



EU Plant Variety Rights in the 21st Century
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Coexistence of National and Community Plant Variety Rights in Poland

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LEGAL BASIS

of the national PVP system

in Poland

- ✓ **The Act of 26 June 2003 on the Legal Protection of Plant Varieties (National PVP Law)**

(OJ No 137/2003, item 1300; as amended:
OJ No 126/2006, item 877; OJ No 99/2007,
item 662; OJ No 186/2011, item 1099)



Background of PVP system in PL

- National PVP system is operational since 1988
- PL joined UPOV on 11.11.1989, after ratification of the 1978 Act of the UPOV Convention
- PL acceded to the 1991 Act of the UPOV Convention on 15.08.2003
- Presently, all genera and species are eligible to be nationally protected

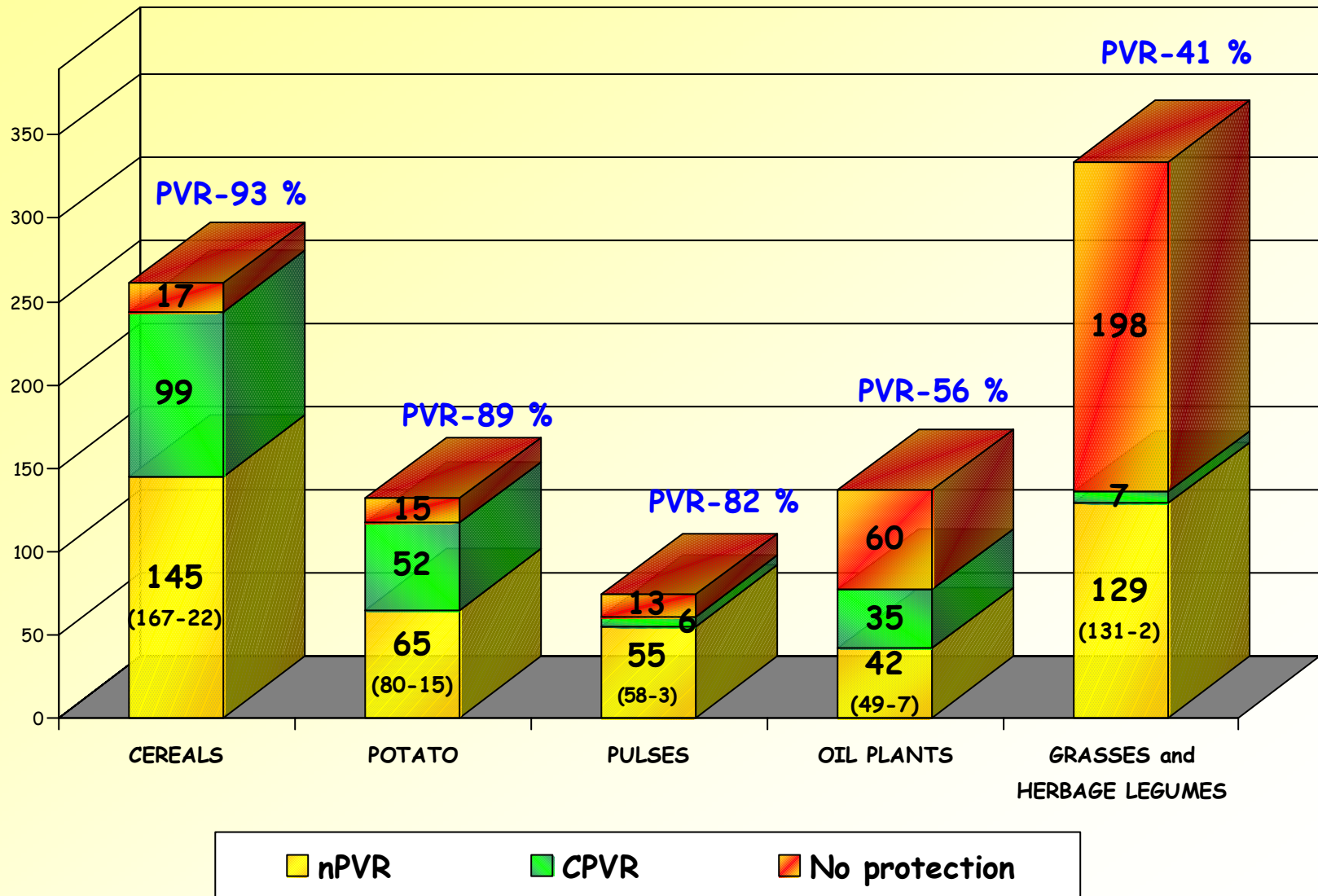


Characteristic of PVP systems in Poland (1)

