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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Twenty-sixth Ordinary Session

Geneva, October 29, 1992

**REPORT BY REPRESENTATIVES OF MEMBER STATES
ON THE SITUATION IN THE LEGISLATIVE,
ADMINISTRATIVE AND TECHNICAL FIELDS**

ADDENDUM

Document prepared by the Office of the Union

The annexes to this document contain the reports from the representatives of Italy (Annex I), the Netherlands (Annex II), Czechoslovakia (Annex III) and Portugal (Annex IV) on the situation in their countries in the legislative, administrative and technical fields of plant variety protection and related areas.

[Annexes follow]

ANNEX I

ITALY

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field

1.1 Modification of Fees

The application and annual fees have been increased by Ministerial Decree of August 20, 1992.

1.2. Extension of Protection to Further Genera and Species

A request for extension of protection to 35 further genera and species has been forwarded to the Ministry of Industry and Commerce. Protection will be available for those genera and species after publication of the corresponding decree in the official gazette.

2. Cooperation in Examination

Contacts have been made with the French Government with a view to concluding an agreement on cooperation. Similar contacts will be made with other Governments for the same purpose.

[Annex II follows]

ANNEX II

NETHERLANDS

PLANT VARIETY PROTECTION

1. Situation in the Legislative Field1.1 Adaptation to the 1991 Act of the Convention

The 1991 Act of the Convention will be implemented in Dutch legislation by an amendment of the Seeds and Planting Material Act (Zaaizaad- en Plantgoedwet). In May 1992, the Minister for Agriculture, Nature Management and Fisheries reported to the Agricultural Commission of the Dutch Parliament that he intended not to launch an amendment Bill until the EEC Regulation on Community Plant Variety Rights had been finalized, mainly because the Dutch national system should as far as possible be in line with the Community scheme as far as the optional elements of the 1991 Act are concerned. It is hoped that the EEC Regulation would be finalized by the end of this year. If it were to be delayed for a longer period, the national policy might be reconsidered. In the meantime, preparations are being made with a view to presenting a draft law amending the Dutch law as soon as possible.

1.2 Other Amendmentsa) Duration of the Plant Breeder's Right

In 1991, the duration of the plant breeder's right has been extended to 30 years for the varieties of potato, acacia, apple, common ash, elm, cherry, pear, poplar, plum and willow, and to 25 years for all other taxa. This--and the extension of protection to all taxa which became effective in 1990--is a reinforcement of the plant breeder's right that anticipates the implementation of the new UPOV Convention.

b) Increases in Fees

A second important change concerns the fees of the Board for Plant Breeders' Rights. By virtue of a change implemented on December 24, 1991, new differentiated fees are charged for the examination in relation to the grant of a plant breeder's right. For the first and second growing period, the examination fee now amounts to DFL 1,000.- (ornamentals), DFL 1,200.- (agricultural crops) and DFL 2,150.- (vegetables) a year. DFL 600,- are charged for the third period (this applies only to agricultural crops). The administrative fees remained unchanged. The fee increase is a consequence of the ministerial objective to achieve 100% cost-recovery. The Minister will consider in 1992 to what extent this aim has been achieved.

c) Legislative Projects

Two important legislative projects have been launched. The first is the amendment of the Seeds and Planting Material Act as a consequence of the new UPOV Convention, as described above. The second attempts to create conditions for a more transparent marketing system. In 1991, the Ministry for Agriculture, Nature Management and Fisheries exchanged views with the interested parties on how this system should look like in the future. The results of the discussions were put in a memorandum, which was formulated in the beginning of 1992.

Some main lines are as follows. Plant breeders' rights and the licensing of varieties for sale are currently closely connected in the Netherlands. It is likely that the decisions will be more independent from each other in the future. Furthermore, it has been proposed to delete some articles dealing with the system of lists of recommended varieties that are currently included in chapter V of the Seeds and Planting Material Act. The amendment is currently being counselled. A project group set up by the Ministry will give further advice on the organizational consequences of the amendment.

2. Cooperation in Examination

No new bilateral agreement has been concluded. The agreements with Belgium and the United Kingdom have been amended recently. In the first case, a large number of (mostly new) taxa have been included in the list of taxa that the Netherlands examines on behalf of Belgium. The second agreement has been modified by the inclusion of two vegetable species in the list of taxa that are examined by the Netherlands on behalf of the United Kingdom and the deletion of four species from the list of taxa for which both countries exchange reports.

3. Situation in the Administrative Field

a) Number of Applications

The record number of applications received in 1990 (1,455) was not reached in 1991. Nevertheless the 1,431 applications filed in 1991 can be considered as consolidating the increases that characterized the previous years.

As in previous years, the ornamental sector accounted for the majority of the applications (66%); the agricultural crops, vegetables and forest trees accounted for 18%, 14% and 2%, respectively.

b) Administrative Procedures

The large number of applications and registrations leads the Board to adapt the administrative procedures. Assuming a constant work force, the increasing workload can only be met by further automation.

In 1991, the Board initiated the computerized processing of applications and registrations on a modest scale. The Board further participates in a project group which, in cooperation with CPRO, tries to come up with a comprehensive automated system. It is hoped that these efforts will be rewarded in the course of 1992/1993.

4. Situation in the Technical Field

The examination concerning the applications for plant breeders' rights is carried out in the Netherlands by the permanent experts of the Board. About 65% of the applications filed in 1991 were examined by them, and the remaining 35%, by one of the foreign authorities with which the Board cooperates.

