react in an official form if it establishes such inconformity but this would not be a reason for the agency to refuse the submitting such information to the order of the variety.

2.3.3.1. Certification, production and trade with seed material
The production and billet of seed and propagating material may realize natural and juridical persons who have obtained permission by the Executive director of Executive agency of variety testing, sampling and seed control and who have to meet appointed requirements. The producers must have higher agricultural education, they must have at their disposal the needed areas and techniques according to the kind of crops to dispose of warehouse base accordingly the crops. These persons are enrolled in the register of Executive agency of variety testing, sampling and seed control.

2.3.3.2. Trade with the diverse seed classes
The principle conditions for trade with the diverse seed classes are explained in the Law on seed and propagating material.

- The certified seeds of all classes are dealt with certificate.
- The trade seeds except for seeds from ornamental plants are dealt with a document issued by Executive agency of variety testing, sampling and seed control.
- The standard seeds and the trade seeds from ornamental plants are dealt with a firm document, which isn’t specified in the law.

The concrete requirements for trade with seeds from vegetable species listed in the variety list are shown in the special regulations of the Ministry of agriculture and woodlands at the Law on Protection of the new plant varieties and animal breeds.

2.3.3.3. Seed classes which may be produced and dealt in Bulgaria

Basic and certified seeds
The principle condition in the law is that the seeds are produced, certified and dealt as:
- Basic – obtained under control of the breeder according to the routine practices for variety maintenance. These seeds are intended for production of certified seeds.
- Certified – seeds, which direct are descended from basic seeds.
- Certified, first propagation – seeds, which are direct descended from basic seeds and are intended for production of seeds – second propagation.
- Certified second propagation – seeds, which direct are descended from seeds first propagation and are intended for trade or for production of seeds – third propagation.
- Certified, third propagation - these seeds are traded if they meet follow requirements:
  - meet the requirements for variety authenticity, variety purity and health status of the crop in field examination
  - meet the requirements for assay purity, germination, humidity content, health status of the seeds in laboratory analysis.

In observing these requirements them is issued a certificate by Executive agency of variety testing, sampling and seed control.
Trade seeds – so are dealt the seeds of fodder, oil-bearing ornamental, medical herbs and aromatic plant species, given in Regulations, issued on the ground of art. 29 of the law. The trade seeds are appointed and dealt provided they meet the conditions for assay purity, germination, humidity content in laboratory analysis. On the grounds of the laboratory analysis the Executive agency of variety testing, sampling and seed control approve the trade seeds and issues a document after pattern.

Standard seeds – so are traded the seeds of all vegetables, ornamental, medical herbs and aromatic plants. The standard seeds are dealt provided that they meet the conditions for variety authenticity and variety purity, germination, humidity content and health status. These requirements are attested by the producer with a firm document. The producers of standard seeds preserve control samples of the batch seeds for a term of two years which are submitted on demand of the Executive agency of variety testing, sampling and seed control.

Under heavy climatic conditions and insufficiency or lack of seeds on the market in the country the minister of agriculture and woodlands or an official person authorized by him may permit the trade with seeds of all classes which don’t meet the requirements for germination.

For some plant species the law lays down specific requirements regarding the production, certification and trade with their seed material:
- the seeds of fruit species are traded provided they meet the conditions for vigour.
- the hybrid seeds are certified after the results of next control of the parent’s components.

2.3.3.4. Certification of the quality of the seed (seed material)
The certification of the seeds is made by the Executive agency of variety testing, sampling and seed control after completed field examination and laboratory analysis. The field examination is a method for estimating authenticity, purity of the variety or of the species, the weed-overgrownes stage and the injuries from diseases and pests by plant examination on the field in a suitable stage of their evolution. The field examination is carried out by the Executive agency of variety testing, sampling and seed control and by natural persons (inspectors), who have obtained permission by the Executive agency of variety testing, sampling and seed control.

For the certification of seeds are made two basic groups of laboratory analyses:
- analyses for estimating the sowing properties of the seed – they are made by the Executive agency of variety testing, sampling and seed control or from the laboratories, confirmed by the Minister of agriculture and woodlands;
- analyses for the health status of the seeds – are carried out by the National services for plant protection or by laboratories confirmed by the Minister of agriculture and woodlands. After issue of the certificate the Executive agency of variety testing, sampling and seed control carries out a next control of the seed classes. The next control is carried out by methods of prime control and/or by laboratory methods, confirmed by the Minister of agriculture and woodlands.

2.3.3.5. Certification of the quality, production and trade with propagating material

Trade with propagating material
The certified fruit and vine propagating material and the certified propagating material of medical herbs and aromatic plants are traded only with a quality Certificate.
The standard fruit propagating material – overlayings, cuttings, the standard vine propagating material is traded with documents, issued by Executive agency of variety testing, sampling and seed control.

The vegetable and ornamental propagating material, the standard fruit trees for planting and the standard material of medical herbs and aromatic plants are dealt with firm documents.

**Vegetable and ornamental propagating material**
The vegetable and ornamental propagating materials are produced and dealt according to the requirements appointed in the respective regulations. The quantity of these kinds of propagating material is verified by the producer with a firm document.

**Fruit propagating material**
The fruit propagating material is dealt as certified or standard one. It is certified as pre-basic, basic, certified. The propagating material is certified provided that it meets the requirements for variety authenticity, variety purity and health status and the requirements for quality of the propagating material.

The field examination, the average sampling for qualifying and for testing for viruses and soil sampling for nematodes are carried out by the Executive agency of variety testing, sampling and seed control, respective by the National services for plant protecting according to methods, established by the Minister of agriculture and woodlands.

On the grounds of the certification of fruit propagating material the Executive agency of variety testing, sampling and seed control issues a certificate after pattern, established by the Executive director of Executive agency of variety testing, sampling and seed control. The certificate has a validity term till beginning the next vegetative period for each one of the plant species, except for the fruit propagating material produced in containers. After expiry of the certificate term the propagating material not may be traded.

The standard propagating material is traded provided that it meet the requirements given in the respective regulation. The quality of the standard fruit trees for planting is certified by the producers with a firm document. The quality of the standard fruit material – cuttings and overlays is verified by a document issued by the Executive agency of variety testing, sampling and seed control.

**Propagating material of medical herbs and aromatic plants**
The propagating material of medical herbs and aromatic plants is pre-basic, basic, certified provided it meet the requirements for variety authenticity, variety purity and health status as well as the requirements for quality of the propagating material. The field examination, the average sampling for qualifying and for testing for viruses and soil sampling for nematodes are carried out by the Executive agency of variety testing, sampling and seed control, respective by the National services for plant protecting by methods, established by the Minister of agriculture and woodlands.

On the grounds of the certification of the propagating material of medical herbs and aromatic plants, the Executive agency of variety testing, sampling and seed control issues a certificate after pattern, established by the Executive director. The Certificate has a term of validity till beginning the next vegetative period for each one of the plant species, including the
propagating material produced in containers. After expiry of the certificate validity the propagating material of medical herbs and aromatic plants may not be traded.

The standard propagating material of medical herbs and aromatic plants is dealt provided they meet the requirements given in the regulation of the Ministry of agriculture and woodlands. The quality of the standard propagating material for planting is verified by the producer by a firm document.

**Vine propagating material**

The vine propagating materials are traded as certified and standard, including the overlayers. It is certified as pre-basic (primary), basic, certified. The propagating material is certified provided it meets the requirements for variety authenticity, variety purity and health status and the requirements for quality of the propagating material.

The field examination, the average sampling for qualifying and for testing for viruses and soil sampling for nematodes are carried out by the Executive agency of variety testing, sampling and seed control, respective by the National services for plant protecting by methods, established by the Minister of agriculture and woodlands.

In consequence of the certification of the vine propagating material the Executive agency of variety testing, sampling and seed control issues a certificate after pattern, established by the Executive director of the Executive agency of variety testing, sampling and seed control. The Certificate has a validity term till beginning the next vegetative period for each one of the plant species, excluding the vine propagating material, produced in containers. After expiry of the certificate validity the propagating material of medical herbs and aromatic plants may not be traded.

The standard vine material is provided for planting of vineyards for grape-production. This vine material qualified by the Executive agency of variety testing, sampling and seed control and is traded provided it meets the requirements appointed in the Regulation which is in a preparation period. On the grounds of the qualifying the Executive agency of variety testing, sampling and seed control issues a document after pattern, appointed by the Executive director of the Executive agency of variety testing, sampling and seed control. The trade with standard vine overlayers is permitted till 1st of January 2006.

In heavy climatic conditions and in insufficiency or lack of propagating material on the market in the country the Minister of agriculture and woodlands or official person authorized by him may permit the trade with propagating material of all classes which meet lower requirements excluding the requirement for health status.

2.3.4. **Import and export of seed and propagating material**

2.3.4.1. **Requirements for imports documents**

The seed and propagating material and the certified propagating material from import must meet the requirements of the law and of the normative base thereto excluding the seeds of ornamental plants, which may be imported without class designation but they must meet the requirements for trade or for standard seeds.
The certified seeds of all classes and the trade seeds which are imported must be attended by a document for sowing properties and health status, issued by an official certifying and/or control body of the export state.

The certified fruit propagating material and all classes of vine propagating material which are imported must be attended by a document for quality, issued by an official certifying and/or control body of the export state.

The standard seed, vegetable propagating material ornamental propagating material and the standard fruit propagating material, which are imported, must be attended by a firm document for quality.

2.3.4.2. Procedure for import of seed and propagating material
In a three-days time since the import the National services for plant protecting is obliged to inform in written the Executive agency of variety testing, sampling and seed control about the imported seeds and propagating material and about the place where they are quarantined. In a three – day’s time since the information the Executive agency of variety testing, sampling and seed control verifies if the information appointed in the import documents meets the requirements of the law and of the normative acts on its application.

For the verification of the conformity the seeds with the information in the import documents appointed the Executive agency of variety testing, sampling and seed control, samples and carries out laboratory analysis and/or prime control of the imported seeds.

For examination of the conformity of the propagating material with the given in the import documents the Executive agency of variety testing, sampling and seed control makes average samplings for estimating the properties of the imported propagating materials.

On the grounds of the performed laboratory analysis and/or prime control the Executive agency of variety testing, sampling and seed control issues a document for trade of the seeds in the country after pattern, established by the Executive director of Executive agency of variety testing, sampling and seed control.

Till obtaining the results of the examination for conformity of the seeds and the propagating material made by the Executive agency of variety testing, sampling and seed control the generative material may not be traded in Bulgaria.