- National PVP (nPVP) system exists in parallel with Community PVP (CPVP) regime
- nPVP was introduced in 1988 and offers variety protection on the Polish territory, only
- Since 2004, it is up to the breeder to decide what type of the protection to choose
- nPVP system is very popular with domestic breeders; almost all of plant varieties bred by Polish breeders are protected by nPBR titles



Varieties listed in Poland protected by nPVR and CPVR





Characteristic of PVP systems in Poland (2)

- If the breeder sees a market for a new variety in more than two EU member states, the CPVP is preferred
- CPVP regime offers protection on a Community scale
- Any variety which is subject of a CPVP shall not be subject of a nPVP or any patent for that variety
- It is not prohibited that a part of a variety (eg. a gene coding of particular trait) is protected by a patent, whereas the variety as such is protected with nPVR or CPVR



Characteristic of PVP systems in Poland (3)

- **Research Centre for Cultivar Testing (COBORU)** is the competent authority for the nPVP administration in Poland
- Within the nPVP system, COBORU takes also care for the technical examination of candidate varieties
- The register of protected varieties, including those provisionally protected, is also kept by COBORU



Derogation of the scope of PBR holders within nPVP system

- Acts done for private, non-commercial purposes
- Acts done for experimental purposes
- Breeder's exemption
- Farmers' privilege (*agricultural exemption*)



Farmers' privilege (*agricultural exemption*) (1)

- This exemption gives the farmers the right to use saved seed without the consent of the owner (right holder) of the variety in question (Art. 23)
- However, the farmer (with the exception of small farmers) must pay the holder an equitable remuneration (Art. 23.1, 3)
- If the parties can not agree upon the level of the remuneration, such remuneration should be 50% of the amounts charged for the licensed protection of propagating material (Art. 23.5)



Farmers' privilege (*agricultural exemption*) (2)

Definition of "Small farmer":

- up to 25 ha
- up to 10 ha - in case of potato varieties

Species covered (16):

- field bean, field pea, barley, linseed, lucerne, narrow leaved lupin, yellow lupin, oat, durum wheat, wheat, triticale, oilseed rape, turnip rape, common vetch, rye, potato



Enforcement of PBRs in Poland (1)

- In case of **nPVR titles**, the **Polish PVP Act** constitutes the legal system providing basic conditions regarding civil claims, infringements and jurisdiction (Art. 36 a, b)
- In case of **CPVR titles**, the following Community Acts are relevant:
 - **Basic Regulation 2100/94** - provides some basic conditions regarding civil claims, infringements and jurisdiction (Art. 94-107)
 - **Directive 2004/48/EC** on the enforcement of intellectual property rights
 - **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



Enforcement of PBRs in Poland (2)

The enforcement of both nPBRs and the CPBRs is a *shared responsibility* of:

- the breeders
- breeders' organization (AGNAS) - collection of FSS remunerations
- national legislator (civil law and penal provisions)
- the judicial authorities (judicial environment to deal with infringement cases)
- national variety office (solid title of protection, information of interested circles)



Enforcement of PBRs in Poland (3)

- The breeders act against infringements with the **available legal means**
- The Polish PVP Act seems to create **adequate civil law and penal provisions** to enable the effective enforcement of PBRs
- However, we suffer from the **lack of specialised courts** to deal with PBRs infringement cases



Enforcement of PBRs in Poland (4)

- Polish national variety office (COBORU) provides a solid title of protection based on a high quality technical assessment of candidate varieties and service in carrying out of variety identification tests
- Furthermore, COBORU regularly informs breeders, producers, farmers and judicial authorities of the implications of both nPBRs and CPBRs infringements
- The final aim of our activities is to raise awareness of problems and solutions as regards the enforcement of PBRs (seminars, training courses, publications, etc.)



