UPOV

PLANT VARIETY PROTECTION

Gazette and Newsletter
of the
International Union for the Protection of New Varieties of Plants (UPOV)

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CONTENTS

GAZETTE

RATIFICATION OF THE REVISED ACT OF 1978 OF THE UPOV CONVENTION

Italy

The Government of Italy deposited on April 28, 1986, its instrument of ratification of the Geneva Act of October 23, 1978, of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972.

The Act entered into force with respect to the Italy one month after the date on which its Government deposited its instrument of ratification, i.e. on May 28, 1986.

It is recalled that Italy became a member of UPOV on July 1, 1977, by ratifying the International Convention for the Protection of New Varieties of Plants of December 2, 1961.

EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

Denmark

By virtue of the Order of the Minister of Agriculture No. 179 of March 26, 1986, Concerning the Protection of Plant Novelties (List of Species), protection was extended to X Triticosecale Wittmack and to Vaccinium corymbosum L. and its hybrids with effect from April 9, 1986.

Pursuant to Article 12(1) of the Law on the Protection of Plant Breeders' Rights (see Plant Variety Protection No. 29, page 14), the duration of protection is 20 years for Triticale and 15 years for Vaccinium.

Pursuant to Article 1 of the Order No. 137 of March 26, 1982, Concerning the Possibility for Foreign Breeders to Obtain Protection of Plant Breeders' Rights, etc. (see Plant Variety Protection No. 29, page 19), breeders who are nationals of or have their residence or registered office in a UPOV member State may obtain protection in Denmark for novelties of any botanical genus or species protected in Denmark. In addition, pursuant to Article 3(2) of the Law mentioned above, the Minister of Agriculture may exceptionally provide that it shall be possible to grant protection to a breeder to whom the preceding provision does not apply if, in the particular case, such protection is found to be in the interest of the Danish agricultural economy.

In addition to the extension of protection, the Order provides a consolidated list of the taxa covered by plant variety protection legislation and repeals the previous orders on the subject. Some minor amendments have also been made in the names of taxa in accordance with latest scientific knowledge. The list is given hereunder, starting on page 3 (the Danish and Latin names appear in the above-mentioned Order, whereas the English, French and German common names have been added, without guarantee of concordance, by the Office of the Union).

List of Taxa Covered by Plant Variety Protection Legislation in Denmark

Liste des taxons couverts par la législation sur la protection des obtentions végétales au Danemark

Liste der taxonomischen Einheiten, die in Dänemark der Sortenschutzgesetzgebung unterliegen

Dansk	Latine	English	Français	Deutsch
Aeschynanthus	Aeschynanthus Jack	Aeschynanthus	Aeschynanthus	Aeschynanthus
Hvene	Agrostis spp.	Bentgrass	Agrostis	Straussgras
Allamanda	Allamanda cathartica L.	Allamanda	Allamanda	Allamanda
Skalotteløg	Allium ascalonicum L.	Shallot	Echalote	Schalotte
Kepaløg	Allium cepa L.	Onion	Oignon	Zwiebel
Porre	Allium porrum L.	Leek	Poireau	Porree
Purløg	Allium schoenoprasum L.	Chives Asatsuki	Ciboulette, Civette	Schnittlauch
Inkalilje (alstroemeria)	Alstroemeria spp.	Alstroemeria, Herb Lily	Alstroemère, Lis des Incas	Inkalilie
Dild	Anethum graveolens L.	Dill	Aneth	Dill
Kørvel	Anthriscus cerefolium (L.) Hoffm.	Chervil	Cerfeuil	Kerbel
Selleri (knold- og bladselleri)	Apium graveolens L.	Celery, Celeriac	Céleri, Céleri-rave	Sellerie (Knollen- und Blattsellerie)
Peberrod	Armoracia rusticana Ph. Gaertn., B. Mey. et Scherb.	Horse Radish	Raifort sauvage	Meerrettich
Asparges	Asparagus officinalis L.	Asparagus	Asperge	Spargel
Plumosus	Asparagus setaceus (Kunth) Jessop	"Asparagus Fern"	Asparagus	Asparagus, Federspargel
Havre	Avena sativa L., Avena byzantina C. Koch	Oats	Avoine	Hafer
Begonie	Begonia spp.	Begonia	Bégonia	Begonie

Dansk	Latine	English	Français	Deutsch
Berberis	Berberis spp.	Berberis, Barberry	Berberis, Epine-vinette	Berberitze
Rødbede	Beta vulgaris L. var. conditiva Alef.	Garden Beet, Beetroot	Betterave rouge, Betterave potagère	Rote Rübe
Foderbede	Beta vulgaris L. var. crassa Mansf.	Fodder Beet	Betterave fourragère	Runkelrübe
Bladbede	Beta vulgaris L. var. vulgaris	Mangel, Leaf Beet, Spinach Beet	Bette commune, Poirée	Mangold
Bougainvillea	Bougainvillea spp.	Bougainvillea	Bougainvillier	Bougainvillea
Kålroe	Brassica napus L. var. napobrassica (L.) Rchb.	Swede	Chou-navet, Rutabaga	Kohlrübe
Raps	Brassica napus L.	Swede Rape, incl. Oilseed Rape	Colza	Raps
Knudekål	Brassica oleracea L. convar. acephala (DC.) Alef. var. gongylodes L.	Kohlrabi	Chou-rave	Kohlrabi
Fodermarvkål	Brassica oleracea L. convar. acephala (DC.) Alef. var. medullosa Thell.	Marrow-stem Kale	Chou moellier	Markkohl
Grønkål	Brassica oleracea L. convar. acephala (DC.) Alef. var. sabellica L.	Curly Kale	Chou frisé	Grünkohl
Blomkål	Brassica oleracea L. convar. botrytis (L.) Alef. var. botrytis L.	Cauliflower	Chou-fleur	Blumenkohl
Hvidkål	Brassica oleracea L. convar. capitata (L.) Alef. var. alba DC.	White Cabbage	Chou cabus	Weisskohl
Rødkål	Brassica oleracea L. convar. capitata (L.) Alef. var. rubra (L.) Thell.	Red Cabbage	Chou rouge	Rotkohl