For the completed qualifying the propagating material the Executive agency of variety testing, sampling and seed control issues a document for trade of propagating material in the country after pattern, established by the Executive director of the Executive agency of variety testing, sampling and seed control.

The Minister of agriculture and woodlands or a third person, authorized by him may permit import of seed or propagating material varieties non-enrolled in the official variety list when:

- they are provided for scientific purposes;
- they are provided for variety-testing;
- they are provided for re-propagation and the obtained from the re-propagation of the respective plant varieties quantities of seed and/or propagating material wholly and obligatory are exported from the country with a document for laboratory analysis issued by the Executive agency of variety testing, sampling and seed control;
• seed and propagating material provided for advertising;
• the seed and propagating material are of the species, there from aren’t enrolled varieties in the official variety list, the import is permitted provided a variety testing begins in the country during the import year.

2.3.4.3. Import
The certified, trade seeds and the certified propagating material provided for export are attended by a certificate for quality.

The ornamental propagating material, the vegetables plant material, the standard fruit trees for planting, the standard propagating material of medical herbs and aromatic plants, the standard seeds, provided for export, are attended by a firm document for quality.

On demand of the seed import-state the Executive agency of variety testing, sampling and seed control issues an international seed trade certificate (ISTA-certificate) and/or a certificate from Organization for economic collaboration and development (OECD-certificate) in the field of the international seed trade.

2.3.5. Control of the seed and propagating material
The Executive agency of variety testing, sampling and seed control and the National services for plant protecting make examinations during the production, preparation, storage, transport and trade with seed and propagating material for the observing the requirements of this law and the normative acts to its application. As a result of the examinations made, the employees of Executive agency of variety testing, sampling and seed control draw up statements for the findings made after pattern, established by the Executive agency of variety testing, sampling and seed control.

The producers, preparators and the dealers of seed and propagating material are obliged to ensure the employers of Executive agency of variety testing, sampling and seed control and National services for plant protecting free access to the places where are realized the production, preparation, storage, package, labelling, transport, trade, important and export of seed and propagating material, as well as information and documents needed for control realizing.

2.3.6. Characteristics of the regime for production and trade of seed material from the tobacco varieties
The law on tobacco since 1993 determines a special regime of production, trade and use of propagating material of tobaccos. The law regulations appoint that every year till 15th of January on suggestion of the Fund “Tobacco” the Minister of agriculture and woodlands determines by an order the quantities regions, types, origins and varieties for tobacco production.

The tobacco producers who are registered on this law receive free tobacco seeds. The production is realized by natural and juridical persons, registered in a public national register which is kept and preserved by the Ministry of agriculture and woodlands and the seeds are distributed to the tobacco producers by the municipal mayor where they are registered.

The production regulation, the purchase and trade in tobacco is supervised by the Fund “Tobacco” at the Ministry of agriculture. At the fund is established a Council of experts for development of the tobacco production, wherein take part tobacco producers representatives,
the manufacturers and dealers of tobacco and scientists. This council offers a suggestion for the variety structure, new varieties selection, strategy of tobacco production development etc.

The Law analysis opens a high level of centralization and state control over the market of seed tobaccos material, which includes also a centralized varieties choice wherefrom tobaccos are seeded in Bulgaria. This means has its economic logic because of the state monopoly on the tobacco articles production until recently existing in Bulgaria. The coming privatization of this branch as well as the liberalization of the tobacco purchase regime by the producers in our opinion will upturn the existing production mode and trade in the tobacco varieties in an operative one, because of that it needs a urgent and drastic change.

2.4. Enforcement of intellectual property rights

2.4.1. International legislation

“Counterfeiting and piracy, and infringements of intellectual property in general, are a constantly growing phenomenon which nowadays have an international dimension, since they are a serious threat to national economies an governments.”

This statement can be found in a memorandum issued on 12 July 2005 in connection with a draft directive on criminal measures aimed at ensuring the enforcement of intellectual property rights.

The unauthorized production of goods protected under IP law has a value of many billions of euros worldwide. Breeders are frequently confronted with the illegal reproduction and commercialization of their varieties. The enforcement of intellectual property rights has become a hot issue.

2.4.1.1. The UPOV Convention and the TRIPS Agreement

Article 30 1(i) UPOV Convention 1991 states that each contracting party must provide for legal remedies for the effective enforcement of breeder’s rights. Part III of the TRIPS Agreement relates to enforcement of intellectual property rights. This part starts with the following ruling:

“Members shall ensure that enforcement procedure as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.”

In the 20 articles that follow detailed rules are given, what types of civil and penal law provisions have to be implemented by the Members of the WTO.

Even if the UPOV Convention and the TRIPS Agreements are not directly applicable under most national legislation, a holder could remind a court of the Conventions if there is discrepancy between the national law and these Conventions.

2.4.1.2. Community legislation

In the framework of the European Community a number of legislative initiatives have been undertaken in order to create tools as regards the enforcement of intellectual property rights in general. On 29 April 2004 the European Parliament and the Council adopted Directive 2004/48/EC on the enforcement of intellectual property rights. The objective of the Directive is “to approximate legislative systems so as to ensure a high, equivalent and homogenous level of protection in the internal market.” The Directive concerns the basically civil law measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. Its scope covers any infringement of intellectual property rights as provided for by Community law and/or by national law of the Member States. Accordingly, infringements of Community plant variety rights as well as national plant variety rights in any of the Member States of the European Union are covered. The Directive includes an obligation on the Member States to provide for a number of measures in their national laws relating to issues such as procedures and remedies, evidence, right of information, provisional and precautionary measures, injunctions and legal costs. The Member States shall take the necessary measures to comply with the Directive.

The Directive is complementary to the obligations of the Member States under the TRIPS Agreement. In its preamble it is explicitly stated, that this Directive should not affect Member States’ international obligations, including those under the TRIPS Agreement.

Council Regulation 1383/2004 on Customs Actions

Other enforcement possibilities are provided by Council Regulation 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights. The Regulation sets out condition for action by the customs authorities when goods are suspected of infringing an intellectual property right in certain specified situations. It also contains provisions on actions to be taken relating to goods found to infringe an intellectual property right at the end of the prescribed procedure. It covers goods infringing intellectual property rights listed in the Regulation, which included national plant variety rights under the laws of the Member States as well as Community plant variety rights. The basic principles of the Regulation are rather simple. It gives the customs authority the right to stop (and under certain circumstances even destroy) goods suspected of infringing an intellectual property right subject to customs clearance. The customs authorities may either initiate the procedure themselves based on their own information and experience or act upon a request from a right-holder. In most cases, the right-holder must, in parallel, initiate actions in a national court in order to get a final decision as regards whether an infringement has actually taken place.


30 Preamble, paragraph 10 of the Directive 2004/48/EC
As mentioned above the European Commission issued on 12 July 2005 a proposal for an EP/Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights. The directive is the penal law complement of directive 2004/48/EC. In a draft so-called Framework decision detailed rules are laid down on penalties and judicial cooperation.

**Council Regulation 2100/1994 (the Basic Regulation)**

The Basic Regulation\(^{34}\) provides some basic conditions regarding civil claims, infringements and jurisdiction Articles 94 to 107). These rules ensure that there will always be a competent national court to deal with infringements of Community plant variety rights. The Basic Regulation provides that the rules of procedure concerning infringements are governed by corresponding national law (Article 103) and the Member States shall take all appropriate measures to ensure that the same provisions are made applicable to penalize infringements of Community plant variety rights as apply in the matter of infringements of corresponding national rights (Article 107).

Article 94 of the Basic Regulation lists acts that, if done without the consent of the holder, allow the holder to bring a civil action against the alleged infringer. The scope of rights mentioned in Article 13 (2) includes the exclusive right for the holder to produce and reproduce condition for the purpose of propagation, sell, market, import and export to the Community and stocking the variety for any of the mentioned purposes. Harvested material also falls under the protection unless the holder has had reasonable opportunity to exercise his right in relation to the variety constituents.\(^{35}\) The Regulation opens up the possibility for the Commission to extend the protection to products obtained directly from material of the protected variety. The Commission has not yet made use of this possibility in Article 13 (4). In addition to acts committed in relation to the protected variety itself, acts committed in relation to essentially derived varieties, other indistinct varieties and hybrid varieties dependent on the protected variety for their production may also constitute infringements.\(^{36}\)

Any person who offers or disposes of to others for commercial purposes material of a protected variety must use the variety denomination designated for that variety. If a trade mark, trade name or similar indication is associated with the designated denomination, this denomination must be easily recognizable as such. A holder of a CPVR may bring an action for an injunction or compensation, or both, against any person who, contravenes Article 17 (1) or (2) or uses the variety denomination of a protected variety or a designation that may be confused with it.

**2.4.2. Enforcement of IPRs in Bulgaria**

By signing the Association Treaty on 8 March 1993\(^{37}\), in force since 1 February 1995, the Republic of Bulgaria became an associated EC member. Bulgaria thus became obliged to implement the Community acquis communautaire\(^{38}\), and to comply with the TRIPS

---

\(^{34}\) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community Plant Variety Rights, JO L 227/1, 1.9.94.

\(^{35}\) See Article 13 (3) of the Basic Regulation.

\(^{36}\) See Article 13 (2) in conjunction with Article 13 (5) of the Basic Regulation.

\(^{37}\) OJEC No. L 386/1 of 31 December 1994.

\(^{38}\) By ratification law of 24 October 1996 in Düršaven Vestnik (Bulgarian Official Gazette, “DV” in the following) No. 93/1996, 1.
requirements due to Bulgaria’s accession to the WTO in October 1996\textsuperscript{39}. Subsequently, a TRIPS Compliance Committee was founded\textsuperscript{40}.

In the course of these obligations, Bulgaria has made amendments to most of its IP laws and ceded to all relevant IP treaties\textsuperscript{41}. A modern Patent Act in accordance with the European Patent Convention and the Patent Cooperation Treaty was promulgated on 18 March 1993\textsuperscript{42}. Bulgaria has been member to the PCT since 21 May 1984 and will become a member of the European Patent Convention as of 1 July 2002. The new Patent Act also concerns rules on utility models/petty patents. The purpose of creating a cheap and uncomplicated right for small and medium sized enterprises and academics could not be achieved, however\textsuperscript{43}. A new act on plant varieties and animal breeds was enacted on 19 September 1996\textsuperscript{44} and coincided with Bulgaria’s accession to UPOV on 11 December of the same year. In 1999, a new Design Act\textsuperscript{45} and an act for the protection of trade marks and geographical indications\textsuperscript{46} were promulgated. The latter is meant to comply with the EC Trade Mark Directive, the EC rules on the protection of geographical indications and the relevant TRIPS provisions. While topographies of the integrated circuits are protected by specific legislation\textsuperscript{47}, know-how protection is provided by the provisions of the Unfair Competition Prevention Act\textsuperscript{48}.