Enforcement of PBRs in Poland (5)

- Provisions of National PVP Law are more suitable for PBR enforceability in Poland than the EU Provisions because of:
 - information obligation on FSS use by farmers and seed processors
 - sufficiently strong penal provisions

- National PVP Law is better adapted to our local conditions



Enforcement of PBRs in Poland (6)

Information requirement to be provided by farmers and seed processors

- A holder of agricultural land shall provide the breeder or breeders' organization(s), on their request, with written information about the use of FSS (Art. 23a.1)
- The seed processor or processors' organization(s) shall provide the breeder or breeders' organization(s), on their request, with written information about services provided (Art. 23b.1)
 - The method and scope of information to be provided by processors is decided in the special agreements concluded by the breeder or breeders' organization(s) and seed processor or processors' organization(s)



Enforcement of PBRs in Poland (7)

Penal provisions **Art. 37, 37a, 37b of our PVP Act**

- A fine
- Restriction of liberty
- Detention of liberty up to one year

Pursuit of claims under civil law procedure

Art. 36a i 36b of our PVP Act



Farm Save Seed (FSS) remuneration collection system in Poland (1)

- Based on National PVP Act of 2003 (art. 23)
- There are no agreements between breeder or breeders' organization and the holders of agricultural land about the use of FSS
- **Breeders' organization** called **AGNAS** (Seed Agency) was established in 2003, and is responsible for the organization and collection of FSS remuneration
- AGNAS represents about 20 breeders of agricultural crops, of both domestic and foreign origin, operating in Poland



Varieties grown in Poland under **AGNAS** FSS remuneration collection system (2011)

Agricultural crops (no. varieties)	Type of protection	No. varieties		
		total	domestic	foreign
Cereals (415)	nPVR	164	149	15
	CPVR	251	43	208
Oilseed Rape (73)	nPVR	17	7	10
	CPVR	56	2	54
Pulses (13)	nPVR	-	-	-
	CPVR	13	2	11
Potato (161)	nPVR	77	60	17
	CPVR	84	8	76
TOTAL (662)	nPVR	258	216	42
	CPVR	404	55	349



Farm Save Seed (FSS) remuneration collection system in Poland (2)

- The **National PVP Act** contains provisions which constitute the base for collection of FSS remunerations for varieties protected with nPVRs and CPVRs
- There exists an **obligation** for farmers to provide **information** about FSS use on their holding as well as obligation for seed processors to provide information on services rendered with FSS material
- Furthermore, **clear penal provisions** are helpful in fighting with infringements of PBRs on the Polish territory



Farm Save Seed (FSS) remuneration collection system in Poland (3)

Seed Agency - AGNAS:

- The breeders' organization established in 2003 by the biggest domestic cereal breeders
- About 92% of the agricultural plant varieties being on the market are under AGNAS FSS remuneration collection system
- The main aims of AGNAS activity are:
 - inspection of licence agreements concluded with seed companies
 - fighting with infringements of nPVRs and CPVRs
 - collection and monitoring of information about FSS use received from farmers and seed processors



Farm Save Seed (FSS) remuneration collection system in Poland (4)

Initiative of Seed Industry to label certified seed put on the market

- One of the AGNAS everyday activities is information promotion by putting special labels on certified seed material
- In practice, it means that **on every bag containing certified seed of protected variety, a label** with the information for farmers is attached
- The information on the label explains to the seed users (farmers) about the obligation to pay remuneration in case of use of a variety material as FSS
- The system was accepted by the whole seed industry operating on the Polish territory and relates to the varieties protected with both nPVR and CPVR

Odmiiana chroniona wylacznym prawem

Siew nasion osuszonych w tym opakowaniu nie wymaga skroczenia opłaty dla Hodowcy. Materiał siewny został wyprodukowany na podstawie umowy licencyjnej.

Odstąpienie rolne dozwolone prawem:
Siew nasion z własnego zbioru odmiany chronionej, wymaga uiszczenia obowiązkowej opłaty dla Hodowcy.

Opłaty są przeznaczone na pokrycie kosztów tworzenia nowych odmian.

Zabronione prawem jest:

- oferowanie lub sprzedaż do siewu materiału ze zbioru odmiany chronionej
- siew nabytego niekwalifikowanego materiału odmiany chronionej.