Dansk	Latine	English	Français	Deutsch
Savoykål	Brassica oleracea L. convar. capitata (L.) Alef. var. sabauda L.	Savoy Cabbage	Chou de Milan	Wirsing
Rosenkål	Brassica oleracea L. convar. oleracea var. gemmifera DC.	Brussels Sprouts	Chou de Bruxelles	Rosenkohl
Majroe	Brassica rapa L. var. rapa	[Spring] Turnip	Navet [de printemps]	Mairübe
Turnips	Brassica rapa L. var. rapa	[Autumn] Turnip	Navet [d'automne]	Herbstrübe
Rybs	Brassica rapa L. var. silvestris (Lam.) Briggs	Turnip Rape	Navette	Rübsen
Kommen	Carum carvi L.	Caraway	Carvi, Cumin des prés	Kümmel
Dvaergcypres	Chamaecyparis spp.	Chamaecyparis	Chamaecyparis	Scheinzypresse
Chrysanthemum	Chrysanthemum spp.	Chrysanthemum	Chrysanthème	Chrysantheme
Endivie	Cichorium endivia L.	Endive	Chicorée frisée, Scarole	Winterendivie
Cikorie	Cichorium intybus L.	Chicory	Chicorée, Endive	Wurzelzichorie, Salatzichorie
Melon	Cucumis melo L.	Melon	Melon	Melone
Agurk	Cucumis sativus L.	Cucumber, Gherkin	Concombre, Cornichon	Gurke
Centnergraeskar	Cucurbita maxima Duch.	Pumpkin	Potiron, Giraumon	Riesenkürbis
Mandelgraeskar	Cucurbita pepo L.	Pumpkin, Marrow, Courgette, Vegetable Marrow	Courge, Pâtisson, Citrouille	Gartenkürbis, Olkürbis
Kvaede	Cydonia spp.	Quince	Cognassier	Quitte
Kamgraes	Cynosurus cristatus L.	Crested Dog's-tail	Crételle	Kammgras
Hundegraes	Dactylis glomerata L.	Cocksfoot, Orchard Grass	Dactyle	Knaulgras

Dansk	Latine	English	Français	Deutsch
Dieffenbachia	Dieffenbachia Schott	Dieffenbachia, Tuft Root, Dumb Bane	Dieffenbachia	Dieffenbachia
Gulerod	Daucus carota L.	Carrot	Carotte	Möhre
Nellike	Dianthus caryophyllus L.	Carnation	Oeillet	Nelke
Koralranke	Euphorbia fulgens Karw.	Euphorbia fulgens	Euphorbia fulgens	Korallenranke
Kristi tornekrone	Euphorbia milii et hybridae	Christ's Thorn, Crown of Thorns	Epine du Christ	Christusdorn
Julestjerne (poinsettia)	Euphorbia pulcherrima Willd. ex Klotzsch	Poinsettia	Poinsettia	Poinsettie, Weihnachtsstern
Exacum	Exacum spp.	Exacum	Exacum	Blaues Lieschen
Svingel	Festuca spp.	Fescue	Fétuque	Schwingel
Havejordbaer	Fragaria X ananassa Duch.	Strawberry	Fraisier	Erdbeere
Freesia	Freesia spp.	Freesia	Freesia	Freesie
Fuchsia	Fuchsia spp.	Fuchsia	Fuchsia	Fuchsie
Julerose	Helleborus L.	Christmas Rose	Hellébore, Rose de Noël	Schneerose, Christusrose
Ridderstjerne (amaryllis)	Hippeastrum Herb.	Amaryllis	Amaryllis	Ritterstern, Amaryllis
Byg	Hordeum vulgare L.	Barley	Orge	Gerste
Hyacinth	Hyacinthus orientalis L.	Common Hyacinth	Jacinthe	Hyazinthe
Balsamin	Impatiens spp.	Balsam, Busy Lizzie, Touch-me-not	Balsamine, Impatiente	Springkraut, Balsamine
Ene	Juniperus spp.	Juniper	Genévrier	Wacholder
Kalanchoe	Kalanchoë Adans.	Kalanchoë	Kalanchoë	Kalanchoë
Salat	Lactuca sativa L.	Lettuce	Laitue	Salat
Karse	Lepidium sativum L.	Cress	Cresson alénois	Gartenkresse

Dansk	Latine	English	Français	Deutsch
Hør	Linum usitatissimum L.	Flax, Linseed	Lin	Lein
Rajgraes	Lolium spp.	Ryegrass	Ray-grass	Weidelgras
Hvid lupin	Lupinus albus L.	White Lupin	Lupin blanc	Weisslupine
Smalbladet lupin	Lupinus angustifolius L.	Blue Lupin	Lupin bleu	Blaue Lupine
Gul lupin	Lupinus luteus L.	Yellow Lupin	Lupin jaune	Gelbe Lupine
Tomat	Lycopersicon lycopersicum (L.) Karst. ex Farw.	Tomato	Tomate	Tomate
Aeble*	Malus sylvestris Mill.	Apple	Pommier	Apfel
Katost	Malvaceae	Mallow	Mauve	Malve
Levkøj	Matthiola spp.	Stock	Giroflée	Levkoje
Humlesneglebaelg	Medicago lupulina L.	Black Medick, Yellow Trefoil	Luzerne lupuline, Minette	Gelbklee (Hopfenklee)
Lucerne	Medicago sativa L.	Lucerne, Alfalfa	Luzerne	Luzerne
Sandlucerne	Medicago X varia Martyn	(Hybrid) Lucerne	Luzerne hybride	Bastardluzerne
Narcis	Narcissus L.	Narcissus, Daffodil, Jonquil	Narcisse, Jonquille	Narzisse
Opiatvalmue	Papaver somniferum L.	Opium Poppy	Oeillette, Pavot	Mohn
Pastinak	Pastinaca sativa L.	Parsnip	Panais	Pastinak
Pelargonie	Pelargonium L'Hér. (incl. P.-Grandiflorum-Hybridi; P.-Zonale-Hybridi et P.-Peltatum-Hybridi)	Geranium, Pelargonium, Stork's Bill	Géranium, Pelargonium	Pelargonie
Rodpersille	Petroselinum crispum (Mill.) Nym. ex A.W. Hill ssp. tuberosum (Bernh. ex Rchb.) Soó.	Turnip-rooted Parsley	Persil à grosse racine	Wurzelpetersilie

* Inclusive grundstammer / Including rootstocks / Y compris les porte-greffes / Einschliesslich Unterlagen