Apart from the examination taking place in the Netherlands under the authority of the Board--and under bilateral agreements on cooperation with several UPOV partners entered into by the Netherlands--the permanent experts also act as technical advisors to the Board and as representatives of the Netherlands in UPOV.

ANNEX III

CZECHOSLOVAKIA

The current situation shows that the Czech and Slovak Federal Republic is moving towards partition into two subjects of international law--the Czech Republic and the Slovak Republic. This will effect Czechoslovakia's membership in UPOV, and both potential successor States are considering separate membership, which is facilitated by the current structure of the institutions and organs responsible for the implementation of the plant variety protection law. So far, all measures for the implementation and development of the law have been taken jointly, although this was known to cause some delays.

PLANT VARIETY PROTECTION**1. Situation in the Legislative Field****1.1 Amendment of the Law and the Implementing Regulations**

There has been no amendment since adoption of the Law on the Legal Protection of New Varieties of Plants and Breeds of Animals (No. 132/1989 of the Collection of Laws). The Law has been supplemented by Decree No. 134/89 of the Collection of Laws which contains the list of species to which protection applies.

The first draft consolidated text of the new law on varieties and seeds has been prepared both in the Czech Republic and in the Slovak Republic.

Czechoslovakia prepares the accession to the text of the Convention which has been adopted by the 1991 Diplomatic Conference.

However, in view of the current institutional situation, accession will take some time, but the fulfillment of the obligations resulting from membership in UPOV will also be guaranteed once the two Republics have been founded. The efforts deployed by the Czech Republic and the Slovak Republic, in line with those of the current Czechoslovakia, with a view to acceding to the European Community demonstrate that the harmonization of the legal norms relating to plant variety protection has a high priority from the point of view of the interests of the above-mentioned States.

The fees have remained unchanged, and no amendment is planned.

1.2 Case Law

So far, there has been no case of litigation in Czechoslovakia as regards protection.

1.3 Extension of Protection to Further Genera and Species

The list of genera and species to which protection applies was extended by Decree No. 515 of November 15, 1991, to the following taxa:

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Amygdalus communis L.
Carum carvi L.
Castanea sativa Mill.
Cerasus vulgaris (L.) Mill.
Cornus mas L.
Coronilla varia L.
Digitalis lanata Ehrh.
Festuca arundinacea Schreb.
Lolium multiflorum Lam. x
Festuca pratensis Huds.

Pelargonium zonale hort.
Persica vulgaris Mill. var. amygdaloides
Pharbitis purpurea Roth.
Potentilla L.
Prunus cerasifera Ehrh.
Silybum marianum (L.) Gaertn.
Solanum melongena L.
Weigela Thunb.

2. Cooperation in Examination

So far, Czechoslovakia has not concluded any agreement on cooperation in examination. However, the matter is actively pursued, in particular with the United Kingdom, with which there is already a general agreement, and with other EC member States, first and foremost with the neighboring Germany; but the agreements with Denmark, France, the Netherlands and other EC member States are just as important.

3. Situation in the Administrative Field

The situation remains unchanged. The Federal Ministry for Economy is competent; it is in contact with the Agriculture services of the Czech Republic and the Slovak Republic and prepares a progressive transfer of the administrative files in anticipation of a partition.

4. Situation in the Technical Field

The technical issues are already dealt with by the independent control institutes of the Czech Republic and the Slovak Republic, which cooperate closely. In case of partition, the first agreement on cooperation would be concluded between those Republics.

Both institutes are sufficiently equipped for the examination of distinctness, homogeneity and stability; part of the high-ranking staff have been abroad on study visits; the main groups of species are therefore handled by qualified staff.

Computer equipment is available for all corresponding posts, even if the software is not at the level of that available in the most advanced member States of UPOV.

5. Activities for the Promotion of Plant Variety Protection

The most important assistance was given by NIAB, Cambridge, in the form of a one-month training period for 17 specialists. The assistance was provided by the Government of the United Kingdom through the know-how fund and has been much appreciated by Czechoslovakia.

A seminar which took place for 12 days in France for 17 staff should also be mentioned; they were given the opportunity to familiarize themselves with all activities in the field of varieties and seeds. The Czech and the Slovak experts were the guests of the French Government. The seminar had been organized by ACTIM.

There is also close cooperation with Austria and Germany, and it is hoped that this cooperation will be extended in future to other States, in particular to EC member States.

DEVELOPMENTS IN RELATED FIELDS OF ACTIVITIES OF INTEREST TO UPOV

Czechoslovakia is one of the countries enjoying a long tradition in research in the field of genetic resources; in 1992, it endorsed the FAO Undertaking on Plant Genetic Resources. The relevant institutions of both Republics are conscious of the importance of genetic resources for the development of plant production and agriculture in general; they support the activities in this area.

No special law has been adopted so far in the field of genetic engineering; activities in this area are supervised by a special commission of the Czechoslovak Academy of Sciences.

In the field of patents, an independent Federal Office of Inventions has been set up.

[Annex IV follows]

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C/26/11 Add.

ANNEX IV

PORTUGAL

Plant variety protection legislation entered into force in Portugal in October 1990, and the Plant Variety Protection Office was set up thereafter. The number of protected species was 14 at that time.

The law is currently undergoing revision with a view to bring it into conformity with the UPOV Convention. Portugal intends to accede to the Convention in the course of next year.

In 1992, protection was extended to eight further species. The law currently applies to 34 species.

An agreement for cooperation in examination with Spain is under preparation and it is hoped that it will be concluded in the near future.

Since entry into force of the law, 20 applications for protection have been filed. No title of protection has been issued yet.

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