Ustawa z dnia 26 czerwca 2003 r. o ochronie prawnej odmian roślin (Dz.U. z 2003 r. Nr 137, poz. 1300, z 2006 r. Nr 126, poz.877, z 2007 r. Nr 99, poz. 662)

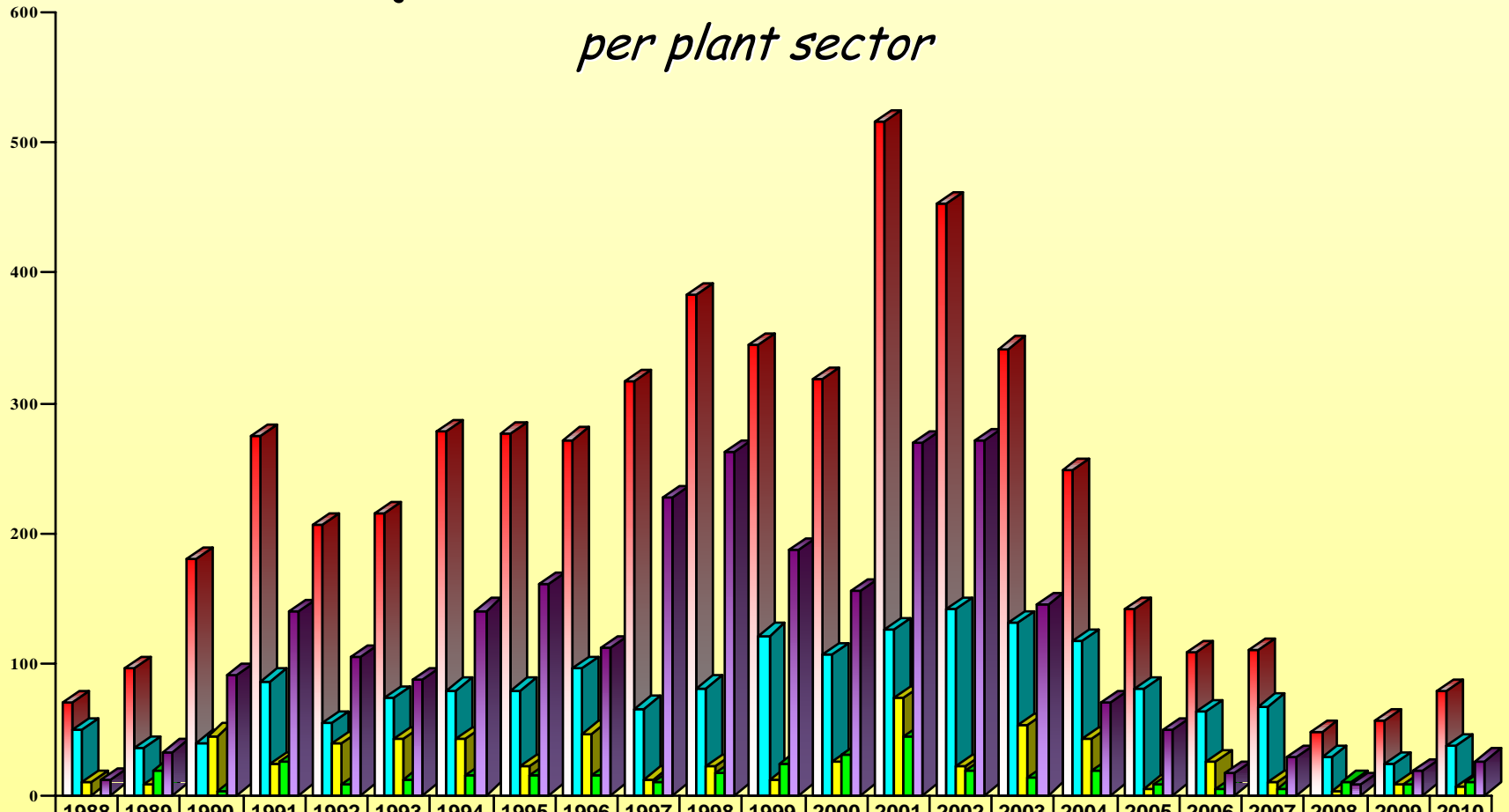


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Evolution of applications for nPVP in Poland