Dansk	Latine	English	Français	Deutsch
Kruspersille	Petroselinum crispum (Mill.) Nym. ex A.W. Hill ssp. crispum	Parsley	Persil	Blattpetersilie
Pralbønne	Phaseolus coccineus L.	Runner Bean, Kidney Bean	Haricot d'Espagne	Prunkbohne
Bønne	Phaseolus vulgaris L.	French Bean	Haricot	Gartenbohne
Knoldrottehale (lav timothe)	Phleum bertolonii DC.	Timothy	Fléole diploïde, Petite fléole	Zwiebellieschgras
Timothe	Phleum pratense L.	Timothy	Fléole des prés	Wiesenlieschgras
Aert	Pisum sativum L.	Pea	Pois	Erbse
Rapgraes	Poa spp.	Meadow-grass	Pâturin	Rispengras
Potentil	Potentilla fruticosa L.	Shrubby Cinquefoil	Potentille ligneuse	Strauchfingerkraut
Sødkirsebaer*	Prunus avium (L.) L.	Sweet Cherry	Cerisier (cerises douces: guignes, bigarreaux)	Süsskirsche
Surkirsebaer*	Prunus cerasus L.	Morello, Sour Cherry	Cerisier (cerises acides: griottes, amarelles)	Sauerkirsche
Blomme*	Prunus domestica L.	Plum	Prunier	Pflaume
Paere	Pyrus communis L.	Pear	Poirier	Birne
Raeddike	Raphanus sativus L. var. niger (Mill.) S. Kerner	Black Radish	Radis d'été, d'automne et d'hiver	Rettich
Olieraeddike	Raphanus sativus L. var. oleiformis Pers.	Fodder Radish	Radis oléifère, Radis chinois	Oelrettich
Radis	Raphanus sativus L. var. sativus	Radish	Radis de tous les mois	Radieschen

* Inclusive grundstammer / Including rootstocks / Y compris les porte-greffes / Einschliesslich Unterlagen

Dansk	Latine	English	Français	Deutsch
Rabarber	Rheum rhabarbarum L.	Rhubarb	Rhubarbe	Krauser Rhabarber
Ledkaktus, herunder påske- og pinsekaktus	Rhipsalidopsis Britt. et Rose et hybridae	Cactus with jointed stems, including Easter and Whitsun Cactus	Cactus à articles, y compris les cactus de Pâques et de la Pentecôte	Gliederkaktus, einschliessend Oster- und Pfingstkaktus
Rhododendron, herunder azalea	Rhododendron spp.	Rhododendron, including Azalea	Rhododendron, y compris Azalée	Rhododendron, einschl. Azalee
Solbaer	Ribes nigrum L.	Black Currant	Cassis	Schwarze Johannisbeere
Ribs	Ribes niveum Lindl. Ribes sylvestre (Lam.) Mert. et W.D.J. Koch	White and Red Currant	Groseillier à grappes	Weisse und Rote Johannisbeere
Stikkelsbaer	Ribes uva-crispa L.	Gooseberry	Groseillier à maquereau	Stachelbeere
Rose	Rosa L.	Rose	Rosier	Rose
Brombaer	Rubus fruticosus L.	Blackberry	Ronce fruitière	Brombeere
Hindbaer	Rubus idaeus L.	Raspberry	Framboisier	Himbeere
Saintpaulia	Saintpaulia ionantha H. Wendl.	African Violet	Saintpaulia	Usambaraveilchen
Skorsonerrod	Scorzonera hispanica L.	Black Salsify	Scorsonère, Salsifis noir	Schwarzwurzel
Ledkaktus, herunder november- og julekaktus	Schlumbergera Lem. et hybridae	Cactus with jointed stems, including November and Christmas Cactus	Cactus à articles, y compris les cactus de novembre et de Noël	Gliederkaktus, einschliessend November- und Weihnachtskaktus
Rug	Secale cereale L.	Rye	Seigle	Roggen
Gul sennep	Sinapis alba L.	White Mustard	Moutarde blanche	Weisser Senf
Kartoffel	Solanum tuberosum L.	Potato	Pomme de terre	Kartoffel
Fredslilje (spathiphyllum)	Spathiphyllum spp.	Spathiphyllum	Spathiphyllum	Spathiphyllum

Dansk	Latine	English	Français	Deutsch
Spinat	Spinacia oleracea L.	Spinach	Epinard	Spinat
Streptocarpus	Streptocarpus X hybridus Voss	Streptocarpus, Cape Primrose	Streptocarpus	Drehfrucht
Thuja	Thuja spp.	Thuya	Thuya	Lebensbaum
Alsikekløver	Trifolium hybridum L.	Alsike Clover	Trèfle hybride	Schwedenklee
Rødkløver	Trifolium pratense L.	Red Clover	Trèfle violet	Rotklee
Hvidkløver	Trifolium repens L.	White Clover	Trèfle blanc	Weissklee
Triticale	X Triticosecale Wittmack	Triticale	Triticale	Triticale
Alm. Hvede	Triticum aestivum L. emend. Fiori et Paoletti	Wheat, Soft Wheat, Bread Wheat	Blé tendre, Froment	Weichweizen
Durumhvede	Triticum durum Desf.	Durum Wheat, Macaroni Wheat, Hard Wheat	Blé dur	Hartweizen
Tulipan	Tulipa L.	Tulip	Tulipe	Tulpe
Blåbaer	Vaccinium corymbosum L. et hybridae	Blueberry	Myrtille	Kulturheidelbeere
Blåbaer	Vaccinium myrtillus L.	Bilberry, Whortle-berry, Blueberry	Myrtille	Heidelbeere
Valsk bønne	Vicia faba L.	Broad Bean, Horse Bean	Fève	Dicke Bohne (Puffbohne)
Hestebønne	Vicia faba L.	Field Bean, Tick Bean	Féverole	Ackerbohne
Foðervikke	Vicia sativa L.	Common Vetch	Vesce commune	Saatwicke
Majs	Zea mays L.	Maize	Maïs	Mais

NEWSLETTER

UPOV

The International Union for the Protection of New Varieties of Plants in 1985

State of the Union*

The Union currently comprises the following 17 member States: Belgium, Denmark, France, Germany (Federal Republic of), Hungary, Ireland, Israel, Italy, Japan, Netherlands, New Zealand, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States of America.