While the substantive laws on IP protection by and large comply with international standards, the EC Commission still sees some deficits in the field of enforcement.\textsuperscript{49} Reasons can be found in the insufficient capacities of administration and judiciary, and the lack of specific training in this field\textsuperscript{50}. Consequently, IP enforcement in Bulgaria had been placed under growing pressure. Details are provided below.

2.4.2.1. Competent Parties against infringement of IPRs

\textsuperscript{39} The relevant legal provisions are mentioned in the 1995 white book on the preparation of accession candidates.

\textsuperscript{40} By directive on institutionalizing a committee on intellectual property rights (\textit{Naredba na Ministerski s\v{c}vet za uchredjavanje na S\v{c}vet po intelektualna sobstvenost}), No. 307 of 27 December 1996, DV No. 1/1997.

\textsuperscript{41} An overview in German is provided by St. Stefanov, Bulgarien: Rechtsnormen und Rechtswirklichkeit – Stimmen aus der Praxis: Das geistige Eigentum in Bulgarien, Munich 2000, 265.

\textsuperscript{42} In force since 1 June 1993, published in DV No. 27/1993. An overview in German is provided by G. Chivarov/T. Kowal-Wolk, Das neue bulgarische Patentrecht, Gewerblicher Rechtsschutz und Urheberrecht Internationaler Teil (GRUR Int.) 1993, 910 et seq. An overview in Bulgarian is provided by St. Stefanov, Zakonovata uredba za zakrila na industrialnata sobstvenost i us\v{s}uv\r{r}\v{s}tenavaneto j (The New Laws on Industrial Property and Their Completion) in Intelektualna sobstvenost (Intellectual Property, periodical of the Patent Office, in the following "InSo") 1995/7-8, 14 et seq.

\textsuperscript{43} Between 1 June 1993 and the end of 1999, no foreign utility model application could be recorded: St. Stefanov, Bulgarskijat polezen model i evropejskata harmonizacija (The Bulgarian Utility Model and European Harmonisation), InSo 1999/8-9, 7 et seq.

\textsuperscript{44} Zakon za zaštita na novite sortove rastenija i porodi \v{g}ivotni (Act for the Protection of New Plant Varieties and Animal Breeds), DV No. 84/1996, 1, in force since 4 January 1997.

\textsuperscript{45} DV No. 81/1999, 13 et seq.

\textsuperscript{46} Zakon za Markite i geografskite označenija (Act for Marks and Geographical Indications), DV No. 81/1999. For a German-language introduction see D. Dimov, Das neue bulgarische Markengesetz, GRUR Int. 1999, 129 et seq.

\textsuperscript{47} Law of 15 December 1999, DV No. 81/1999, 21 et seq.

\textsuperscript{48} DV No. 52/1998, 1. German-language introduction by A. Bakardjeva, Das neue Wettbewerbsgesetz in Bulgarien, GRUR Int. 1999, 395, and St. Stefanov, Der Know-how-Schutz nach bulgarischem Wettbewerbsrecht, GRUR Int. 1999, 879 et seq.


Prior to 1989, there were practically no effective remedies for the defence of exclusive rights that in the case of industrial property rights primarily belonged to the socialist state. One of the main advantages of the new legislation in the IP field is an effective protection by providing for remedies against infringement. An IP owner is entitled to sue against infringement of an IP right; in the case of several owners, each has the right to sue independently, Sec. 27(3) Patent Act. For patent matters, the exclusive licensee is entitled to sue unless the contract provides differently. Secs. 75(2) Trade Mark Act and 56(2) Design Act entitle the exclusive licensee to sue only if the licensor has failed to act against an infringement within one month from receiving knowledge thereof. The position of a non-exclusive licensee is far weaker. In the case of a licence of right, the IP owner must have failed to have acted for at least six months in order to give the licensee a right to sue. A contractual non-exclusive licensee is entitled to sue only with the permission of the right owner, unless the licensing agreement provides differently. In the case of plant varieties, a non-exclusive licensee may sue after the licensor’s inaction for six months. The applicant of a patent for plant variety may also sue for infringement between publication and grant, Secs. 18 Patent Act and 17 Plant Variety Act. Those entitled to sue may request ascertainment of infringement, damages or injunctive relief. Ascertainment of infringement is rare without a corresponding request for damages or injunctive relief51. Ascertainment of right claims are more frequent in cases where the recognition of an invention as an employee’s invention is in doubt. As this matter is important for ascertaining ownership, such claim of ascertainment is doubtlessly admissible under Sec. 97(3) CCP.

2.4.2.2. Infringement and remedies under the Plant Variety Act

In accordance with Article 28, paragraph 1 of the Plant Variety Act any use of the variety covered by the variety protection scope, which has been made without the consent of the breeder, constitutes an infringement of the certificate. Any person who offers for sale products and other materials, subject to the protected variety, which have been made by other persons in violation of the certificate, may be sued for infringement by the certificate owner only if he has acted intentionally.

In case of an infringement, the certificate owner and the licensee of the exclusive license are entitled as per Article 28, paragraph 3 to bring an action before the Sofia Civil Court, unless otherwise agreed. The holder of a contractual license pursuant to Article 22, of a compulsory license pursuant to Article 23 and of an official license pursuant to Article 24 may institute certificate infringement proceedings if the certificate owner does not exercise his own right to institute such proceedings within six months of the receipt of a written invitation to do so from the licensee.

Certificate infringement proceedings may also be instituted by the applicant prior to grant of a certificate, after the application has been published. Where the applicant prior to grant of a certificate files an appeal, the court proceedings is suspended until a decision is taken by the Patent Office. In such cases, the Patent Office is required to reach a decision within a one-year time limit from the notification for suspension of the court proceedings.

In accordance with Article 29, paragraph 1 of the Plant Variety Act certificate infringement proceedings may include: (a) action to ascertain the fact of infringement; (b) action for compensation of the damages suffered and profits lost; (c) action to enjoin the infringer from

51 M. Dimitrova, Sporove za narušavane na prava vůruh patentovani izobretenija i administrativopravna zakrila (Claims for the Infringement of Patents and Their Administrative Protection), presentation at the conference “Matters Related to Inventors and Integration”, Sofia, 31 January 2001, 2.
performing all infringing acts. Where proceedings in these cases lead to a conviction, the court may order, at the plaintiff's request, reprocessing or destruction of the infringing articles and also, if the infringement was intentional, of the means with which the infringement was carried out.

Any infringement committed in full knowledge of the facts constitutes an offence punishable as per Article 52, paragraph 1 of the Plant Variety Act by a fine to the amount of BGL 100 and 1,000 (Euro 1 = BGL 1.955830). In the case of repetition, the penalty is between BGL 1,000 and BGL 10,000. In both cases, the propagating material is confiscated. A special organ of the Ministry of Agriculture and Forests shall draw up a statement concerning any offence. The penalty ordered by the Minister for Agriculture and Forests might be appealed under the provisions of the Law on Administrative Offences and Penalties. The administrative penalty does not exclude responsibility under criminal law or other laws of the country.

2.4.2.3. Competent Courts and Administrative Offices
Both the courts and certain administrative offices are responsible for the enforcement of IP rights. Administrative offices are the Patent Office, the Ministry of Culture (for copyrights), and the Commission for the Protection of Fair Trade (for unfair competition). The Trade Mark and Design Acts also give the customs authorities' jurisdiction over the seizure and release of potentially infringing goods.

The Patent Office
The Patent Office is responsible for the protection of industrial property, including plant variety protection and the development of related policy.

Decisions by the Patent Office are administrative acts governed by the Patent Act and certain provisions of the Act on Administrative Procedure. Procedures are related to appeals against first instance decisions of the Patent Office, nullity, cancellation and compulsory licences. First instance decisions of the Patent Office which can be appealed before the Appeal Board are the complete or partial rejection of grant, closure of the grant procedure due to procedural defects, determination of priority and rejection of a request for reinstatement. The Appeal Board decisions are reached by a panel of two technical and one legal member, in nullity/cancellation and compulsory licence procedures, with two technical and two legal members, Sec. 55 Patent Act. Administrative procedures are the same for plant varieties, Sec. 47 Plant Variety Act, trade marks, Sec. 64 Trade Mark Act, and designs, Sec. 41 Design Act. Procedures before the Patent Office are less time-consuming and cheaper than before the courts.

While that Patent Office is not competent to handle infringement suits, it has a strangely hybrid jurisdiction over the investigation of alleged infringements in matters of trade marks, designs and plant varieties. Administrative Penal protection is available through the Trade Mark Act (Articles 81-88) the Design Act (Articles 65-70) and the Plant Variety Act (Article 52). Ex officio or upon request from rights holders, the Patent Office may search premises for infringing goods, seize these and impose fines on infringers of up to 2,500 Euro. The Patent Office can also order the destruction of the seized goods which is carried out by the Ministry of Interior.

53 Zakon za administrativnoto proizvodstvo (Act on Administrative Procedure), DV No. 90/1979, as of DV No. 95/1999.
Prevention is the key objective. The Administrative provisions are fast and effective and have offered positive results. The strong support of the police is recognized as an important element in the process.

The Office has clearly recognized that IP crime is a growing and serious problem worldwide and is threatening legitimate businesses and consumers. The protection of rights is vitally important for strong and competitive markets.

The Patent Office has developed a strategy that it hopes will become a standard model to help achieve better enforcement results. The key objectives are:

- To establish a coordinated management structure of state agencies and related ‘players’;
- To develop a statement of priorities about how best to tackle IP crime
- To allocate operational roles to competent authorities and improve the analysis and evaluation of information;
- To coordinate law enforcement and the information exchange.

The Office strategy is to set up national IP Crime Control Board employing subgroups to work in specific fields:

- Pharmaceuticals
- Textiles
- Luxury goods
- Foodstuffs
- Automotive
- Stationery

The strategy also recommends the introduction of a National Report to record successes and suggests improvements. The European Commission strongly endorses this approach54.

**The Sofia City Court**

Sofia City Court operates in an administrative capacity in relation to IPR disputes and deals with the full range of intellectual and industrial property issues including trade marks and geographical indications, patents, plant varieties and designs.

Decisions taken by the Patent Office’s Appeal Board or by the Ministry of Agriculture and Forests are subject to judicial review, Secs. 59 Patent Act and 51 Plant Variety Act. The provisions envisage an administrative appeal before the Sofia City Court.