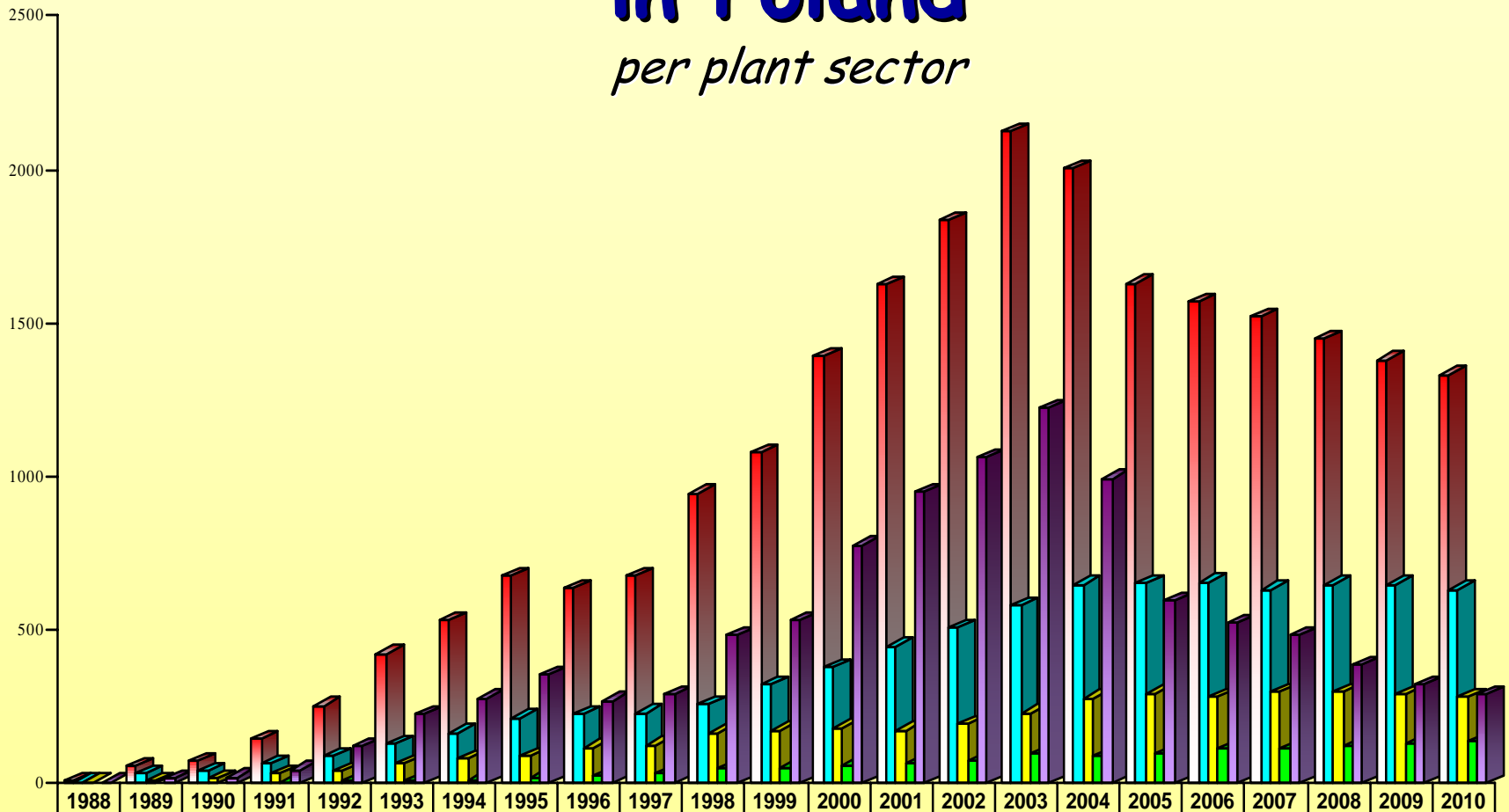
per plant sector



■ TOTAL	70	96	180	275	207	216	278	276	272	316	383	344	319	515	453	342	249	142	109	110	48	56	79
■ Agricultural	50	36	40	87	55	74	80	80	97	66	82	122	107	127	142	131	118	81	63	68	28	24	37
■ Vegetable	9	8	45	23	39	42	43	21	47	12	22	11	25	74	22	53	42	5	25	9	3	7	6
■ Fruit	-	19	3	25	7	12	14	14	15	10	16	23	31	44	18	13	18	7	4	5	9	7	10
■ Ornamental	11	33	92	140	106	88	141	161	113	228	263	188	156	270	271	145	71	49	17	28	8	18	26