On December 31, 1985, all member States--except Belgium, Germany (Federal Republic of), Italy and Spain--were bound by the most recent Act of the International Convention for the Protection of New Varieties of Plants, namely, the Revised Act of October 23, 1978.[1]

The table appearing on page 16 summarizes the position of the various States vis-à-vis the various Acts of the Convention, as at August 1, 1986.

Sessions

During 1985, the various bodies of UPOV met as described below. Unless otherwise specified, the sessions took place in Geneva.

The Council held its nineteenth ordinary session on October 17 and 18, 1985, under the chairmanship of Mr. J. Rigot (Belgium). The session was attended by the representatives of the member States and by observers from seven non-member States, namely, Argentina, Chile, Finland, Greece, Morocco, Norway and Poland. The Food and Agriculture Organization of the United Nations (FAO) and the Commission of the European Communities (CEC) were also represented by observers.

The main decisions taken by the Council at its nineteenth ordinary session were:

(i) the report of the Secretary-General on the activities of the Union in 1984 and the first nine months of 1985, the report on his management and the financial situation of the Union in 1984, and the accounts of the Union for 1984, were approved;

(ii) the program and budget of the Union for the biennium 1986-87 were established;

(iii) the medium-term plan for 1988-91 was noted;

(iv) the reports on the progress made by the various committees and technical working parties, including their plans for future work were approved;

(v) the following officers were elected for a term of three years expiring at the end of the twenty-second ordinary session of the Council (1988):

(a) Mr. F. Espenhain (Denmark) was elected Chairman of the Administrative and Legal Committee;

(b) Mr. M. Simon (France) was elected Vice-Chairman of the Administrative and Legal Committee.

The Consultative Committee held its thirty-first session on March 29, 1985, and its thirty-second session on October 14 and 18, 1985, both under the chairmanship of Mr. J. Rigot (Belgium). The thirty-first session was devoted mainly to:

(i) further consideration of the arrangements made for the celebration in Paris, in 1986, of the 25th anniversary of the adoption of the UPOV Convention;

(ii) the establishment of guidelines for the 1986-87 program and budget and the 1988-91 medium-term plan;

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* For more recent developments, see Plant Variety Protection No. 50, page 2, and this issue, page 2.

(iii) the arrangements for the second Meeting with International Organizations, held on October 15 and 16, 1985.

The thirty-second session was devoted mainly to:

(iv) the preparation of the nineteenth ordinary session of the Council;

(v) an exchange of views concerning future cooperation between UPOV and the World Intellectual Property Organization (WIPO) regarding biotechnology and patents.

The Administrative and Legal Committee held its fifteenth session on March 27 and 28, 1985, under the Chairmanship of Mr. M. Heuver (Netherlands), and its sixteenth session on November 14 and 15, 1985, under the chairmanship of Mr. F. Espenhain (Denmark). Both sessions were attended by representatives from member States and by an observer from the CEC.

At both sessions, the Administrative and Legal Committee noted the latest developments regarding amendments to national plant variety protection legislation, changes in the fees payable by applicants, the extension of lists of species eligible for protection and the enlargement of the network of bilateral agreements for cooperation in the testing of varieties.

Furthermore, at its fifteenth session, the Administrative and Legal Committee considered a number of questions in preparation for the second Meeting with International Organizations, held in October 1985, and subsequently, at its sixteenth session, it examined the views expressed by the international non-governmental organizations at that meeting. The subjects discussed at the Meeting with International Organizations were:

(i) minimum distances between varieties;

(ii) international cooperation;

(iii) application of the UPOV Convention to botanical genera and species;

(iv) appropriate protection of the results of biotechnological developments by industrial patents and/or plant breeders' rights;

(v) scope of protection.

As far as the question of minimum distances between varieties is concerned, the Administrative and Legal Committee noted that organizations generally accepted its earlier view, based on discussions in the Technical Committee, that decisions could only be taken on a species-by-species basis. It also noted the proposal by one participant at the meeting that decisions on whether to grant protection should be based on a weighing of similarities and differences and not just, as at present, on the establishment of a clear difference for at least one important characteristic, since use of the latter criterion facilitated the activities of both infringers and plagiarists. The Administrative and Legal Committee decided that the Office of the Union should prepare a document for its future consideration, presenting the legal and scientific facts that provide the basis on which decisions on minimum distances are currently taken in the UPOV member States.

As far as international cooperation between the plant variety protection offices in the examination of varieties is concerned, the Administrative and Legal Committee noted that, whilst breeders of certain crops were still somewhat reluctant to accept the idea of centralized examination, recognition of the value to breeders of the continued development of the network of bilateral agreements was in general increasing. The Administrative and Legal Committee also noted that the recently formalized practice of taking over examination reports, with no centralization, placed a heavy burden on offices since they had to maintain their examination facilities and, in particular, their reference collections at a time when, as a consequence of the new practice, income from fees for examinations was decreasing. The Administrative and Legal Committee concluded that it might not always be possible in the long term to satisfy those breeders who wished to be able to choose the country in which their varieties were to be examined.

As far as the question of the application of the UPOV Convention to botanical genera and species is concerned, the Administrative and Legal Committee noted that the organizations were generally strongly in favor of the widest possible application of the Convention, and that they welcomed the

draft recommendations prepared by it with a view to stimulating harmonization of the national lists of species eligible for protection. The Administrative and Legal Committee decided to submit the draft recommendations, as amended following consideration of comments made by the organizations, to the Council for adoption at its next ordinary session. The Administrative and Legal Committee also decided, in that connection, to ask the organizations to indicate the species which they wished each member State to add to its list of protected species and to give an order of priority for each species concerned.

The Administrative and Legal Committee, in connection with the work of its Biotechnology Subgroup, sought the views of the organizations on the important question of the appropriate protection of the results of biotechnological developments by industrial patents and/or plant breeders' rights. It became apparent from the detailed discussion on that subject that organizations were still in the process of formulating their positions. Nevertheless, the views expressed as to the best way to provide appropriate protection will be of great assistance to the Biotechnology Subgroup in its efforts to identify overlaps and conflicts between patent and plant breeders' rights laws, and to UPOV in its participation in the general debate on biotechnology and intellectual property protection systems.

The Administrative and Legal Committee noted the request of the organizations that UPOV and its member States should review the scope of protection provided for in the Convention and in national laws. It decided that it would consider that request at its next (seventeenth) session.

