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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Thirtieth Ordinary Session
Geneva, October 23, 1996

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

1. According to the practice introduced on the occasion of the twenty-sixth ordinary session of the Council, it is recommended that the reports from the representatives of States (member States and observer States) and intergovernmental organizations on the situation in the legislative, administrative and technical fields of plant variety protection and related areas be submitted in writing, in advance, to increase the ability of the Council to effectively carry out its tasks.
2. Written reports have been requested by the Office of the Union in the invitation circulars relating to this session and a model format has been proposed for the purpose. The reports submitted by the following States are reproduced in Annexes I to XIII (in the alphabetical order of the names of the States in French): South Africa, Germany, Austria, Denmark, Finland, Ireland, Japan, Norway, New Zealand, Poland, United Kingdom, Sweden, Ukraine.
3. The report from the Organisation for Economic Co-operation and Development (OECD) is reproduced in Annex XIV.

[Fourteen annexes follow]

ANNEX I

SOUTH AFRICA

Situation in the Legislative Field

The Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976), which was revised in terms of the 1991 Act, was passed by Parliament and published as the Plant Breeders' Rights Amendment Act, 1996 (Act No. 15 of 1996), on April 19, 1996. It is envisaged that South Africa's instrument of ratification of the 1991 Act of the Convention will be deposited with the Secretary-General before the end of 1996. The necessary documents are being prepared at present.

The Department of Agriculture still receives requests for extension of protection to further genera and species. During the year under review, protection has been extended to 13 genera and species.

Situation in the Administrative Field

From October 1, 1995, to August 31, 1996, 169 applications for plant breeders' rights were received and 137 plant breeders' rights were granted. As at August 31, 1996, there were 415 applications under consideration and 1055 plant breeders' rights in force. Further details are given below.

	Agricultural Crops	Vegetable Crops	Ornamental Plants	Fruit Crops	Total
Applications Received	64	19	62	24	169
Plant Breeders' Rights Granted	61	27	26	23	137
Plant Breeders' Rights Valid	344	174	363	174	1055
Applications Being Considered	96	20	215	84	415

Situation in the Technical Field

It is becoming increasingly difficult to distinguish between varieties as the differences are getting smaller and smaller and the number of varieties is increasing. In the case of maize, for instance, there are 150 white and 150 yellow varieties on the variety list.

Activities for the Promotion of Plant Variety Protection

The Assistant-Director, who is responsible for variety testing in South Africa, has given various lectures to different groups of people regarding the changes in the Plant Breeders' Rights Act which emanated from the 1991 Act of the Convention. During these lectures the reasons for the changes were explained. It may be necessary to amend the present Act in one or two instances. Some resistance has been encountered regarding the fact that the Department now has the right to inform the holder of a plant breeder's right that his rights have been violated. The general feeling is that it is the responsibility of the holder of the right to enforce his rights and that the Department should not interfere in such matters at all.

Developments in Related Fields of Activities

Legislation in respect of genetically modified organisms is in an advanced stage of development and a final draft of the Act is currently being prepared for submission to the relevant Parliamentary Committee. Genetically manipulated varieties may, however, cause problems where such varieties cannot be morphologically distinguished from the initial variety.

South Africa has become a member of the Southern African Development Community (SADC) and has subsequently joined the Regional programme on the conservation and sustainable utilization of plant genetic resources. A National Committee to coordinate these issues with regard to food and agriculture has also been inaugurated during the period under review.

[Annex II follows]

ANNEX II

GERMANY

Situation in the Legislative Field

The work on the draft law amending the Plant Variety Protection Law and the consultations have been pursued.

Cooperation in Examination

The administrative agreement concluded with the Plant Variety Board of Finland has been extended. The Federal Office of Plant Varieties will examine, on behalf of the latter, the varieties of the species *Brassica napus* ssp. *oleifera* (rapeseed); the results of the technical examinations made by one of the offices will be taken over by the other for three soft fruit species.