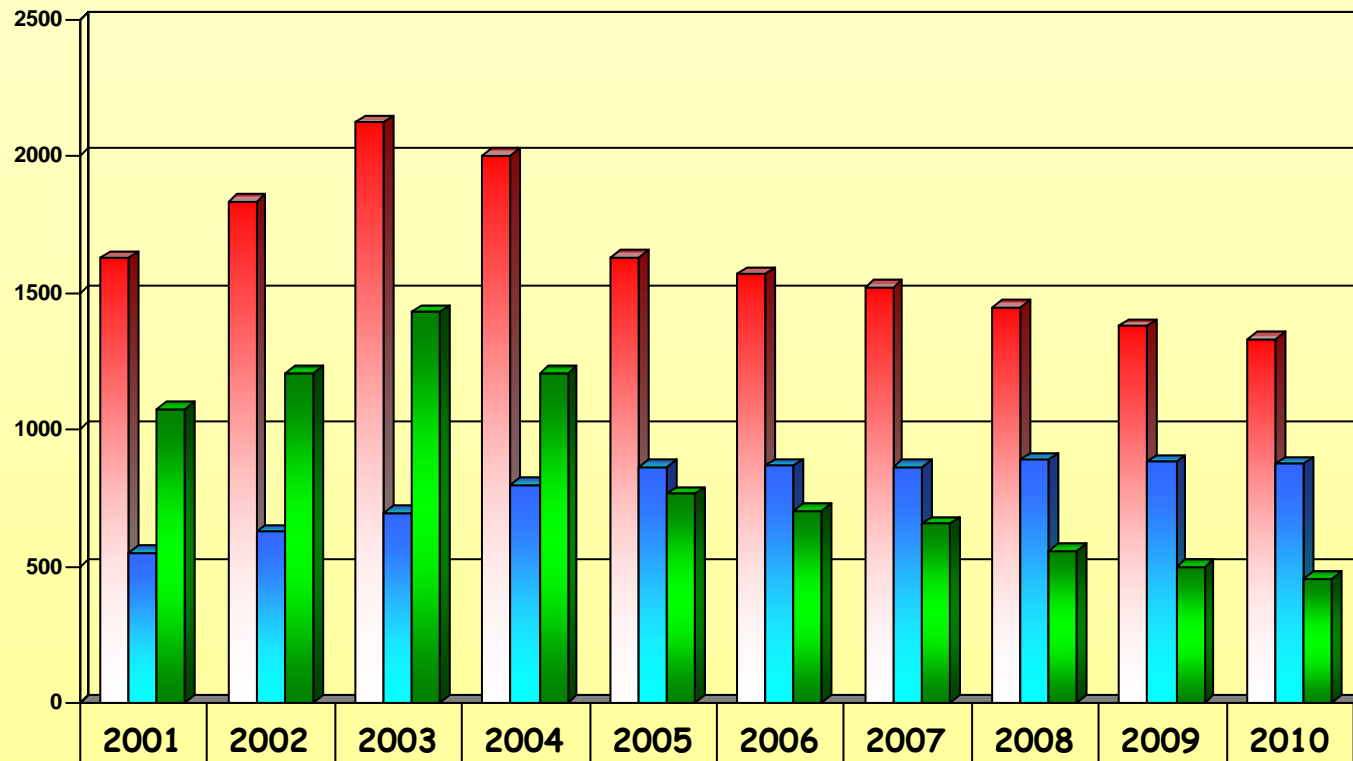
Varieties under nPVP in Poland *per plant sector*



	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
TOTAL	7	54	70	141	252	421	530	675	632	673	943	1077	1391	1626	1832	2122	2004	1628	1568	1519	1446	1378	1331
Agricultural	4	32	37	65	89	125	163	213	226	228	255	321	378	445	504	579	646	649	654	630	646	645	631
Vegetable	2	6	13	29	37	65	80	88	114	123	162	172	179	170	194	228	277	291	281	295	297	286	280
Fruit	-	-	-	3	5	5	10	20	24	33	47	52	60	64	72	94	89	95	109	113	120	129	133
Ornamental	1	16	20	44	121	226	277	354	268	289	479	532	774	947	1062	1221	992	593	524	481	383	318	287