In view of the strong objections voiced by some organizations about the recently adopted UPOV Recommendations on Variety Denominations, the Administrative and Legal Committee decided to convene a meeting of experts from UPOV and the interested organizations, early in 1986, at which those objections could be considered in detail.

The Technical Committee held its twenty-first session on November 12 and 13, 1985, under the chairmanship of Dr. J.-M. Elena Rosselló (Spain). The session was attended by representatives from member States and by an observer from the Commission of the European Communities.

The main business of the session was as follows:

The Technical Committee adopted 14 Test Guidelines submitted:

(i) by the Technical Working Party for Agricultural Crops, for Red Clover (TG/5/4), for Rice (TG/16/4), for White Clover (TG/38/6) (all three being revisions of the existing Test Guidelines), for Cotton (TG/88/3) and for Groundnut (TG/93/3);

(ii) by the Technical Working Party for Fruit Crops, for Vine (TG/50/5) (a revision of the existing Test Guidelines), for Avocado (TG/97/3), for Kiwifruit (TG/98/3), for Olive (TG/99/3) and for Quince (TG/100/3);

(iii) by the Technical Working Party for Ornamental Plants and Forest Trees, for Streptocarpus (TG/47/5) (a revision of the existing Test Guidelines), for Willow (TG/72/4), for Ling, Scotch Heather (TG/94/3) and for Lagerstroemia (TG/95/3).

As in previous years, the Technical Committee examined a number of questions, brought to its attention by the five Technical Working Parties, that had arisen from the practical experience gained by the offices of member States when conducting tests for distinctness, homogeneity and uniformity in the framework of their examination of new varieties.

Following discussions at the second Meeting with International Organizations and at the subsequent sessions of the Consultative Committee and Council, the Technical Committee decided to invite those professional organizations that had expressed a wish to participate more actively in the preparation of Test Guidelines to nominate a technical expert for each of the species for which the Technical Working Parties were planning to establish new Test Guidelines or to revise existing ones in the near future. The list of technical experts, once established, should assist the Chairman of the various Technical Working Parties in deciding which experts should be invited to specific sessions of their respective bodies. Furthermore, noting the work being done on variety description in certain specialized bodies of the Commission of the European Communities, the Technical Committee decided that it should be invited to send a technical expert to sessions of the Technical Working Parties for Agricultural Crops, for Vegetables and possibly for Fruit Crops.

The Technical Committee approved proposals for a new standard format for Test Guidelines and agreed that it should be ussd as the basis for the establishment of all future Test Guidelines.

The Technical Committee noted a report on the further comparison of various color charts. It also welcomed the news that the RHS (Royal Horticultural Society) Colour Chart was to be reprinted.

Among the other matters considered by the Technical Committee were: an interim report on the possibility of replacing the present UPOV criteria used for the assessment of distinctness by the combined over-years analysis method; the compilation of a list of reference books and other documents used in connection with variety testing; a draft for a revised version of the UPOV Model for a Report on Technical Examination; the results of the first year of the study on the use of various electrophoretic methods on wheat.

The Technical Committee received reports on the progress of the work of the Technical Working Parties, gave guidance on a number of questions raised by them and instructed them on the major aspects of their future work.

The Technical Working Party on Automation and Computer Programs held its third session in Wageningen (Netherlands) from May 8 to 10, 1985, under the chairmanship of Mrs. V. Silvey (United Kingdom). The task assigned to the said Working Party is that of studying the harmonization of automation and computer programs used by the authorities of the member States in carrying out the examination of new varieties and in generally administering their plant variety protection legislation. The Working Party confirmed that, from a statistical point of view, the combined over-years analysis method should replace the present UPOV criteria for the testing of distinctness, but that the practical implications of the change had to be studied further before a definitive proposal could be made to the Technical Committee. It also agreed to investigate a possible alternative to the UPOV method for the testing of homogeneity. Other matters considered by the Working Party were: progress with the harmonization of the annual lists of varieties under test exchanged between members States; exchange of proposed variety denominations by electronic mail; standardization of the layout of variety descriptions; linking national authorities via electronic mail and packet switching.

The Technical Working Party for Agricultural Crops held its fourteenth session in Hanover (Federal Republic of Germany) from June 5 to 7, 1985, under the chairmanship of Mr. J. Guiard (France). In addition to its work on the five Test Guidelines for agricultural crops adopted by the Technical Committee, the said Working Party completed the preparation of the first draft of the Test Guidelines for Potato (revision) for submission to the professional organizations for comment.

The Technical Working Party for Fruit Crops held its sixteenth session in Aarslev (Denmark) from June 19 to 21, 1985, under the chairmanship of Mr. F. Schneider (Netherlands). In addition to its work on the five Test Guidelines for fruit crops adopted by the Technical Committee, the said Working Party completed the preparation of first drafts of the Test Guidelines for Apple and for Raspberry (both revisions) for submission to the professional organizations for comment.

The Technical Working Party for Ornamental Plants and Forest Trees held its eighteenth session in Aarslev (Denmark) from June 25 to 27, 1985, under the chairmanship of Mr. B. Bar-Tel (Israel). In addition to its work on the four Test Guidelines for ornamental plants and forest trees adopted by the Technical Committee, the said Working Party completed the preparation of first drafts of the Test Guidelines for Christmas Cactus, Easter Cactus, for Impatiens and for Juniper for submission to the professional organizations for comment.

The Technical Working Party for Vegetables held its eighteenth session in Cambridge (United Kingdom) from July 9 to 12, 1985, under the chairmanship of Dr. J. Habben (Federal Republic of Germany). It completed the preparation of first drafts of the Test Guidelines for Turnip, Turnip Rape (revision) and for Melon for submission to the professional organizations for comment.

Contacts with States and Organizations

Of the various contacts the Office of the Union had during 1985, the following deserve special mention: in May, the Vice Secretary-General gave a lecture on UPOV at the International Spanish/Latin American Course on Seed Technology, organized by the Spanish Ministry of Agriculture, Fisheries and Food and held in Madrid; in December, the Vice Secretary-General visited the competent authorities of the Argentine Republic in Buenos Aires, at their invitation, for discussions on their legislation on plant variety protection and to give a lecture on "International Regulation of Property in Cultivars - A World View; Biotechnology and Its Implications for Property in Cultivars" at a workshop on the "Regulation of Property in Cultivars and Technology Transfer," organized by the National Institute of Industrial Technology (INTI), in cooperation with the National Institute of Agricultural Technology (INTA).