The Sofia City Court is a court of appeal against decisions by the Patent Office, and also responsible in first instance for deciding most cases of IP infringement55. This does not mean, however, that the Sofia City Court is a court specialised in IP matters. The question of whether a special IP court was worthwhile for Bulgaria was discussed at a 1998 conference in Sofia56. While patent attorneys and other patent experts were in favour, the judges argued

---

55 With the exception of ascertaining the fact of commercial introduction according to Sec. 65 Patent Act.
56 See conference discussion Trjabva li da imame specializiran sūd? (Shall We Have a Special Court in Intellectual Property Matters?), InSo 1999, No. 3, 9 et seq.
against. The patent experts opted for a special court, as they were dissatisfied with the current judicial practice. The judges admitted that they had certain difficulties with IP matters and expressed their willingness to increase their knowledge in this area. Yet, they took the view that IP cases were of little relevance when compared to other cases, for which reason the matter would not even merit a specialised court division. As the judges of the Sofia City Court have to deal with a wide range of matters, they did not feel particularly competent to handle IP cases. Most of their cases concerned commercial or tax matters with highly complex laws which are often subject to change. In the end, all participants agreed that there was little prospect for the establishment of a specialised court for patents and trade mark matters, and that it would be preferable to concentrate efforts on the professional education of judges in the IP field.

The Sofia City Court is a special court in some respects. According to Sec. 64 Judiciary Act, it is the only city court in Bulgaria and enjoys the position of a District Court. The court employs 80 judges who deal with matters of criminal law, administrative law, commercial and civil matters, in addition to IP cases. Between 1995 and 2000, 213 IP cases were dealt with in civil procedures. Within the same period of time, 232 requests for administrative review against decisions of the Patent Office were dealt with. It stands to reason that for 445 cases within six years, or an annual average of 80 cases, no special court or even special division in IP matters can be justified. Still, one should not overlook the fact that the number of IP cases is rising. While there were 21 cases in 1995, the number had risen to more than 150 in the year 2000. This is still an insignificant number, compared to the 500 to 600 cases a judge at the Sofia City Court has to deal with annually.

Identifying key decisions is important and the lack of information can be a problem for other bodies. Unfortunately the Court has no statutory obligation to disseminate its decisions. It is recommended that this is considered as a future development.

**Arbitration/Conciliation**

Sec. 9(1) CCP allows arbitration agreements in all cases of proprietary character. These are cases that can be estimated and valued in monetary terms. Arbitration can be of particular interest in cases of employee’s inventions, particularly related to the question of who has the right to apply for a patent. One judge has taken the view that these cases cannot be brought before an arbitration tribunal, as before the application a patent cannot be defined as a proprietary right. This view is incorrect, however. Proprietary rights are those that can be transferred by contract. According to Sec. 4 Patent Act, all rights under the Patent Act can be transferred unless there are specific provisions to the contrary. Thus, also the right for the application of an invention can be transferred and be the subject of a contract for consideration.

According to Sec. 63 Patent Act, also ascertainment of prior user rights can be determined by way of arbitration.

---

57 For the supply of statistical data in this respect I would like to thank Ms. Marussia Dimitrova, judge at the Sofia City Court.
59 Traditionally, two arbitration institutions have existed in Bulgaria. One is the Bulgarian Chamber of Commerce, the older the Bulgarian International Chamber of Trade. Bulgaria is a member to the 1961 New York Agreement on the Recognition of Arbitrary Awards and the European Agreement on International Commercial Arbitration of 1964.
60 M. Dimitrova, (above fn 28), 3.
2.4.2.4. Preparation for Trial

Preserving Evidence
Secs. 165-170 CCP provide for measures for the preservation of evidence. The request for preservation can be made prior to or during the trial and if there is a danger that evidence might be removed or destroyed. If made prior to the trial, the request has to be made before the district court where the evidence is located. If granted, the order for preserving evidence is served on the opponent, while the inspection as such is carried out by the court with the help of a specialist. The right owner who made the request for preserving evidence is not present during the inspection.

Interim Measures
According to Sec. 308 CCP, the plaintiff may request interim measures at any time during the trial. The court will order these measures on the basis of written evidence establishing that otherwise pursuing the claim would be difficult or impossible. Such requests can only be made in civil, not in administrative procedures, and require the initiative of a party to the suit.

Two cases of requests for interim injunctions can be reported in relation to patent matters. In the first, the plaintiff requested the court to issue an interim injunction against the defendant’s production of a pharmaceutical which, according to the plaintiff, was produced by using the plaintiff’s patented product. The City Court denied the request, arguing that such injunction would not amount to a measure for protecting the plaintiff’s interests in a claim, but rather satisfy the claim for injunctive relief as such. Based on the same arguments, the Sofia City Court rejected a request for prohibiting the further production of a pharmaceutical product called “Vasopren” by a state enterprise. The reasoning could also have been based on Sec. 312 CCP that does not permit interim measures to be ordered against state enterprises. This provision, however, is inconsistent with Art. 19(2) Bulgarian Constitution.

2.4.2.5. Trial

In General
As mentioned above, infringement procedures in IP matters start with bringing an action before the Sofia City Court, or when decisions of the Patent Office are appealed, with a request for administrative review. Civil matters in first instance, e.g., the infringement of a patent or trade mark, are dealt with by one single judge in open court. The court may, but must not order the presence of the parties. Administrative matters are dealt with by three judges and allow a possibility of a final appeal to the Administrative Supreme Court.

In civil matters, the judge would first investigate the admissibility of the claim and ask the parties to state their case; thereafter, he would propose a settlement. Subsequently, the parties will be asked to submit evidence, the admissibility of which is decided by the court. Facts which are not explicitly denied by the defendant are deemed admitted. The same applies when one party obstructs the gathering or presentation of evidence. Once the court finds that the case has been exhaustively argued, it again requests the parties to settle the case. Should no settlement be reached, the case is decided within 30 days from the last oral hearings.

The Role of the Expert

61 Request in the Civil Case No. 912/1997 before the Sofia City Court.
62 The case is reported by Dimitrova (above fn. 28), 12.
Particularly in cases of patent or utility model infringements, it has become the rule to request technical expertise. The case “Porous Chocolate/Nestle” is a case in point. Here the plaintiff had transformed its former creator’s certificate into a proper patent. The invention concerned a conveyor belt for the shaping of porous chocolate goods, and the defendant was found to have infringed the patent. The Sofia Appeal Court suspended the execution of the decision pending a nullity action, which the defendant had meanwhile raised before the Patent Office. The nullity action was for the most part unsuccessful, and was subsequently appealed before the Sofia City Court in a civil action. In this case, the Sofia City Court asked two professors to give an expert opinion on the question of validity. After five years of litigation, the parties finally settled the case. In particularly complicated cases, the court may order three experts to give evidence, one to be nominated by each party, and a third by the court. In one case where the court requested one expert opinion and the plaintiff disagreed with the findings of the expert, the court ordered a “triple expertise”.

As necessary as an expertise may often be in complicated technical matters, the delay caused by this cannot be denied.

It should finally be noted that experts should be adequately remunerated to ensure that they render their expertise independently, speedily and comprehensively.

2.4.2.6. Proving Infringement

In patent matters, the court first tries to establish – often with the help of technical experts – if the defendant’s device employs all elements of the patented invention. In the case of process patents, a new product directly derived from such a process is deemed to be infringing unless proven otherwise.

It is not uncommon that potential infringers often try to circumvent the patent by using elements that are identical to those of the patented invention, fulfil the same function and attain the same result. While an infringement by equivalents is recognised under Sec. 17 Patent Act, application of the provision causes immense practical difficulties for the courts. Not only is it difficult to find competent experts, but also the attorneys are of little help and often lack the relevant knowledge. It is at this stage where the patent attorney is of great importance, as he is perhaps the only one who can understand the expert and confer the expert’s results to the party. Unfortunately, patent attorneys have no right of representation in court, and are thus confined to assisting the attorney.

A far greater number of trade mark cases are decided, where the Sofia City Court and other district courts have obtained a certain experience. It should be noted, however, that as yet there have been very few cases decided under the new 1999 Trade Mark Act. While the decisions rendered under the previous Trade Mark Act of 1967 are still persuasive, the courts will now have to look to precedents from EU countries far more frequently in order to apply the harmonised trade mark legislation. Similarity is determined according to the graphical impression, the phonetics and the meaning. Similarity was affirmed for “Hostalan” and “Ostalan” for colours and paint. After some hesitation, similarity was denied for the word

\begin{footnotes}
\item[64] Sofia City Court, decision of March 1997, Case No. 1451/95.
\item[65] Patent Office, decision of 6 June 1996 in re Patent No. 4387 BG.
\item[66] Sofia City Court, Civil Matter No. 1807/96 – “Porous Chocolate/Nestle”.
\item[67] Sofia City Court, Case No. 2622/95 in re Patent No. 33336/94 BG.
\item[68] Djelepov, (above fn. 36), 88.
\end{footnotes}
marks “Logos” and “Lotus” for textiles. On appeal, the Sofia City Court also held that “Klaudia” was dissimilar to “Klauden”.

More difficult are cases that involve well-known, widely-known or famous marks. Neither the Patent Office nor the courts seem to share uniform criteria for determining recognition. Art. 6bis Paris Convention was implemented as Sec. 4(g) Bulgarian Trade Mark Act 1967 and seemed to require recognition in the country where protection was sought, a fact the Patent Office decided on a case by case basis, mostly upheld by the courts. In the case “Milk Way/Milky Way”, the Patent Office denied recognition for the trade mark “Milky Way” Bulgaria, an opinion upheld by the Sofia City Court. As a consequence, the Bulgarian application for “Milk Way” was granted.

2.4.2.7. Defences

Due Process
It stands to reason that the defendant’s procedural rights for a fair trial are safeguarded in infringement procedures by compliance with all necessary formalities (proper service claim, etc.) and by the defendant’s possibilities of appointing a representative or raising a counter-suit. If the plaintiff does not initiate the main action after his successful request for an interim injunction, the defendant may sue for damages.

Nullity
The defence of nullity cannot be raised in infringement procedures. Rather, the defendant in such case has to make a request for invalidating the patent before the Patent Office, Sec. 55(2)(i) Patent Act. The Patent Office’s decision can be appealed against before the Sofia City Court in administrative proceedings. As a result, the infringement suit is handled by the civil, the appeal against the invalidation action by the administrative branch of the Sofia City Court. The (civil) infringement action will be suspended until a final decision on the patent’s validity has been reached.

In cases of trade marks, the court may well come to the conclusion that a mark should not have been registered, or is prone to cancellation. In such case, cancellation or invalidation of the mark can be requested by any interested person on the basis of such decision.

