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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Twenty-eighth Ordinary Session****Geneva, November 9, 1994****ADDENDUM TO DOCUMENT C/28/11**

(REPORTS BY REPRESENTATIVES OF STATES AND ORGANIZATIONS
ON THE SITUATION IN THE LEGISLATIVE,
ADMINISTRATIVE AND TECHNICAL FIELDS)

Document prepared by the Office of the Union

The Annexes to this document contain the reports from Belgium, Denmark, Spain and the Netherlands.

[Four Annexes follow]

C/28/11 Add.

ANNEX I

BELGIUM

Situation in the Legislative Field**Adaptation of the Law to the 1991 Act of the Convention**

An intensive activity was deployed at the end of 1991 and the first months of 1992 with regard to the preparation of a new plant variety protection law. The finalization of the Bill can now start since all obstacles have been removed (adoption of the Community Regulation on plant variety protection and signature--and for some of them publication--of the regulations on a budgetary fund redefining completely the financial mechanisms governing not only plant variety protection, but also related matters--plant protection, national lists of varieties, seed certification and control).

Financing

The redefinition of the financial mechanisms is close to completion. The law of March 17, 1993, creating a budgetary fund for the production and protection of plants and plant products was published in the "Moniteur belge" of May 28, 1993. The implementing regulations have been signed. Some of them have already been published in the "Moniteur belge." It is hoped that the others will be published still this year. The Council established in the framework of the budgetary fund will perhaps have to set a new tariff of plant variety protection fees and fees for related matters.

Extension of Protection to Further Genera and Species

A new Royal Decree has been assented to on October 1, 1993. It adds 16 taxa to those included in the previous version. The Service intends to extend protection to further species on the basis of requests made by the interested parties and after having published a notice to that effect in the next gazette (October 30, 1994).

Cooperation in Examination

Two agreements--with Denmark and France--are awaiting confirmation. New agreements or amendments to existing agreements may be concluded on the basis of the requests for extension of protection to further taxa.

Situation in the Administrative and Technical Fields**Changes in the Administrative Structure**

The Service for the Protection of New Plant Varieties will become part of a new administrative structure within the Ministry of Agriculture, namely the administration for the quality of raw materials and the plant sector. This change is linked with a comprehensive reorganization of the Ministry and of its parastatal institutions due to become effective on January 1, 1995.

Amount of Activities--Status on August 31, 1994

From the entry into force of the system for the protection of new plant varieties to August 31, 1994, 1,877 applications for protection have been filed and 1,080 certificates issued, of which 520 are still in force. In 1993, 84 titles of protection were issued.

Developments in Related Fields of Activities

Community Protection

The Council Regulation (EC) No. 2100/94 of July 27, 1994, on Community Plant Variety Rights was published on September 1, 1994, in the Official Journal of the European Communities. Belgium actively participates in the discussions on the implementation of the Regulation and, in particular, on the setting-up and phasing-in of the Community Plant Varieties Office.

The creation of the Community protection system is expected to have an influence on the number of national applications since breeders will be able to choose between the Community and the national right.

Seed Certification and Control

The various applicable regulations and the structure of the control system for reproductive material in Belgium are being revised. The changes aim at simplifying the procedures with a view to achieving a greater efficiency and transferring responsibilities to the profession.

Furthermore, the Service for the Control of Seeds and Plants is being restructured in connection with the reorganization of the Ministry of Agriculture (see above); it will eventually belong to the same administrative unit as the Service for the Protection of New Plant Varieties.

Rules and Regulations in the Field of Genetic Engineering

Belgium participates in the discussions at European Community level on the simplification of the procedures for the tests on genetically modified plants contemplated in Council Directive 90/220/EEC on the release of genetically modified organisms into the environment.

A Royal Decree transposing the said Directive into national law and a Royal Decree for the creation of a system of scientific evaluation of biosecurity are in preparation.

[Annex II follows]

C/28/11 Add.

ANNEX II

DENMARK

Situation in the Legislative FieldAdaptation of the Law to the 1991 Act of the Convention

It is expected that the Danish plant variety protection Act of 1987 will be revised by the end of 1995. Preparatory work with a view to drafting a first proposal has started.

Extension of Protection to Further Genera and Species

In 1994, the following seven genera and species were included under the plant variety protection Act:

Aubrieta Adans.
Catharanthus roseus (L.) G. Don
Echinodorus L.C. Rich. ex Engelm.
Malus toringo (Sieb.) Sieb. ex de Vriese var. microsorum L.
Pogonatherum paniceum (Beauv.) Hack.
Verbena L.

Cooperation in Examination

The existing bilateral agreements are under revision. New agreements with other member States are in preparation.

Situation in the Administrative Field

In 1993, 286 applications for plant breeders' rights were received, as follows:

Agricultural crops	85
Fruit	4
Vegetables	7
Ornamentals	187
Landscape plants	3

In 1993, the number of titles of protection issued was 274:

Agricultural crops	91
Fruit	5
Vegetables	5
Ornamentals	173

In the period from January 1, 1994, to September 14, 1994, 208 applications for protection were received and 198 titles of protection were issued.