UPOV was represented: (i) at two meetings held at FAO headquarters in Rome, the first, in March, being a meeting of the Commission on Plant Genetic Resources and the second, in November, being a meeting of Commission II of the twenty-third session of the Conference of FAO; (ii) at the eleventh Pan-American Seeds Seminar (PSS), held in November in Cali, Colombia.

UPOV was also represented: (i) at two meetings of the International Association of Horticultural Producers (AIPH), the first, in January in Berlin (West), being a meeting of the AIPH Committee for the Protection of Plant Breeders' Rights and the second, in August in Helsingborg, Sweden, being the thirty-seventh AIPH Congress; (ii) at the annual Congresses of the International Federation of the Seed Trade (FIS) and of the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), both held in June in Killarney, Ireland.

In October 1985, the second Meeting with International Organizations was held at the headquarters of UPOV in Geneva. Information on the subjects discussed at that meeting is given in the earlier description of the work of the Administrative and Legal Committee. The following non-governmental organizations were represented: Association of Plant Breeders of the European Economic Community (COMASSO), International Association for the Proetction of Industrial Property (AIPPI), AIPH, ASSINSEL, International Community of Breeders of Asexually Reproduced Ornamental and Fruit Tree Varieties (CIOPORA), FIS, International Chamber of Commerce (ICC). A record of the meeting is reproduced in document IOM/II/8.

Immediately after the above-mentioned meeting, there was also a brief discussion on the UPOV Recommendations on Variety Denominations, adopted by the Council in October 1984, at its eighteenth ordinary session.

Publications

In 1985, the Office of the Union published seven issues of Plant Variety Protection - Gazette and Newsletter of the International Union for the Protection of New Varieties of Plants; the Records of the 1984 Symposium on "Industrial Patents and Plant Breeders' Rights - Their Proper Fields and Possibilities for Their Demarcation," in English, French, German and Spanish (UPOV publications 342 (E), (F), (G) and (S), respectively); 14 Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability (for details, see the above report on the work of the Technical Committee); and a supplement to the Collection of the Texts of the UPOV Convention and Other Important Documents Established by UPOV (UPOV publications 644 (E), (F) and (G), respectively). It also made the final arrangements for the publication of the Collection of Plant Variety Protection Laws and Treaties (UPOV publication 651(E)).

Membership of the Union (as at August 1, 1986)

State	Date of Entry into Force of*: Convention of 1961	Additional Act of 1972	Geneva Act of 1978
Belgium	December 5, 1976	February 11, 1977	-
Canada**	-	-	-
Denmark	October 6, 1968	February 11, 1977	November 8, 1981
France	October 3, 1971	February 11, 1977	March 17, 1983
Germany (Federal Republic of)	August 10, 1968	February 11, 1977	April 12, 1986
Hungary	-	-	April 16, 1983
Ireland	-	-	November 8, 1981
Israel	December 12, 1979	December 12, 1979	May 12, 1984
Italy	July 1, 1977	July 1, 1977	May 28, 1986
Japan	-	-	September 3, 1982
Mexico**	-	-	-
Netherlands	August 10, 1968	February 11, 1977	September 2, 1984
New Zealand	-	-	November 8, 1981
South Africa	November 6, 1977	November 6, 1977	November 8, 1981
Spain	May 18, 1980	May 18, 1980	-
Sweden	December 17, 1971	February 11, 1977	January 1, 1983
Switzerland	July 10, 1977	July 10, 1977	November 8, 1981
United Kingdom	August 10, 1968	July 31, 1980	September 24, 1983
United States of America	-	-	November 8, 1981
Total (17 member States)	12	12	13

* Full titles: Convention of 1961: International Convention for the Protection of New Varieties of Plants of December 2, 1961; Additional Act of 1972: Additional Act of November 10, 1972, Amending the International Convention for the Protection of New Varieties of Plants; Geneva Act of 1978: International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978.

** Not yet a member State of UPOV. Canada signed the Geneva Act of 1978 on October 31, 1978, and Mexico on July 25, 1979.

FEDERAL REPUBLIC OF GERMANY

The Plant Variety Protection Law*

of December 11, 1985**

CHAPTER ONE

CONDITIONS AND CONTENT OF PLANT VARIETY PROTECTION

Article 1

Conditions for Plant Variety Protection

(1) Protection shall be granted for a plant variety (hereinafter referred to as a "variety") of a species included in the List of Species under this Law, provided such variety is

1. distinct,
2. homogeneous,
3. stable,
4. new and
5. designated by means of a registrable variety denomination.

(2) The Federal Minister for Food, Agriculture and Forestry shall be empowered to establish the List of Species under this Law by statutory order. The List of Species shall include all those species of which the varieties were entitled to protection on the entry into force of this Law. Further species shall be included where

1. the trade in propagating material of varieties belonging to such species has assumed or is expected to assume sufficient importance and
2. the requirements of the necessary examinations of varieties of such species have been met.

Article 2

Definitions

For the purposes of this Law:

1. "Species" shall mean species of plants, and also groupings and subdivisions of species of plants,
2. "Propagating material" shall mean plants and parts of plants, including seeds, intended for the production of plants or for any other growing,
3. "Marketing" shall mean offering, keeping available for sale, placing on sale or any kind of disposing of to other parties,
4. "Filing date" shall mean the day on which the application for plant variety protection is received by the Federal Office of Plant Varieties,

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* German title: Sortenschutzgesetz
Translation by the Office of the Union of the text published in the Bundesgesetzblatt, Part I, of December 17, 1985, on pages 2170 to 2180.

** Entry into force: December 18, 1985

5. "Member State" shall mean a Member State of the European Economic Community,
6. "Union State" shall mean a State that belongs to the Union for the Protection of New Varieties of Plants set up in accordance with the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (BGBl. 1968 II p. 248) in its version applicable in each case.

Article 2

Distinctness

(1) A variety shall be deemed to be distinct when its plants are clearly distinguishable by the expression of at least one important characteristic from the plants of all other varieties that are a matter of common knowledge on the filing date. The Federal Office of Plant Varieties shall communicate on request for every species those characteristics it deems important for the distinctness of varieties of that species; the characteristics must be capable of precise recognition and description.