Other Defences
The defendant may also argue exhaustion (both for patents and trade marks), or non-use of a trade mark for a continuous period of five years.

2.4.2.8. Remedies
According to Sec. 45 Obligations Act, the infringement of intellectual property rights is viewed as a tort. Both the general tort clause and the specific remedies for injunctive relief, damages or ascertainment of infringement under the IP laws can be used as a basis of claim, depending on what types of damages are sought, and if damages were incurred in the first place. In the above-mentioned “Porous Chocolate/Nestle” case, the right owner only sued for injunctive relief without requesting damages. Particularly in cases where no damage relief is

---

69 Sofia City Court, 22 February 1978, Case No. 6521/78.
70 Sofia City Court, 3 April 1985, Case No. 375/85.
71 Sofia City Court, 16 February 1998, Case No. 120/97.
72 Exempt from liability are those who trade in infringing goods in good faith, Sec. 27(2) Patent Act, 73(2) Trade Mark Act.
sought, out of court settlements are not uncommon, sometimes even resulting in a licensing agreement being concluded. The claim for damages can be based on direct damages and lost profits.

If a claim is successful, the court can order the infringer to publish the decision in two daily newspapers at the infringer’s expense if the plaintiff makes a corresponding request. The court can also order the destruction of infringing goods and in the case of wilful infringement also the means of producing such goods. The court orders the losing party to pay the court fees and the other side’s attorney’s fees. The amount of such fees can be any figure between what the winning side has actually paid, and the legal minimum stipulated by Sec. 36 Bulgarian Attorneys Act.

It has already been mentioned above that the Patent Office may order seizure and destruction of infringing goods under trade mark, design and plant variety protection law. Such a decision can be appealed to the Administrative Court. Unfortunately, the law does not specify which administrative body shall actually carry out the destruction.

The infringing use of a trade mark or design is also a punishable offence according to Sec. 227 Criminal Code.

Unfortunately, in the 1998 CCP Amendment the legislature missed the opportunity to stipulate the infringer’s obligation to supply names of producers and suppliers of infringing goods as required by Art. 47 TRIPS Agreement.

2.4.2.9. Conclusion
No doubt Bulgaria has complied with Art. 67 Association Treaty in amending and modernising its IP legislation in conformity with European standards. While this also seems to apply to the legislative provisions of enforcement, their de facto application is more difficult to evaluate. The new laws also require well functioning administrative entities and courts, which is currently not the case despite being an indispensable requirement for proper enforcement both in the field of IP law and in general. Judicial reform thus needs to continue. The number of IP cases before the courts while still low, continues to rise. Precedents under the old IP laws were infrequent and as yet there is no settled body of case law under the new legislation. Judges are often unsure of how to apply the new IP legislation, as few are well versed in IP matters. The judiciary is burdened with a high number of cases, leaving very little room for specialisation. It is not uncommon that IP infringement suits take two years or even more if technical expertise is sought. Judges work under difficult conditions and are paid inadequately.

Programmes for the continued legal education of the judiciary seem to be of vital importance. As yet, no specific educational qualifications are required to become a judge, nor is a continued legal education compulsory. The new programme for developing the court system is a step in the right direction. The corresponding education of patent attorneys and attorneys representing clients in IP matters should also be improved.

---

73 C. Ivanova, Građanski i administrativni sposobi za zaštitu na obektite na industrialnata sobstvenost (Civil and Administrative Measures for the Protection of Industrial Property Objects), InSo 1998/10, 11.
74 M. Dimitrova/R. Busova, Građanski i administrativni proceduri i obezpečitelni merki (Civil and Administrative Procedure and Means for Securing Evidence), InSo 1998/10, 9.
Finally, one major field of improvement that the Bulgarian judiciary should pursue is the fact that court decisions are normally not published. Only those of the Supreme Court are published in abbreviated form in a court annual. Given the fact that even the lower courts do not handle a high number of IP cases and that even fewer would reach the Supreme Courts, it is obvious that there is no possibility of a feedback by way of a publication of decisions. Unfortunately, cases in the field of plant variety infringement were not found.

3. USE AND PRACTICAL ASPECTS

3.1. Seed Industry

3.1.1 The Executive Agency of Plant Variety Testing, Approbation and Seed Grading
The Executive Agency of Plant Variety Testing, Approbation and Seed Grading (EAPAS) implements the government policy regarding plant varieties and certifies the authenticity and quality of seeds and propagation material, locally produced and imported. The government policy has been conducted through the National List of Plant Varieties and the Bulletin on Recommended Recently Approved Varieties both published annually. The activities related to approbation and seed grading focus on the following areas:
- Field inspections (approbation) of seed-producing and propagation crops intended to certify the quality of seeds and propagation material;
- Seed and propagation material grading and issuance of certificates required for domestic and export trade;
- Ground control tests (zonal field tests) and laboratory tests intended to determine the authenticity and purity of tested varieties of seeds and propagation material;
- Control on production, storage, handling, marketing and planting of seeds and propagation material.

3.1.1.1 Plant Variety Testing.
In 2000, the government structures involved assessed 398 plant varieties for DHS (distinction, homogeneity and stability) and further 814 varieties for BEQ (bio-economic qualities) including 703 field crop varieties, 101 vegetable varieties and 10 permanent crop varieties. In addition, 367 varieties have been tested for resistance to biotic and non-biotic factors. The chemical laboratories tested 1,063 plant specimens and executed 3,191 chemical analyses throughout the year. The technical analyses of 259 test specimens have been completed. The activities on part of the Directorate of Plant Variety Testing (DPT) have been based on 105 individual contracts including 43 with Bulgarian companies, 52 with foreign counterparts and 10 commissioning contracts. Expert committees convened on 17 occasions to appraise 122 new varieties whereof 31 varieties of the local selection and 57 varieties of the foreign selection have been approved. The necessary documentation for the transformation of 70 patents into applications for certificates and the issuance of certificates for 25 recently approved varieties has been furnished to the patent authorities.

During January 1 – July 31, 2001, 84 contracts for formal variety testing have been signed including 43 with local customers, 30 with foreign customers and 11 with private variety testing laboratories.

75 See the Agrarian Report of Ministry of Agriculture and Forestry, 2001, pages 75 – 77, in: http://www.mzgar.government.bg/OfficialDocuments/Agry_report ...
Regarding BEQ assessment, in the current year preparations have been made for comparative testing of 577 varieties including 520 field crop varieties, 46 vegetable varieties and 11 permanent crop varieties.

Regarding the assessment of resistance to biotic and non-biotic factors, 237 varieties have been tested for resistance to viruses and further 504 varieties have undergone a field test for resistance to 107 different pollutants.

The chemical laboratories have tested 74 specimens and have carried out 200 chemical analyses.

The laboratories for technical analyses have tested 55 specimens, reporting 10 indicators for each one of them.

During January 1 – July 31, 2001, expert committees convened on 17 occasions to appraise 108 new varieties including 16 local varieties and 92 varieties included in the foreign selection. The number of varieties approved and subsequently added to the National List of Plant Varieties totaled 71 including 16 local and 55 foreign varieties.

3.1.1.2. Approbation and Seed Grading.
In 2000, the local structures involved have assessed a total of 33,973 ha under seed-producing field and vegetable crops.

During 1999-2000, 960 143 orchard saplings have been engrafted in total. Regarding viticulture propagation material, 4 797 709 vines in total have been engrafted and further 343 375 replanted.

In addition 2 036 720 decorative rose bushes have been certified including 1 944 530 intended for export.

In the first half of 2001, approbation has been requested for a total of 3 136 ha under hybrid maize, which indicates a decline of 685 ha compared to a year earlier. Similar trend has been observed with respect to approbation of hybrid sunflower, 50 % decline down to 1 840 ha against 3 683 ha in 2000. This has been attributed to limited supply of seeds for propagation purposes and low prices of regular hybrid seeds.

In 2001, approbation has been requested for 231 ha under seed-producing vegetable crops including 87 ha under elite and super-elite categories, 136 ha first-time propagated and 8 ha under hybrid vegetable crops. The reported increase has been attributed to high demand for seeds of local selection, namely hybrid tomatoes, cucumbers, melons and marrow, despite the significant volume of seed imports.

During January 1 – June 30, 2001, the Directorate of Approbation and Seed Grading (DAS) under EAPAS has assessed 309 propagating orchards and inspected 88 orchard nurseries. DAS certified 283 230 orchard saplings, 580 000 pieces of strawberry propagation material and 105 000 pieces of raspberry propagation material.

3.1.1.3. Certification, using and control of the varieties in Bulgaria
The meaning of the legal protection of the new variety as an object of intellectual property is to grant to the variety owner exclusive rights upon its use, which has to reimburse the expenses made by him and to enable him to realize a profit. There aren’t other legal means in the plant varieties which grant property upon the variety, except these ones for protection by certificate for the variety as an object of intellectual property\(^7^6\).

The rights upon using and disposal of the variety are granted to the breeder. Their realization obtaining an economic benefit for the breeder is the logical and successful completion of the new variety selection process, which sketchily shown passes follow stages:

The exclusive right of the Certificate owner includes the right of use, of disposal with the protected variety and the right forbid other persons to use it without his consent. The use of the protected variety extends over the variety generative material as well as under particular conditions over the crops of this material and the products, obtained from this material includes follow activities:

- production or reproduction, incl. submitting with the purpose of reproduction;

---

• offering for sale, selling or another kind of trade, incl. import and export;
• storage with one of the above mentioned purposes.

These activities (using of the protected variety) are regulated in a special standard form.

In Bulgaria the production, reproduction, storage and trade with generative material of the protected agricultural plants variety are settled in a special law - Law on seed and propagating material and the subnormative acts thereto. This special normative base gives the legal framework of the variety using on territory of Bulgaria. To be able to exercise effective his rights on the variety the breeder is to be acquainted with this normative base and to take advantage of the rights and means submitted by it. The breeder has to know also the legal regulation of the official variety list and the enrolment of a variety therein, its actual status and development as the trade with the agricultural plant variety (with some exceptions) only possible after enrolment in the variety list.

The new variety protection as an object of intellectual property according to the Law on protection of the new plant varieties and animal breeds gives the opportunity to its owner first of all to obtain an economic result of his selection or by means of production and trade with seeds by the breeder himself or by means of payment of a license reward.