It has been agreed with the Institute for Agricultural Quality Control of Hungary that the results of the technical examinations made by one of the offices for *Pisum sativum* (pea) or *Triticum durum* (hard wheat) will be taken over by the other.

Activities for the Promotion of Plant Variety Protection

Technical training has been given to staff members of the variety offices of the successor States of the former Soviet Union.

Developments in Related Fields of Activity

National List

A draft law amending the Seed Trade Law, with a view to adapt some of the latter's provisions to the planned changes to the Plant Variety Protection Law, has been prepared.

Genetic Engineering

The Federal Office of Plant Varieties is discussing with the competent authority a possible concentration of the procedures relating to genetic engineering, plant variety protection and national listing.

Genetic Resources

Germany organized the International (FAO) Technical Conference on Plant Genetic Resources which was held in Leipzig from June 17 to 23, 1996, and currently examines its implications for variety legislation.

[Annex III follows]

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ANNEX III

AUSTRIA

Situation in the Legislative Field

The calendar for the adjustment of the law to the 1991 Act has not been fixed yet.

The application and examination fees have been increased.

Cooperation in Examination

An administrative agreement with France is in preparation.

Situation in the Administrative Field

From January 1 to August 31, 1996, 23 applications were received and 22 titles were issued; 178 titles were in force on August 31.

Developments in Related Fields of Activities

The draft new seed law has been released for comments. The results will be submitted to Parliament as soon as possible.

The implementing regulations to the Genetic Engineering Law (Official Journal No. 510/94) will be published as soon as possible. Austria has not approved any release yet.

[Annex IV follows]

ANNEX IV

DENMARK

Situation in the Legislative Field

National legislation

An amended Plant Variety Protection Act entered into force on January 1, 1996, and brought the Danish legislation into conformity with the 1991 Act of the Convention.

Varieties of all genera and species are eligible for protection in accordance with the amended Act. The period of protection remains unchanged (25 years for all species except potato, for which the period is 30 years).

An Order which implements the provisions on the use of farm-saved seed entered into force on August 1, 1996. The Order follows very closely the corresponding provisions made under Council Regulation (EC) No. 2100/94 on Community plant variety rights, in particular as regards the species covered by the Order. The royalty for the use of farm-saved seed may not exceed 50% of the normal royalty on certified seed for the same variety. The setting of a maximum fee to be paid by the user reflects a decision of the Danish Parliament, which interpreted the term "sensibly lower" used in the said Council Regulation to mean an amount not exceeding 50% of the normal license fee.

Ratification of the 1991 Act of the Convention

The amended law made it possible for Denmark to ratify the 1991 Act of the Convention. The instrument of ratification was deposited on April 26, 1996.

Cooperation in Examination

In the autumn 1995, it had been planned to revise the agreements on cooperation in examination concluded with other member States. Due to special circumstances, the revision has been delayed and is still pending.

Situation in the Administrative Field

In 1995, 98 applications for plant breeders' rights were received, as follows:

Agricultural crops	42
Fruit	3
Vegetables	3
Ornamentals	50
<i>Total</i>	<i>98</i>

In 1995, the number of titles of protection issued was 221:

Agricultural crops	54
Fruit	5
Ornamentals	160
Landscape	2
<i>Total</i>	<i>221</i>

In the period from January 1 to September 1, 1996, 37 applications for protection were received and 90 titles of protection were issued.

Compared to 1994, there was a reduction of 204 applications in 1995 or 67.5%. The reduction concerns mainly ornamentals and agricultural crops (-76% and -22%, respectively). The reduction is the result of the introduction of the Community plant variety rights system, to which 260 applications originating from Denmark were submitted.

Situation in the Technical Field—Genetically Modified Organisms

Variety Testing

As the variety testing for both plant breeders' rights and variety listing is to be self-financed from fees paid by the applicants, the reduction of the number of applications affects the financial situation in respect of tests for distinctness, uniformity and stability severely. The number of varieties going into testing for value for cultivation and use is expected to decrease also as an ever-increasing number of varieties of agricultural crops are commercialized within the European Union on basis of the Common Catalogue.