Situation in the Technical FieldCooperation with Estonia

During 1994, a number of experts from Estonia participated in courses on seed testing, seed certification and variety testing in Denmark. Lectures on

C/28/11 Add.
Annex II, page 2

seed legislation and variety testing were given in Estonia; the report on a study of the seed sector in Estonia is in preparation.

Testing of Agricultural Crops for Variety Listing

A new system for the testing of agricultural crops for value for cultivation and use (VCU) was introduced as from the autumn season of 1994. The new system includes a more intensive cooperation between the authorities, the extension services and the breeders. The part of the VCU testing which is statutory is under official supervision.

Genetically Modified Organisms

The Plant Directorate, Department of Gene Technology and Variety Testing, has been requested by the Ministry for Environment to comment on 175 European Union summary notifications concerning the experimental release of genetically modified plant. In addition, two applications for marketing approval in respect of genetically modified plants of oilseed rape and tobacco, respectively, have been examined. The application relating to oilseed rape is still under consideration.

Genetically modified varieties will enter the official variety testing in the near future. Work has been initiated to prepare for this development and allow the handling of those varieties. Persons filing an application for official testing of a genetically modified variety are currently requested to fill in a special form containing additional questions.

Activities for the Promotion of the Protection of Plant Varieties

A course on plant variety protection and patents has been organized by the Danish Patent Office and the Plant Directorate. The latter are preparing a brochure on the possibilities for protecting plant material.

[Annex III follows]

C/28/11 Add.

ANNEX III

SPAIN

Preparatory work was done during the past year with a view to revising plant variety protection legislation.

A new legislative text to amend the schedule of plant variety protection fees is under consideration. It is planned to increase the fees substantially in order to achieve an improved balance of revenue and expenditure.

It has been decided to extend the protection system to chick-pea, Prunus cerasifera and Prunus insititia. An extension to cherry and plum is under consideration. In addition, the situation of apple varieties used as root-stocks will be clarified.

The Spanish Supreme Court has upheld the decisions taken on a number of applications for inbred lines of maize whose protection had been refused on the ground of lack of novelty.

During the past year, 209 applications for protection have been filed and 306 titles of protection issued; 980 titles are currently in force.

Various aspects of the question of protecting living matter and also the question of national and regional (European Union) norms for the protection of new plant varieties continue to arouse considerable interest.

Spain has pursued the training program for foreign experts having an interest in the technical aspects of and the procedures for plant variety protection and variety catalogues.

[Annex IV follows]

C/28/11 Add.

ANNEX IV

NETHERLANDS

Situation in the Legislative Field**Adaptation of the Law to the 1991 Act of the Convention**

The advice of the Council of State on the draft law amending the Seed and Planting Material Act was received mid 1994. The draft law will be presented to the Council of Ministers as soon as possible. It is planned to submit it to Parliament still before the end of the year.

Case Law

The appeal against the decision to refuse the application for a plant breeder's right has been rejected in case number GRB 1215 ('Terpanyk'). The initial decision was based upon the absence of differences between variety 'Terpanyk' and variety 'Terstelle'; the application for 'Terstelle' had been rejected earlier on, based upon a lack of uniformity. The only difference between 'Terpanyk' and 'Terstelle' concerned uniformity. However, since uniformity is not regarded as a relevant factor for distinctness, the Board of Appeal decided that 'Terpanyk' belonged to 'Terstelle.' Consequently, as the novelty criterion under Article 29 of the Seed and Planting Material Act was no longer fulfilled when the application was filed for 'Terpanyk,' the initial decision to reject the application was upheld by decision of July 21, 1994.

Cooperation in Examination

No new agreements, nor extensions to existing agreements, have been signed during the last 12 months. The Netherlands will shortly conclude a bilateral administrative agreement for cooperation in the testing of varieties with Finland and Norway.

Situation in the Administrative Field

The investigations regarding the reorganization of the administrative structure for plant variety protection on the one hand and marketing authorization on the other were carried out in 1994.

In 1993, the number of applications and grants again showed an increase over the preceding year: 1,484 applications were received and 1,283 rights were granted. The examinations entrusted to foreign authorities rose from 39 to 43 percent. Furthermore, a substantial increase (by 48 percent) of the requests for information--coming from abroad--on tests conducted in the Netherlands can be reported.

In the period from January 1 to October 1, 1994, 1,095 applications were received and 690 rights were granted.

Situation in the Technical Field

In a meeting in which six member States of the European Union participated an agreement was reached on the centralization of the technical examinations designed to limit costs.

Activities for the Promotion of Plant Variety Protection

In September 1993, Mr. Bart Kiewiet, President of the Board for Plant Breeders' Rights, participated in a seminar organized by UPOV and the People's Republic of China and held in Beijing.

Experts from various countries visited the facilities of the Dutch Testing Center, the CPRO-DLO, in Wageningen.

From June 13 to 17, 1994, the Board for Plant Breeders' Rights received a delegation from the People's Republic of China. As the delegation wished to know more about the relations between the different parties in the Dutch plant breeding sector, the Board organized a program that included visits to, and discussions with, various public institutions and private companies.

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