The special legislation regulating the use of the agricultural varieties allows the breeder owner of a protected variety:

1. To require information about all activities, related to the variety maintenance, production, storage, packing, labelling, trade, import, export of generative material of the protected variety from the competent government institutions.
2. To require exact information from the competent government bodies about quantity of production and trade of his variety by third persons as they are subject to strict control and registration on behalf of the Ministry of agriculture and woodlands and the executive agency of variety testing, sampling and seed control (IACAC).
3. To enrol his variety in the official variety list after respective tests.
4. To warn the control bodies against coming on the market of generative material of unregulated production origin etc.
5. To punish the infringers of his rights upon the protected variety in an administrative and legal form. In legal controversy of subject protected new variety each one of the parties in the case may require and obtain without limitation the information specified in s.1 and s.2 from the competent bodies and services.

As result the increased control regime over production and trade with seed and propagating material of agricultural varieties behalf of the Executive agency of variety testing, sampling and seed control and the Ministry of agriculture allows the certificate owner effective to discontinue the illegal use of his variety by referring to competent governmental bodies.

3.2. Survey of the registered and protected plant varieties in Bulgaria

The use and trade of the agricultural crop variety on the territory of Bulgaria may be realized in principle only after its enrolment in the official variety list of the country. In this sense the Official variety list for the time 2002-2003 is an objective source of information about the
current economic and legal status of the new plant varieties protection as an object of intellectual property\textsuperscript{77}.

The aim of this initial of its kind Bulgarian survey analysis is to submit information about cases of varieties protected by a certificate or applied for protection, enrolled in the variety list of Bulgaria actual to this moment. The analysis is made according to the information available in the list “A” and list “B” of the variety list for 2002-2003. The Enclosure lists which include well-known varieties only aren’t been examined by us.

3.2.1. Varieties List 2002-2003

3.2.1.1. Varieties, enrolled in the “List - A”

In the list A are enrolled varieties which are distinct, uniform and stable and meet the requirements for biologic and economic properties accordingly the soil-climatic conditions in Bulgaria.

\begin{table}[h!]
\centering
\begin{tabular}{|c|c|}
\hline
\textbf{Bulgarian varieties (list A)} & \\
\hline
\textbf{Total} & \\
\hline
274 & Certificate 222 \\
& Application 50 \\
& Without legal protection for Bulgaria 2 \\
\hline
\end{tabular}
\caption{Data of the official variety list 2002-2003}
\end{table}

\begin{table}[h!]
\centering
\begin{tabular}{|c|c|}
\hline
\textbf{Foreign varieties (list A)} & \\
\hline
\textbf{Total} & \\
\hline
168 & Certificate 0 \\
& Application 0 \\
& Without legal protection for Bulgaria 168\textsuperscript{*} \\
\hline
\end{tabular}
\caption{Data of the official variety list 2002-2003}
\end{table}

\textsuperscript{*} (for 119 of the varieties is appointed, that they are enrolled in the General catalogue of the EU).

Varieties, enrolled in this section of the variety list 2002-2003 are divided into four groups:
- field crops
- vegetables
- perennial plants
- flowers

The examination of the crops below is conformance to this division according to the variety list.

3.2.1.1.1. Field crops

<table>
<thead>
<tr>
<th>Bulgarian varieties – field crops (list A)</th>
<th>Total</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>153</td>
<td>Certificate: 120 Application: 31 Without legal protection for Bulgaria: 2*</td>
</tr>
</tbody>
</table>

Fig. 7. Data of the official variety list 2002-2003
* (for 1 of these varieties is marked that, it is enrolled in the General catalogue of the EU).

<table>
<thead>
<tr>
<th>Foreign varieties (list A)</th>
<th>Total</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>78</td>
<td>Certificate: 0 Application: 0 Without legal protection for Bulgaria: 78*</td>
</tr>
</tbody>
</table>

Fig. 8. Data of the official variety list 2002-2003
* (for 53 varieties of them is marked that, they are enrolled in the General catalogue of the EU).

More important crops:

**Wheat** – in the list A are enrolled 24 varieties of wheat, which from 21 varieties of the species winter common wheat and 3 varieties of the species winter durum wheat. All varieties are Bulgarian ones and are protected by a certificate (they are protected as intellectual property according to the Law on new plant varieties and animal breeds. The varieties are property of the Agricultural institute of Dobrudzha, the Institute of plant genetic recourses – Sadovo and Institute of cotton and durum wheat Chirpan.

**Triticale** – enrolled is one variety only, which is Bulgarian one and it is protected by a certificate.

**Barley** – enrolled are three varieties of distichous and two varieties of multichous barley. Of these five varieties four are Bulgarian selection and one-a French one. Three of the Bulgarian varieties are protected by a certificate, property of the Institute of agriculture of the town of Karnobat, the fourth is in a protection procedure.

**Maize** – as a main fodder crop the maize is represented by 59 varieties in the variety list. The Bulgarian maize varieties are 24, which from 7 are applied for protection but 16 are protected by a certificate.

The most of the certificates are property of the Institute of agriculture and seed knowledge “Obrazcov chiflik” and the Institute of maize of the town of Knezha. The foreign varieties are property mainly of the American firms Pioneer Hi-Breed and Monsanto, there are some varieties of the Israeli firm Galilee seed and the French one Rustica. No one of the foreign varieties has a certificate for Bulgaria the most of them are enrolled in the General catalogue of the EU.

**Millet** – there are enrolled 2 varieties, a selection of the Institute in the town of Novi Sad.

**Rice** – there are enrolled 3 varieties, all of them are Bulgarian selection and are protected by a certificate, property of the Institute of plant genetic resources - Sadovo.
Field Beans – there are enrolled 7 varieties, all of them Bulgarian selection, 4 of them are protected by a certificate but the others are in a protection procedure.

Soy-bean – there are enrolled 4 varieties, 3 of them are protected by a certificate, property of the Institute of fodder crops – Pleven, but the other one is enrolled in the General catalogue of the EU.

Tobacco – in the variety list are enrolled 41 varieties of tobacco, which from 32 varieties small – leaved/ oriental and 9 varieties are of the big-leaved tobacco. All varieties are Bulgarian selection and are protected by a certificate or are applied for protection. Breeders of most of the varieties are the Ministry of the agriculture and woodlands and the Regional centre of scientific and applicable service of the town of Haskovo.

Sugar beet – in the list are enrolled 12 sugar beet varieties, 7 varieties are Bulgarian, all of them are applied or protected by certificates, property of the Institute of agriculture of the town of Shumen. The other part (with one exception) of the varieties is Danish selection.

Cotton – there are enrolled 5 varieties of Bulgarian selection, all of them are applied or protected by a certificate, property of the Institute of cotton and durum wheat of the town of Chirpan.

Sunflower – in the variety list are enrolled 28 varieties of sunflower. In the oil-content and the high-oil content sunflower aren’t varieties. The only Bulgarian variety is of sunflower for birds and it is protected by a certificate in Bulgaria. The Breeders of most of the varieties are the American firms Pioneer Hi-Breed and Monsanto. Except them there are enrolled 9 French varieties, 2 of the Swiss Syngenta seeds and one variety of the Institute in Novi Sad – Serbia. All foreign varieties are without protecting certificate for Bulgaria, and the most of them (excepting of 7 varieties) are enrolled in the General catalogue of the EU.

Essential-oily aromatic crops – in the variety list are enrolled 1 variety of oil-bearing rose, one each variety of salvia, fennel and chamomile, two varieties peppermint and 5 varieties of lavender. All varieties are protected by a certificate, property of the Institute of rose and essential-oily crops of the town of Kazanlak.

Fodder crops – of the fodder crops with most varieties, is represented the lucerne - 9 varieties which from 7 are Bulgarian selection. All Bulgarian varieties are protected with certificates; the most of them are property of the Agriculture Institute “Obraszov chiflik”.

In the variety list are enrolled 3 fodder pea varieties; 4 varieties of rape and 2 common vetch varieties.

<table>
<thead>
<tr>
<th>Bulgarian varieties of vegetable crops (list A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificate</td>
<td>75</td>
</tr>
<tr>
<td>Application</td>
<td>0</td>
</tr>
<tr>
<td>Without legal protection for Bulgaria</td>
<td>0</td>
</tr>
</tbody>
</table>

Fig. 9. Data of the official variety list 2002-2003
Foreign varieties (list A)

<table>
<thead>
<tr>
<th>Total</th>
<th>Certificate</th>
<th>Application</th>
<th>Without legal protection for Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>80</td>
<td>0</td>
<td>0</td>
<td>80*</td>
</tr>
</tbody>
</table>

Fig. 10. Data of the official variety list 2002-2003
*(for 66 varieties of them is marked, that they are enrolled in the General catalogue of the EU).

More important crops:

**Tomatoes** – in the list A are enrolled 46 tomato varieties. The varieties are classified in follow sections:
1. The grown under glass production - 7 varieties. All varieties are foreign ones – Israeli or Netherlands selection.
2. Under Polyethylene grown-house – 3 varieties. The varieties are Bulgarian ones and are protected by a certificate.
3. Early field production - 7 varieties. The varieties are Bulgarian ones and protected by a certificate. Owner is mainly the “Geosemselect” OOD.
4. Middle-early field production – 29 varieties. The Bulgarian tomato varieties are 16 and all are protected by a certificate. The others foreign varieties are Netherlands, Israeli and Danish selections.

**Aubergine** – there are enrolled 2 varieties, property of the Israeli firm Hazera Genetics.

**Pepper** – there are enrolled 6 varieties of pepper, all of them are Bulgarian and are protected by a certificate. In pepper the selection is traditionally Bulgarian one. The varieties are property mainly of the Gardening and tinned foods Institute of the town of Plovdiv.

**Onions** – there are enrolled 7 varieties, which from 5 are Bulgarian ones, protected by a certificate, property of the Gardening tinned foods Institute of the town of Plovdiv, the both other varieties are Netherlands selection, property of Bejo Zaden.

**Cabbage** – there are enrolled in the list 5 varieties white head cabbage. Three of the varieties are Bulgarian ones, protected by a certificate, property of the Gardening and tinned foods Institute of the town of Plovdiv, but the two others are Netherlands selection.
In the other cabbage crops reed head cabbage, cauliflower, Brussels sprouts, broccoli, are enrolled foreign varieties only – Netherlands and Danish selections.

**Garden beans and garden peas** – all enrolled varieties (10 of them) are Bulgarian and they are protected by a certificates and the owner of 8 of them is the Gardening and tinned foods Institute of the town of Plovdiv.

**Potatoes** – the potato varieties are listed accordingly to he production stages.
1. Early production - 9 varieties;
2. Middle – early production – 14 varieties;
3. Late production – 1 variety.
The varieties are property mainly of the Netherlands firm “Agrico B.A.” and they are enrolled in the General catalogue of the EU. There are enrolled 2 Bulgarian varieties, protected by a certificate, property of the Gardening and tinned foods Institute of the town of Plovdiv.
**Cucumbers** – the cucumbers are represented by 19 varieties. The varieties are Netherlands and Israeli selections. There are four Bulgarian varieties, protected by certificates, property mainly of the Gardening and tinned foods Institute of the town of Plovdiv.