(2) A variety shall be deemed to be a matter of common knowledge, in particular, when it has already been entered in an official list of varieties, precisely described in a publication, notoriously cultivated or notoriously included in a reference collection or when propagating material or harvested material of the variety has already been commercially marketed. Where the grant of variety protection has been applied for in respect of that variety, it shall be deemed to be a matter of common knowledge as from the filing date, subject to acceptance of the application; the same shall apply where approval has been applied for in respect of the variety under the Seed Trade Law.

Article 4

Homogeneity

A variety shall be deemed to be homogeneous when its plants, apart from a small number of deviations, and taking into account the particularities of their sexual reproduction or vegetative propagation, are sufficiently identical in the expression of those characteristics that are important for distinctness.

Article 5

Stability

A variety shall be deemed to be stable when the characteristics of its plants that are important for distinctness correspond after each propagation, or, in the case of a propagation cycle, after each such cycle, to the expressions determined for the variety.

Article 6

Novelty

(1) A variety shall be deemed to be new when propagating material or harvested material of the variety has not been commercially marketed with the consent of the entitled person or of his predecessor in title prior to the filing date or has only been commercially marketed within the following periods of time:

1. one year prior to the filing date within the territorial scope of this Law,
2. four years prior to the filing date outside the territorial scope of this Law,
3. four years prior to inclusion of the species in the List of Species where the filing date lies within one year of such inclusion.

(2) The Federal Minister for Food, Agriculture and Forestry shall be empowered, in respect of the implementation of the International Convention for the Protection of New Varieties of Plants, to extend by means of statutory order the periods of time referred to in paragraph (1), items 2 and 3, from four years to six years in respect of vine and tree species.

Article 7

Variety Denomination

(1) A variety denomination shall be registrable if no grounds for exclusion under paragraphs (2) or (3) exist.

(2) Grounds for exclusion shall exist when the variety denomination

1. is not suitable to identify the variety, particularly for linguistic reasons,
2. possesses no distinctive nature,
3. consists exclusively of figures,
4. is identical to or may be confused with a variety denomination under which a variety of the same or of a related species is entered in an official list of varieties in a Member State or a Union State, or was so entered, or where propagating material of such variety has been marketed, unless the variety is no longer entered and no longer cultivated and its denomination has acquired no special significance,
5. may mislead, particularly when it is likely to cause erroneous conceptions as to the origin, the properties or the value of the variety, or as to the original breeder, discoverer or other entitled person,
6. may cause offence.

The Federal Office of Plant Varieties shall communicate those species it deems to be related within the meaning of item 4.

(3) Where the variety has already been entered in an official list of varieties or entry in such list has been applied for

1. in another Member State or Union State or
2. in another State which, according to a declaration in legal acts of organs of the European Communities, to be notified by the Federal Office of Plant Varieties, evaluates varieties in accordance with rules that correspond to the Guidelines for the Common Catalogues of Varieties,

only the variety denomination so entered or declared shall be registrable. This shall not apply where grounds for exclusion under paragraph (2) are opposed thereto or the applicant reasonably establishes that an opposing third party right exists.

Article 8

Entitlement to Variety Protection

(1) The original breeder or discoverer of the variety or his successor in title shall be entitled to variety protection. If more than one person has bred or discovered the variety jointly, the entitlement shall belong to such persons jointly. If more than one person has bred or discovered the variety independently, the entitlement shall belong to the person who files the first application for variety protection.

(2) The applicant shall be considered the entitled person in proceedings before the Federal Office of Plant Varieties unless it comes to the knowledge of the Federal Office of Plant Varieties that he is not entitled to variety protection.

Article 9

Persons not Entitled to Apply

(1) If a person not entitled to protection has filed an application, the entitled person may require that the applicant transfer to him the claim to the grant of variety protection.

(2) If variety protection has been granted to a person not entitled thereto, the entitled person may require that the owner of variety protection transfer variety protection to him. Such claim shall expire five years after notification of the entry in the Plant Variety Protection Register, except where the owner of variety protection was not acting in good faith in obtaining variety protection.

Article 10

Effect of Variety Protection

Variety protection shall have the effect that the owner of variety protection alone shall be entitled to

1. commercially market propagating material of the variety or produce it for such purpose,
2. utilize plants or parts of plants of the variety, normally marketed for purposes other than propagation, for the commercial production of ornamental plants or cut flowers,
3. use propagating material of the variety to produce propagating material of another variety where propagating material of the protected variety must be used repeatedly to produce the propagating material of the other variety, and
4. introduce propagating material of the variety originating within the territorial scope of this Law into an area outside the Member States in which German nationals or persons having their place of residence or place of business within the territorial scope of this Law are not granted corresponding protection for varieties of that species.

The use of propagating material of a protected variety for the breeding of a new variety shall not require the consent of the owner of variety protection.

Article 11

Legal Succession, Exploitation Rights

(1) The right to variety protection, the claim to granting of variety protection and the variety protection itself shall be transferable. The obligation to have the Plant Variety Protection Register corrected shall be incumbent, in the event of doubt, on the person hitherto entitled.

(2) Variety protection may be the subject of exclusive or non-exclusive exploitation rights.

Article 12

Compulsory Exploitation Rights

(1) The Federal Office of Plant Varieties may on request, insofar as it appears justified in the public interest, taking into account the economic acceptability for the owner of variety protection, grant a compulsory exploitation right in respect of variety protection as regards the rights under Article 10, first sentence, items 1 and 3, under reasonable conditions where the owner of variety protection has granted no exploitation rights or insufficient exploitation rights. When granting the compulsory exploitation right, the Federal Office of Plant Varieties shall determine the conditions thereof, particularly the amount of the remuneration to be paid to the owner of variety protection.

(2) On expiry of one year after the grant of the compulsory exploitation right, any of the parties may request renewed determination of the conditions. The request may be repeated each time on expiry of one year; the sole grounds for such request may be that the circumstances that were decisive for the determination have in the meantime undergone considerable change.

(3) Before taking its decision on the grant of a compulsory exploitation right or on a new determination, the Federal Office of Plant Varieties shall hear the professional associations concerned.

(4) If a compulsory exploitation right has been granted for a variety belonging to a species subject to the Seed Trade Law, the owner of variety protection may require information from the responsible authorities

1. on the identity of the person who has applied for seed recognition in respect of propagating material of the protected variety,
2. on the size of the propagating surfaces stated in the request for recognition,
3. on the weight or quantity that has been stated in respect of the lots.