A report on the future of variety testing in Denmark is expected to be finalized in October 1996. The financial difficulties might lead to a need for reconsidering the present organization of the variety testing.

Genetically Modified Plants

In 1995, the Plant Directorate, Division of Gene Technology and Variety Testing, was asked by the Ministry of Environment to comment on 210 EU Summary Notification Information Formats (SNIFs) concerning experimental releases of genetically modified plants. In the period from January 1 to August 31, 1996, the Directorate reviewed a further 217 SNIFs.

In 1995, applications for EU marketing approval of genetically modified plants of leaf chicory, maize, soybean and rapeseed (two) have been assessed. The Directorate has assessed further applications for rapeseed and maize (two) in the period from January 1 to August 31, 1996.

Variety Testing of a Genetically Modified Plant Variety

In 1996, the first genetically modified plant variety entered into official variety testing in Denmark. The variety is a fodder beet of Danish origin and is the subject of an application for both plant breeders' rights and variety listing.

Developments in Related Fields of Activities

Notification of the Plant Variety Protection Legislation to the WTO Council for TRIPS

The Danish legislation on plant variety protection and the bilateral agreements for cooperation in examination concluded with other UPOV member States have been notified to the WTO Council for TRIPS.

[Annex V follows]

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ANNEX V

FINLAND

Situation in the Legislative Field

Preparatory work with a view to adjusting the law to the 1991 Act of the Convention has started, and the interested circles are being consulted.

Protection was extended to 47 further species as from January 12, 1996.

Cooperation in Examination

The administrative agreement concluded with Germany has been amended and an agreement has been concluded with Denmark.

Situation in the Administrative Field

From October 4, 1995, to September 13, 1996, 16 applications were received and 70 titles were issued.

[Annex VI follows]

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ANNEX VI

IRELAND

Situation in the Legislative Field

Adaptation of the Law to the 1991 Act of the Convention

The Memorandum of Government to amend the Plant Varieties (Proprietary Rights) Act, 1980, has been finalized and circulated to other Government Departments for comment; it will be submitted to Government by the end of September 1996. Legislation will then be prepared and placed before the Dail (Parliament). It is not possible to state at this stage how long this procedure will take.

Case Law

There was one application for a compulsory license lodged with the Controller for the potato variety 'Cultra.' However, on examination of the application, it was established that the claim made by the applicant related to a seed certification problem. The application was rejected by the Controller on the basis that it appeared that the conditions for the consideration of a compulsory license were not met.

Situation in the Administrative Field

Following the introduction of the Community plant variety rights system, in April 1995, the number of applications for national rights has dropped considerably. Many of the national rights for "newer" varieties were also converted into Community rights. While some applications for national rights are still being received for agricultural crops, many applications in future may be for ornamental plants.

The Controller has provided information to breeders on completion of the application and related forms for Community rights.

The Controller changed address on August 19, 1996. His new address is: Department of Agriculture, Food and Forestry, Agriculture House, Kildare St., Dublin 2 (phone: +353-1-6072079, fax: +353-1-6616263).

A new computer package was organized to provide UPOV with information on national listing and plant breeders' rights for the CD-ROM system. Particular problems were encountered in this respect as no database existed previously for national listing. The existing plant breeders' rights program had been written in D-base 3 and had to be adjusted to Windows 95.

Developments in Related Fields of Activities

Genetic resources as they relate to plants and animals are now receiving considerable attention in Ireland. The Minister for Agriculture, Food and Forestry established an Advisory Committee in July 1996. A primary role of this Committee will be to promote better coordination of activities in conservation of genetic resources among the various interested circles involved. Since conservation also includes utilization, these activities should become an integral part of both the national breeding and the national conservation policies.