**Pumpkins** – enrolled are two Bulgarian varieties, protected by a certificate.

**Cucumini** – enrolled are 4 varieties, 3 of them are Bulgarian selection and are protected by certificate, property of “Variety seed-Elit” EAD.

### 3.2.1.1.2. Perennial crops

<table>
<thead>
<tr>
<th>Bulgarian varieties – perennial crops (list A)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Certificate 27</td>
</tr>
<tr>
<td></td>
<td>Application 18</td>
</tr>
<tr>
<td></td>
<td>Without legal protection for Bulgaria 0</td>
</tr>
</tbody>
</table>

*Fig. 11. Data of the official variety list 2002-2003*

<table>
<thead>
<tr>
<th>Foreign varieties perennial (list A)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>Certificate 0</td>
</tr>
<tr>
<td>10</td>
<td>Application 0</td>
</tr>
<tr>
<td></td>
<td>Without legal protection for Bulgaria 10</td>
</tr>
</tbody>
</table>

*Fig. 12. Data of the official variety list 2002-2003*

**More important crops:**

Of the perennial crops widest are practiced the vine varieties. In the list are enrolled total 31 varieties of dessert grapes varieties, wine varieties and overlayers. There are 21 Bulgarian varieties applied or protected by a certificate, 12 of them are property of the Vine growing and wine-producing Institute of the town of Pleven, the others 9 varieties are property of the Institute of agriculture “Obrazov chiflik”. The foreign varieties are French and Italian selections. The white and red wine varieties are branches of the well-known Chardonnay, Cabernet Sauvignon, Merlot.

In the fruit crops are enrolled some varieties of pear, apricot, plum, cherry, walnut, almond. All varieties are Bulgarian selections and they are enrolled or protected by a certificate. There are enrolled 1 strawberry and 5 raspberry varieties, all of them are Bulgarian varieties and they are in a procedure of obtaining a certificate. Applicant of all varieties is the Agricultural experimental station of Kostinbrod.

### 3.2.1.1.3. Flower crops

There is enrolled one variety of chrysanthemums, Bulgarian selection which is in a procedure of protection.
3.2.1.2. Varieties enrolled in the list „Б”. General statistic - list „Б”

<table>
<thead>
<tr>
<th>Bulgarian varieties – (list - Б)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total 21</td>
<td></td>
</tr>
<tr>
<td>Certificate</td>
<td>3</td>
</tr>
<tr>
<td>Application</td>
<td>3</td>
</tr>
<tr>
<td>Without legal protection for Bulgaria</td>
<td>15*</td>
</tr>
</tbody>
</table>

Fig. 13. Data of the official variety list 2002-2003
* (for 10 varieties of them is marked, that they are enrolled in the General catalogue of the EU).

<table>
<thead>
<tr>
<th>Foreign varieties - (list - Б)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total 160</td>
<td></td>
</tr>
<tr>
<td>Certificate</td>
<td>3</td>
</tr>
<tr>
<td>Application</td>
<td>0</td>
</tr>
<tr>
<td>Without legal protection for Bulgaria</td>
<td>157*</td>
</tr>
</tbody>
</table>

Fig. 14. Data of the official variety list 2002-2003
* (for 80 varieties of them is marked, that they are enrolled in the General catalogue of the EU).

3.2.1.2.1. Field crops – grain and industrial crops

<table>
<thead>
<tr>
<th>Bulgarian varieties – field crops (list - Б)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total 16</td>
<td></td>
</tr>
<tr>
<td>Certificate</td>
<td>3</td>
</tr>
<tr>
<td>Application</td>
<td>3</td>
</tr>
<tr>
<td>Without legal protection for Bulgaria</td>
<td>10*</td>
</tr>
</tbody>
</table>

Fig. 15. Data of the official variety list 2002-2003
* (for 8 varieties of them is marked, that they are enrolled in the General catalogue of the EU).

<table>
<thead>
<tr>
<th>Foreign varieties – field crops (list - Б)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total 51</td>
<td></td>
</tr>
<tr>
<td>Certificate</td>
<td>0</td>
</tr>
<tr>
<td>Application</td>
<td>0</td>
</tr>
<tr>
<td>Without legal protection for Bulgaria</td>
<td>51*</td>
</tr>
</tbody>
</table>

Fig. 16. Data of the official variety list 2002-2003
* (for 38 varieties of them is marked, that they are enrolled in the General catalogue of the EU).

More important crops:

In the list “Б” widest is used the maize – 30 varieties. They are French, Hungarian, German, Bulgarian selections. All varieties are enrolled in the General European catalogue of the field crops.

Barley is represented by 5 varieties, four of them are French selection one of them is Bulgarian selection. The Bulgarian variety is for protection applied.

There are enrolled 10 sunflower varieties which from 5 are Bulgarian. All varieties are enrolled in a General European catalogue.

There are enrolled 5 tobacco varieties – all of them are Bulgarian selection and are applied or protected by a certificate.
For the first time in this list are enrolled 5 rape varieties. The varieties are German and French selection and are enrolled in the General European catalogue of the field crops.

### 3.2.1.2.2 Field crops - vegetable crops

<table>
<thead>
<tr>
<th>Total</th>
<th>Bulgarian varieties – vegetable crops (list - Б)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Certificate</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Application</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Without legal protection for Bulgaria</td>
<td>5*</td>
</tr>
</tbody>
</table>

Fig. 17. Data of the official variety list 2002-2003
* (for 2 varieties of them is marked, that they are enrolled in the General catalogue of the EU).

<table>
<thead>
<tr>
<th>Total</th>
<th>Foreign varieties – vegetable crops (list - Б)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>43</td>
<td>Certificate</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Application</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Without legal protection for Bulgaria</td>
<td>43*</td>
</tr>
</tbody>
</table>

Fig. 18. Data of the official variety list 2002-2003
* (for 42 varieties of them is marked, that they are enrolled in the General catalogue of the EU).

**More important crops:**

With 10 varieties of the vegetable crops are represented the tomatoes being Netherlands, Israeli and Bulgarian selections. There are enrolled 16 varieties potatoes – mainly German selection and all varieties are enrolled in a General European catalogue of the vegetable crops. The cucumbers are represented with 2 varieties, spinach lettuce and carrots each of them by one variety.

### 3.2.1.2.3. Perennial crops

Bulgarian varieties, perennial crops – not existing.

<table>
<thead>
<tr>
<th>Total</th>
<th>Foreign varieties – perennial crops (list - Б)</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Certificate</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Application</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Without legal protection for Bulgaria</td>
<td>3*</td>
</tr>
</tbody>
</table>

Fig. 19. Data of the official variety list 2002-2003

In the list “Б” are enrolled four strawberry varieties. All of them foreign ones and three of them are protected by certificate. There are enrolled also two Swiss raspberry varieties, without protection for Bulgaria.
3.2.1.2.4. Flower crops – foreign varieties only

<table>
<thead>
<tr>
<th>Foreign varieties – flower crops (list - Б)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>Certificate</td>
<td>60*</td>
</tr>
<tr>
<td></td>
<td>Application</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Without legal protection for Bulgaria</td>
<td>60*</td>
</tr>
</tbody>
</table>

Fig. 20. Data of the official variety list 2002-2003

In the list are enrolled and 60 ornamental roses varieties. All varieties are Netherlands selection and they are property of the firm Horatia BV.

We could generalize that in the last published variety list for Bulgaria are registered in all 295 Bulgarian varieties and 328 foreign varieties. Of them a legal protection by a certificate on the territory of Bulgaria has obtained as follows:

**In the list “A” of the variety list**

Bulgarian varieties – of the 274 varieties enrolled in all 272 are applied for protection or they are protected by a certificate.
Foreign varieties (168 in all) – no one has a legal protection by a certificate.

**In the list “Б” of the variety list**

Bulgarian varieties – of the 21 varieties enrolled in all 6 are applied for protection or are protected by a certificate.
Foreign varieties (160 in all) – 3 of them are protected by a certificate.

3.2.2. Varieties List 2004

A common over view of cases of the enrolled in the list varieties protected by a certificate for property on territory of Bulgaria showed that the emerged trends exemplified on the grounds of the variety list 2002-2003 haven’t been changed in 2004.

3.2.2.1. Variety list “A”- enrolled are in all 663 varieties

<table>
<thead>
<tr>
<th>Bulgarian varieties (list A)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>Certificate</td>
<td>267</td>
</tr>
<tr>
<td></td>
<td>Application</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td>Without legal protection for Bulgaria</td>
<td>25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Foreign varieties (list A)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>Certificate</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Application</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Without legal protection for Bulgaria</td>
<td>303</td>
</tr>
</tbody>
</table>

Fig. 21. Bulgarian and foreign varieties, enrolled in the variety list 2002-2003 in the list A.

We offer to you a comparative table of the status of the legal protection by a certificate for a new variety of the enrolled varieties in the list A and in the list Б of the official variety lists for 2002-2003 and for 2004.
3.2.2. Variety list “Б”- enrolled are in all 211 varieties

<table>
<thead>
<tr>
<th>Total</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>61</td>
<td>Certificate: 3, Application: 2, Without legal protection for Bulgaria: 56</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total</th>
<th>Legal protection of the variety in Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td>150</td>
<td>Certificate: 0, Application: 2, Without legal protection for Bulgaria: 148</td>
</tr>
</tbody>
</table>

Fig. 22. Bulgarian and foreign varieties, enrolled in the variety list 2002-2003 in the list Б.