Domestic and foreign varieties under nPVP in Poland

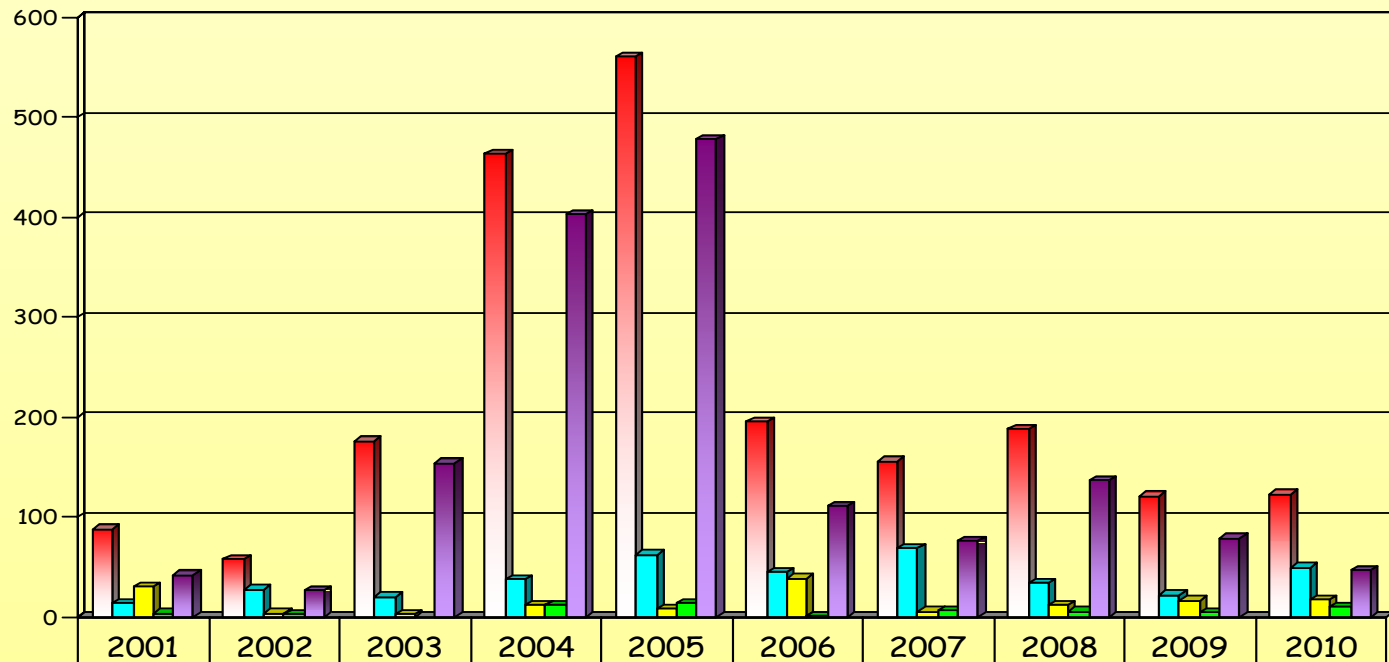


TOTAL	1626	1832	2122	2004	1628	1568	1519	1446	1378	1331
Domestic var.	550	626	693	797	864	867	863	889	881	875
Foreign var.	1075	1206	1429	1207	764	701	656	557	497	456



Surrenders of nPVP in Poland

per plant sector



■ TOTAL	88	58	176	464	561	195	156	188	121	123
■ Agricultural plants	13	27	20	37	62	45	69	34	22	49
■ Vegetable plants	30	3	2	12	8	38	5	12	16	17
■ Fruit plants	3	2	-	12	13	1	6	5	4	10
■ Ornamental plants	42	26	154	403	478	111	76	137	79	47



CONCLUDING REMARKS

- nPVP system (1331 varieties protected) plays important role in the national seed sector and is much more preferred by domestic breeders
- nPVP system coexists smoothly with CPVP regime
- National PVP Law, especially on FSS, is more suitable for PBR enforceability in our local conditions than the CPVP provisions
- New phenomenon is observed that 6-7% of the varieties grown close to the borders are not protected, neither by nPVRs nor by CPVRs



**THANK YOU FOR YOUR
ATTENTION**