[Annex VII follows]

ANNEX VII

JAPAN

Situation in the Legislative Field

Preparatory work is being undertaken to make the amendments to the Seeds and Seedlings Law that are necessary for its adaptation to the 1991 Act of the Convention.

Protection was extended to 15 genera and species, with effect from July 5, 1996. As a result of the extension, a total of 467 plants are currently eligible for plant variety protection in Japan.

Cooperation in Examination

The Government of Japan has communicated with the Governments of Denmark, Germany, the Netherlands and the United Kingdom for the establishment of agreements on cooperation in examination.

Activities for the Promotion of the Protection of Plant Varieties

The Japanese Government has contributed to the UPOV seminars on the nature of and rationale for the protection of plant varieties under the UPOV Convention which were held in India, Bangladesh and Viet Nam in the period from September 12 to 20, 1996. A seminar for countries of the Central Asian region will also be held in Kyrgyzstan from November 11 to 16, 1996.

[Annex VIII follows]

ANNEX VIII

NORWAY

Situation in the Legislative Field

The Regulations Relating to the Plant Breeder's Right have been revised with effect from February 6, 1996. The main amendment is that plant breeders' rights may now be granted for varieties of all genera and species of plants, including hybrids between genera or species. Minor amendments have also been made in respect of the publication procedure.

Cooperation in Examination

Norway received 56 DUS reports from other member States.

Situation in the Administrative Field

From January 1 to December 31, 1995, 45 applications have been received and 60 titles were issued. The grants were as follows:

Barley	2	Poinsettia	21	Rose	20
Begonia	2	Potato	4	Wheat	2
Oat	3	Rhododendron	6		

Seventy-five titles were in force on August 1, 1996.

Situation in the Technical Field

Experience is being gained on DUS-testing of cloudberries (*Rubus chamaemorus* L.).

[Annex IX follows]

ANNEX IX

NEW ZEALAND

Situation in the Legislative Field

On September 2, 1996, as part of the Law Reform (Miscellaneous Provisions) Act 1996, certain non-controversial amendments to the Plant Variety Rights Act 1987 came into effect. The important changes are:

- (a) A completed technical questionnaire must be supplied at the time of application.
- (b) As soon as implementing regulations come into effect, a representative color photograph must be supplied at the time of application for all fruit, ornamental and tree varieties.
- (c) Section 16(2)(h) of the Plant Varieties Rights Act 1987, which provided for the cancellation of a plant variety right if the grantee failed to comply with a compulsory licence or a compulsory sales order, was repealed.

During the period there has regrettably been no progress towards amending the Plant Variety Rights Act 1987 to bring it into conformity with the 1991 Act of the Convention.

Situation in the Technical Field

Change in the Testing System

In 1980, in the early years of the PVR scheme, a move was made for many crops away from the system of official DUS testing at a central site. In the case of fruit varieties, and ornamentals other than roses, a system of official testing on the applicant's property became the norm. For agricultural varieties, a system of breeder testing came into effect.

In recent years, as the number of applications has steadily grown and as the difficulty of establishing distinctness has increased, there has been a gradual move back towards DUS testing at a central site and towards greater involvement of the PVR Office in the testing. This trend continued during 1996 with respect to agricultural varieties. It was mutually agreed by applicants and the PVR Office that in the case of the major arable and pasture crops, there should be a move from the current system of breeder testing back to a system of DUS testing under the control of the PVR Office. The move is expected to give cost savings for applicants and produce a higher level of technical rigor in the testing.

While it had been hoped to move to such a system on a formalized basis on June 1, 1996, it was not possible to implement the necessary regulatory changes by that time. In order to meet the expectations of applicants, the PVR Office is in the meantime prepared to conduct central testing of the crops concerned should the applicants so request, at a cost equivalent to the fee expected to be charged once the system becomes formalized.

Protection for Microscopic Fungi

Plant variety protection has been granted for two varieties or strains of *Acremonium*, an endophyte (a microscopic organism living in the seeds and plants) of ryegrass (*Lolium*).