Comparison of the legal status of the varieties enrolled in the official variety lists for 2002-2003 and for 2004

<table>
<thead>
<tr>
<th>Variety list 2002-2003</th>
<th>Variety list 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. In all enrolled varieties in the lists A and Б</td>
<td>623</td>
</tr>
<tr>
<td>2. Bulgarian varieties applied or protected by a certificate</td>
<td>278</td>
</tr>
<tr>
<td>3. Bulgarian varieties without certificate (incl. with expired validity term certificate)</td>
<td>17</td>
</tr>
<tr>
<td>4. Foreign varieties applied or protected by a certificate for Bulgaria</td>
<td>3</td>
</tr>
<tr>
<td>5. Foreign varieties without certificate for Bulgaria</td>
<td>325</td>
</tr>
</tbody>
</table>

Fig. 23. Legal status of varieties enrolled in the variety lists for 2002-2003 and for 2004

3.2.3. Applied and registered new plant varieties in Bulgarian patent office

Statistics of the applied and with a certificate protected varieties in the Bulgarian patent office

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications from: Native persons</th>
<th>Foreign persons</th>
<th>Total</th>
<th>Certificates issued to: Native persons</th>
<th>Foreign persons</th>
<th>Total</th>
<th>Certificates which expire in the particular year</th>
<th>Certificates in force till end the particular year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>42</td>
<td>2</td>
<td>44</td>
<td>67</td>
<td>--</td>
<td>67</td>
<td>--</td>
<td>67</td>
</tr>
<tr>
<td>1999</td>
<td>63</td>
<td>5</td>
<td>68</td>
<td>152</td>
<td>--</td>
<td>152</td>
<td>--</td>
<td>219</td>
</tr>
<tr>
<td>2000</td>
<td>25</td>
<td>4</td>
<td>29</td>
<td>74</td>
<td>--</td>
<td>74</td>
<td>--</td>
<td>293</td>
</tr>
<tr>
<td>2001</td>
<td>21</td>
<td>5</td>
<td>26</td>
<td>146</td>
<td>3</td>
<td>149</td>
<td>--</td>
<td>275</td>
</tr>
<tr>
<td>2002</td>
<td>30</td>
<td>2</td>
<td>32</td>
<td>52</td>
<td>6</td>
<td>58</td>
<td>14</td>
<td>319</td>
</tr>
<tr>
<td>2003</td>
<td>40</td>
<td>--</td>
<td>40</td>
<td>51</td>
<td>--</td>
<td>51</td>
<td>--</td>
<td>370</td>
</tr>
<tr>
<td>2004</td>
<td>49</td>
<td>4</td>
<td>53</td>
<td>--</td>
<td>--</td>
<td>63</td>
<td>7</td>
<td>363</td>
</tr>
</tbody>
</table>

Fig. 24. Source UPOV plant variety Protection Statistics
One comparing is of interest between the situation in Bulgaria after its admitting as membership of the UPOV in the year 1998 and the effect of this admitting of the Convention in other states. For example in Canada which has passed the Law on protection of the breeder’s right in 1990 and becomes member of the UPOV since 1991 there are follow trends reported before the Parliament in the year 2002 with analysing the change after the first 10 years since coming in the force the law. In the report has been found that in whole the economic situation in the agriculture and plant-growing is improving considerable.

There is marked an increasing the investments in the plant-growing, the material base and the technologies and the investments in the private branch are almost trebled. As a great achievement and contribution the law is appointed the possibility, that the local breeders have access to the foreign crops.

All these consequences on the development of the agriculture in Canada of the applying the new varieties protection are found also in the other to countries after their joining to the UPOV which gives to us a good reason to think that these are regular consequences which unavoidable will be shown also in Bulgaria under the favour conditions of the present of this matter normative regulation in our country.

4. CONCLUSION

The Bulgarian varieties, which are used on the territory of the country and accepted in the variety list as a whole, have legal protection granted by a certificate. The majority of these varieties are old selections, which have been protected with certificates for authorship, transformed into certificates under the law on new plant varieties and animal breeds. This doesn’t lessen their value because the term of protection in these varieties starts from the date of issue of the certificate – this means that these varieties will experience protection with certificate average with more 15 years (the transformation of the certificates for authorship into certificates took place mainly between 1998 and 2001). This allows the breeders of older varieties, which have good agricultural qualities to receive economic return of the investments they have made for the selection and this is an inceptive for new selections to be made, if they are able to manage effective their intellectual property over the variety.

In the database which we have analyzed there is no-information about whether these certificates are being maintained. The information shown on the figure 24 is worrying wherein is recognized the maintenance termination of 13 certificates. We can only suggest that this is due to failure of payment the annual taxes.

As most of the owners of these varieties are governmental institutes, which have economic difficulties at the moment and have no resources for financing of new selections, the effective use of the protection varieties is of great importance for their survival as a scientific potential.

The status of the legal protection of the foreign varieties in Bulgaria at the moment shows, that the major companies-breeders, do not protect their varieties with certificates on the territory of Bulgaria.

From the accepted 303 foreign varieties in “list A” of the variety list 2004 no one is protected as an object of intellectual property rights nevertheless the varieties are on the Bulgarian
market. From the enrolled 9 foreign varieties in the Bulgarian patent office the owners of 8 of them refused their varieties to be accepted in the Bulgarian official list for 2004.

As a whole 23 new foreign varieties with applied certificates or with granted Bulgarian certificates are not accepted in the last official variety list. This probably is prompted by the absence of commercial interest in the Bulgarian market or lack of sufficient information for about the PVP-system in the country. The only enrolled in the official variety list 2004 and applied for protection new foreign varieties are two varieties of ornamental rose in “list Б”

According to us the explanation of this unpleasant fact is due to:

1. Almost all of the field crops varieties offered by the major companies are hybrids which makes them difficult of access for an unauthorized use by third persons. But in the hybrids (especially if propagating material is produced in Bulgaria) there are to be protected by a certificate the parental lines, which is not used by the large foreign companies in our country.
2. In Plant varieties, where there is a small number of hybrids – the grain crops (without maize and sorgo) are well protected only the Bulgarian varieties. It is unexplainable why this is not made by the major foreign companies, which trade on the Bulgarian market in seed of the varieties of these crops.
3. There are no major companies which invest in the production of seeds on the territory of Bulgaria, which would be an incentive for entering the country with their newest selection developments – varieties and lines with the relevant technologies for production of seeds.

According to us this is connected with the following reason:

4. The foreign companies do not know the excellent climate characteristics of our country for seed production and the contemporary normative base protecting the variety owner’s rights. Moreover they are embarrassed for problems connected with the technology discipline and the preparation in the seed production in our country.

We think, that the future joining of Bulgaria the EU-structures is already changing this negative tendencies and the fact that our country as a member of UPOV has adopted contemporary legal protection of intellectual property over the varieties and will have a determinant importance for the entering the major foreign companies-breeders in the production of propagating material in Bulgaria.

We think that these trends have to be stimulated by the government because the entrance of new highly productive varieties will increase the productivity and the effectiveness of the Bulgarian agriculture and would stimulate the selections of the Bulgarian breeders and would develop the seed production technologies.

At the same time the joining of Bulgaria the European Union highs the question of the legal regime after 2007 for the varieties, protected by certificate and enrolled in our variety list when Bulgaria will apply the directives of the European Union for the European variety and the General European variety list.
Annex 1

List of the stations and their locations and telecommunications, offered by the Agricultural Academy

Institute of Genetic Engineering
Address 2232 Kostinbrod, Sofia district, Bulgaria
Phones +359 721 2017
Fax +359 721 4985

Institute for Introduction and Plant Genetic Resources
Address 4122 Sadovo, Plovdiv district, Bulgaria
Phones 22-51, 22-52
Fax +359 4930026
Telex 44444

Institute of Plant Protection
Address 2230 Kostinbrod, Sofia district, Bulgaria
Phones +359 721 20-70
Telex 23504

Institute of Barley
Address 8400 Karnobat, Bulgaria
Phones +359 559 27-02, 27-03, 27-92
Fax +359 559 5847

Institute for Wheat and Sunflower "Dobroudja"
Address 9520 General Toshevo, Bulgaria
Phones +359 573 2-03-39
Fax +359 573 44-48

Forage Research Institute
Address 5800 Pleven, 89 General Vladimir Vazov Str., Bulgaria
Phones +359 64 2-24-74, +359 64 2-34-74, +359 64 2-36-89
Fax +359 64 38528
Telex 34440

Institute of Soya-Bean
Address 5200 Pavlikeni, 61 Rouski Blvd., Bulgaria
Phones +359 610 21-53, 21-54
Fax +359 610 2541
Telex 66505

Institute of Cotton
Address 6200 Chirpan, Bulgaria
Phones +359 416 23-45, 23-46
Fax +359 416 3133
Institute of Maize
Address 3230 Knezha, Montana district, Bulgaria
Phones +359 9132 25-07
Fax +359 9132 2711

Institute of Seed Science and Seed Production
Address 7007 Obraztsov chiflic, Rouse, Bulgaria
Phones +359 82 22-26-60
Fax +359 82 225898

Prof. Ivan Ivanov Institute of Sugar Beet
Address 9700/9747 Shoumen, Bulgaria
Phones +359 54 5-00-21, +359 54 6-35-38
Fax +359 54 569006
Telex 73525

Institute of Cereal Food and Forage Industry
Address 2230 Kostinbrod, Sofia district, Bulgaria
Phones +359 2 83-32-62

Institute of Wine Research and Control
Address 134 Tsar Boris the III Blvd., 1618 Sofia, Bulgaria
Phones +359 2 55-40-21, +359 2 22-23-24
Fax +359 2 556025

Vine – Growing and Wine - Producing Institute
Address 5800 Pleven, 1 Kala tepe Str., Bulgaria
Phones 2-21-61, +359 64 2-91-09
Fax +359 64 26470, +359 64 22468

Maritsa Vegetable Crops Research Institute
Address 4003 Plovdiv, 32 Brezovcko shose Str., Bulgaria
Phones +359 32 55-12-27, +359 32 55-22-95
Fax +359 32 650177
Telex: 44525

Institute of Fruit - Growing
Address 4004 Plovdiv, 12 Ostromila Str., Bulgaria
Phones +359 32 77-08-11
Fax +359 32 77-08-08, 26-57-47

Institute of Fruit - Growing
Address 2500 Kyustendil, Bulgaria
Phones +359 78 2-26-12, 2-40-36
Fax +359 78 27411

Institute of Floriculture
Address 1258 Negovan, Sofia., Bulgaria
Phones +359 2 39-46-39
Fax +359 2 394816
Telex: 23966
<table>
<thead>
<tr>
<th><strong>Institute of Fruit - Growing</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
<td>4004 Plovdiv, 12 Ostromila Str., Bulgaria</td>
</tr>
<tr>
<td><strong>Phones</strong></td>
<td>+359 32 77-08-11</td>
</tr>
<tr>
<td><strong>Fax</strong></td>
<td>+359 32 77-08-08,+359 32 26-57-47</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Institute of Mountainous Animal Breeding and Agriculture</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
<td>5600 Troyan, 283 Vasil Levski Str., Bulgaria</td>
</tr>
<tr>
<td><strong>Phones</strong></td>
<td>+359 670 2-42-71</td>
</tr>
<tr>
<td><strong>Fax</strong></td>
<td>+359 670 23032</td>
</tr>
<tr>
<td><strong>Telex:</strong></td>
<td>27794</td>
</tr>
</tbody>
</table>