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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS  
GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE**

**Thirty-Seventh Session  
Geneva, October 27, 1997**

REPORT ON TRANSITIONAL PROVISIONS INCLUDED  
IN LAWS ADAPTED TO THE 1991 ACT

*Document prepared by the Office of the Union*

Introduction

1. At its thirty-sixth session, the Administrative and Legal Committee received an information document on the transitional provisions inserted into the laws of Australia, Denmark, Israel, the Netherlands, Poland, Slovakia, South Africa and the United States of America when those laws were adapted to the 1991 Act. The document also considered the case of the European Community given the links with the laws of its member States. The document pertained to novelty and the extension of the scope of the breeder's right (from a general point of view and from the point of view of farm-saved seed and essentially derived varieties).

2. In the meantime, Germany and Sweden have amended their laws, while the United Kingdom has drafted a Bill that is sufficiently advanced for its elements to be described. The transitional provisions of these texts are described below.

Germany

3. Novelty. – The new novelty rule laid down in Article 6(1) of the 1991 Act is based upon a sale or disposal to others, for purposes of exploitation of the variety, whereas the former rule

was based upon the offer for sale or marketing, as in Article 6(1)(b) of the 1978 Act, which is narrower in scope. A transitional provision has been included in the new German law; its effect is to allow the protection of varieties which are the subject of an application filed within one year from the date of entry into force of the new law and for which the former novelty condition is satisfied at the filing date of the application.

4. Essentially derived varieties. – The right conferred in respect of a variety (before or after entry into force of the new law) does not extend to any essentially derived variety which has been the subject of an application for protection, or a right granted, before the entry into force of the new law.

#### United Kingdom

5. Novelty. – A transitional relaxation of the requirement of novelty applicable to varieties of species newly made eligible for protection is contemplated. The relaxation permits four years (six in the case of trees and grapevine) of prior commercialization in the country, computed from the date of entry into force of the new law; the application for protection will have to be filed within 12 months from that date, and the duration of protection will be reduced by a period measured from the date on which a sale or other disposal first took place in the country to the date of the application, less one year.

6. Provisional protection. – The right to request equitable remuneration from any person who has exploited the variety during the period in which the application was pending will be extended to applications filed under the former law, if the breeder's right is granted under the new law, but only in respect of acts of exploitation occurring after the new law comes into force.

7. Farm-saved seed. – In general, the proposals relating to farm-saved seed are similar to those of the Regulation on Community plant variety rights. The obligation to pay a royalty to the breeder in respect of use of farm-saved seed will also apply to varieties protected under the former law; there will be an exemption – not limited in time – for farmers who have used farm-saved seed of the variety in question before the entry into force of the new law (with regard to any later use of the “privilege”). The derogation may be repealed by Order of the Ministers.

8. Essentially derived varieties. – The right granted in respect of a given variety will apply to an essentially derived variety only if the latter was not a matter of common knowledge before the date of entry into force of the new law.

9. The same provision is contemplated for the extension, to hybrid varieties, of the protection granted in respect of an inbred line. This results from the fact that the effect of the right granted as a result of the strict implementation of Article 5(3) of the 1978 Act is that the authorization of the right owner is required for the (repeated) use of the inbred line for the commercial production of hybrid seed, whereas the right granted under Article 14 of the 1991 Act is broader in scope from the point of view of both the act of producing the hybrid and the act of exploiting it.

Sweden

10. Novelty. – For varieties of species which were not eligible for protection before July 1, 1997 (the date of entry into force of the new law), the novelty condition will be satisfied if propagating material or harvested material of the variety in question has not been sold or otherwise disposed of to others within Sweden, for purposes of exploitation of the variety, before July 1, 1993, subject to the application being filed on June 30, 1998, at the latest; for any sale or disposal outside Sweden, the normal time limits (four or six years before the date of application) apply.

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