Activities for the Promotion of Plant Variety Protection

The Commissioner of Plant Variety Rights, Mr. Bill Whitmore, participated in the UPOV Regional Seminar on Variety Testing for Tropical and Sub-tropical Crops Under the UPOV Convention held in Medan (Indonesia) from December 5 to 7, 1995.

He also joined the Vice Secretary-General in Beijing from June 26 to 28, 1996, for discussions with officials of the State Council on the Chinese draft legislation on the protection of new varieties of plants.

[Annex X follows]

ANNEX X

POLAND

Situation in the Legislative Field

The new Seed Industry Law entered into force on January 20, 1996. In its part concerning plant variety protection, the Law is adjusted to the 1991 Act of the Convention. Implementing provisions to the law have been made in two decrees of the Minister for Agriculture and Food Economy, of which one sets out the fees for plant variety protection. Detailed provisions concerning *inter alia* the application procedure, variety testing and the granting procedure are included in four decisions of the Director of the Research Centre for Cultivar Testing (COBORU). The decisions and an extract from the decree of the Minister concerning fees will be published, in English, in an annex to the next edition of the Gazette.

Poland has taken steps to accede to the 1991 Act of the Convention. The Minister for Agriculture and Food Economy gave the necessary instructions to the competent Government authorities. Accession to the 1991 Act should take place soon, but it is difficult to give a precise date.

Protection has been extended to further genera and species, bringing the total to 302 taxa.

Cooperation in Examination

Bilateral agreements for cooperation in examination have been signed with the Czech Republic, Hungary and Slovakia.

Activities for the Promotion of Plant Variety Protection

The program of assistance to some East European countries is continuing.

(a) Practical training on DUS testing was organized in COBORU in the period from May 26 to June 2, 1996, for five participants from the State Committee for Variety Testing of Belarus, and two from the State Committee of Ukraine for Plant Variety Testing and Protection.

(b) Practical training on the methods of variety testing and assessment, and summer pruning of fruit trees, was organized from August 4 to 11, 1996, for four participants from Belarus.

[Annex XI follows]

ANNEX XI

UNITED KINGDOM

Situation in the Legislative Field

A draft Bill for the amendment of the Plant Varieties and Seeds Act 1964 to adapt it to the 1991 Act of the Convention will be published in the autumn for full consultation with the industry.

There was no increase in fees for plant breeders' rights and they remain at the 1994-95 level in 1996-97. Renewal fees equal to 50% of the existing rates have been introduced for varieties protected under a national right and subsequently granted a Community plant variety right, for which breeders wish to leave open the possibility of resuming the operation of the national right once the Community right has been either surrendered or terminated.

In the longer term it is intended to extend protection to the whole plant kingdom. In the short term, it is intended to extend protection to the following during 1996:

Ornamentals: *Fremontodendron*, x *Halimocistus sahuicii*, *Helichrysum*, *Lavandula*, *Myosotis palustris*, *Myosotis scorpioides*, *Platycodon grandiflorus*, *Tagetes*;

Fruit: Almond, Apricot, Nectarine, Peach, Peach x Almond rootstocks;

Oilseed Crop: Quinoa.

Cooperation in Examination

The United Kingdom has signed a bilateral agreement with Japan, due to come into effect on September 30, 1996, in which the authorities agree to take over each other's examination reports.

The United Kingdom is also negotiating an agreement with Norway, in which the United Kingdom offers to test Campanula, Chrysanthemum, holly and apple varieties on behalf of the Norwegian authority.

Situation in the Administrative Field

During the year ended March 31, 1996, 295 applications were received (47.2% decrease over previous year), 363 grants were issued (3.5% decrease), 266 grants were terminated (11.3% increase) and 1,904 grants were renewed (7.1% increase).

The big decrease in applications is in large part due to the introduction of the Community plant variety rights system, but the precise extent is not known. The increase in the number of grants terminated is also largely due to breeders applying for Community rights and terminating national rights.

Community Plant Variety Rights

Following the introduction of the Community plant variety right giving breeders, *inter alia*, the right to claim royalties on farm-saved seed, there has been much continuing complaint and the Ministers have received many letters on this issue.

[Annex XII follows]

ANNEX XII

SWEDEN

Situation in the Legislative Field

The work on the draft for a new Plant Variety Protection Law based upon the 1991 Act of the Convention is in progress. A Bill might be presented to Parliament in early 1997.

Two Articles have been added to the current law, one to provide that the filing of an application for a Community plant variety right with the National Plant Variety Board will be subject to payment of a fee (fixed at 300 Swedish kronas), and the other to provide that the infringement of a Community plant variety right will be prosecuted according to the penal rules applicable to national rights.

The appeal fee (900 Swedish kronas) has been abolished.

Protection has been extended to *Chaenomeles* Lindl. (flowering quince), *Clematis* L., *Dracaena* spp, *Euphorbia* spp. (spurges), *Kalanchoë* Adans., *Pelargonium* L'Hér. ex Ait., *Philadelphus* spp. (mock orange).

Cooperation in Examination

Sweden has withdrawn the offer to test *Allium schoenoprasum* L. (chives) and *Anethum graveolens* L. (dill), and existing bilateral agreements will be amended accordingly.

[Annex XIII follows]

ANNEX XIII

UKRAINE

Activities for the Promotion of Plant Variety Protection

Representatives of the State Committee for Plant Variety Testing and Protection participated in the following:

- (a) a seminar on seed policy (United States of America, February 1996);
- (b) a practical training course at the National Institute of Agricultural Botany (NIAB) on the use of computer programs for variety testing (United Kingdom, May 1996);
- (c) the Congress of the International Federation of the Seed Trade (FIS) (Netherlands, May 1996);
- (d) a seminar organized by the World Bank, the Department of Agriculture of the United States of America and the University of Iowa on seed policy (Kyiv, Ukraine, May 1996);
- (e) a practical training course on the identification and description of plant varieties organized by NIAB (United Kingdom, June 1996).

The Register of Plant Varieties for 1996, indicating the varieties proposed for sale, has been published.

[Annex XIV follows]

ANNEX XIV

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
(OECD)

Since last year, Iran was admitted to the Beet Seed Scheme and the participation of South Africa was extended to the Maize and Sorghum Scheme. The application of Bolivia to the Herbage and Oilseed Scheme (to be applied in the beginning to oilseed species only) is in progress, as is the extension of the participation of Slovenia to the Cereal Seed Scheme. In addition, Estonia and Ukraine are officially candidates to the admission to the OECD Seed Schemes, and several countries, including South-American countries, Egypt, India and Indonesia, have shown interest to join the OECD Seed Schemes.

The last Annual Meeting of the Designated Authorities took place in March 1996 in Argentina and provided an opportunity to develop fruitful relations with the host country and neighboring countries. This meeting was preceded by a workshop on issues surrounding trade of transgenic varieties and a working group meeting on accreditation.

The voluntary temporary experiment on the accreditation of non-official bodies for field inspection is now involving eight countries (Argentina, Canada, Denmark, France, Netherlands, Sweden, United Kingdom and United States of America) for one or several groups of species, with positive results. It was agreed to continue the experiment, subject to repeal, on an annual basis.

The OECD Council should take a decision very soon to confirm the rules for certification of oilseed hybrid cultivars for an indefinite period (these rules were initially adopted for a three-year period, ending in December 1996).

Subject to funding approval, a collaboration is being set up with the European Union relating to field post-control of sunflower and cotton certified seeds. It should start with the EEC comparative trials to be sown in 1997 in Seville (Spain) for sunflower and Thessaloniki (Greece) for cotton.

Apart from the OECD Cultivar List published annually, new updated editions for the Seed Schemes and for the Manual for crop inspection and control plots are about to be completed.

OECD would like to develop electronic availability of the Cultivar List, including possible arrangements with UPOV.

[End of document]