Article 13

Duration of Variety Protection

(1) Variety protection shall extend to the end of the twenty-fifth calendar year or, in the case of hop, potato, vine and the tree species specified in a statutory order under Article 6(2), the end of the thirtieth calendar year following the year of grant.

(2) Where variety protection is granted for a variety of a species newly entered in the List of Species in application of Article 6(1), item 3, in conjunction also with paragraph (2), the duration of variety protection shall be reduced by the number of full calendar years between the start of marketing and the filing date.

Article 14

Use of the Variety Denomination

(1) Propagating material of a protected variety may only be commercially marketed if the variety denomination is stated in relation thereto; where it is stated in writing, it shall be readily distinguishable and clearly legible. This shall also apply after expiry of variety protection.

(2) Rights in a designation that is identical with the variety denomination may not be used to prohibit the use of the variety denomination for the variety. Prior rights of third parties shall not be affected.

(3) The variety denomination of a protected variety or of a variety for which breeders' rights have been granted in another Union State or a designation which may be confused with it may not be used for another variety of the same or of a related species.

Article 15

Scope of Application in Respect of Persons

(1) The rights afforded by this Law may only be acquired by

1. German nationals within the meaning of Article 116(1) of the Basic Law and natural and legal persons and unincorporated trading companies having their place of residence or registered offices within the territorial scope of this Law,
2. nationals of another Member State and natural and legal persons and unincorporated trading companies having their place of residence or registered offices in another Member State,

3. nationals of another Union State and natural and legal persons and unincorporated trading companies having their place of residence or registered offices in another Union State, if
   (a) such Union State affords breeders' rights for varieties of the same species or
   (b) the variety belongs to a species listed in the annex to the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (BGBl. 1968 II p. 428) and such Union State is bound by the said version of the Convention; where such relationship is terminated, it shall have no effect on previously granted variety protection,
4. other natural and legal persons and unincorporated trading companies where the State to which they belong or in which they have their place of residence or registered offices affords corresponding protection to German nationals or persons having their place of residence or registered offices within the territorial scope of this Law according to a notification of the Federal Minister for Food, Agriculture and Forestry in the Bundesgesetzblatt.

(2) Any person who has neither his place of residence nor an establishment in a Member State may only participate in procedures governed by this Law or claim rights under this Law if he appoints a representative having his place of residence or business premises within the territorial scope of this Law (procedural representative). The latter shall be entitled to act as representative in procedures before the Federal Office of Plant Varieties and in legal disputes concerning variety protection; he may also institute criminal proceedings.

CHAPTER TWO

THE FEDERAL OFFICE OF PLANT VARIETIES

Article 16

Nature and Tasks

(1) The Federal Office of Plant Varieties shall be an autonomous senior federal authority within the purview of the Federal Minister for Food, Agriculture and Forestry.

(2) The Federal Office of Plant Varieties shall be responsible for the granting of variety protection and for related affairs. It shall keep the Plant Variety Protection Register and shall verify the continuing existence of the protected varieties.

Article 17

Members

(1) The Federal Office of Plant Varieties shall consist of a President and other members. They must have special competence in the field of plant varieties (technical members) or be qualified for judicial office under the German Law Relating to Judges (legal members). They shall be appointed by the Federal Minister for Food, Agriculture and Forestry for the duration of their activity with the Federal Office of Plant Varieties.

(2) As a rule, only such person shall be appointed as a technical member who has successfully undergone a State or academic examination following a scientific course at a university in a subject relevant to his activity at the Federal Office of Plant Varieties within the territorial scope of this Law or a final examination following equivalent studies outside the territorial scope of this Law and has also worked for at least three years in the corresponding technical area and who possesses the necessary legal knowledge.

(3) Where there exists a need that is expected to be limited in time, the President may appoint persons as assistant members to carry out the duties of members of the Federal Office of Plant Varieties. Such appointments may be for a specified period or for as long as needed and may not be terminated during such period. In other respects, the provisions regarding members shall also apply to assistant members.

Article 18

Examining Sections and Opposition Boards

(1) There shall be set up within the Federal Office of Plant Varieties

1. examining sections,
2. opposition boards for variety protection matters.

The President shall determine their number and shall decide on the allocation of duties.

(2) The examining sections shall be responsible for decisions on

1. applications for variety protection,
2. objections under Article 25,
3. cancellation of the grant of variety protection in respect of the variety denomination,
4. entry of a different variety denomination and the establishment of a variety denomination under Article 30(3),
5. the grant of a compulsory exploitation right and the determination of the conditions,
6. withdrawal and annulment of the grant of variety protection.

(3) The opposition boards shall be responsible for decisions on opposition against decisions taken by the examining sections.

Article 19

Composition of the Examining Sections

(1) The examining sections shall in each case comprise one technical member of the Federal Office of Plant Varieties designated by the President.

(2) Decisions in the cases under Article 18(2), items 2, 5 and 6, shall be taken by the examining sections composed of three members of the Federal Office of Plant Varieties designated by the President, one of whom shall be a legal member.

Article 20

Composition of the Opposition Boards

(1) The opposition boards shall in each case comprise the President or one member of the Federal Office of Plant Varieties designated by the President as chairman, one legal member and one technical member of the Federal Office of Plant Varieties designated by the President as assessors, and two honorary assessors. The opposition boards shall be empowered to deliberate and make decisions provided that the chairman, the legal assessor and one honorary assessor are present.

(2) The honorary assessors shall be appointed by the Federal Minister for Food, Agriculture and Forestry for a term of six years; they may be reappointed. Where an honorary assessor retires prematurely, his replacement shall be appointed for the remaining term of office. The honorary assessors should possess special technical knowledge in the field of plant varieties. Owners

or employees of breeding establishments and employees of breeders' associations shall not be appointed.

(3) An alternate shall be appointed for each honorary assessor. Paragraph (2) shall apply mutatis mutandis.

CHAPTER THREE

PROCEEDINGS BEFORE THE FEDERAL OFFICE OF PLANT VARIETIES

Article 21

Formal Administrative Procedure

The provisions of Articles 63 to 69 and 71 of the Law on Administrative Procedure concerning formal administrative procedures shall apply to proceedings before the examining sections and the opposition boards.

Article 22

The Application for Variety Protection

(1) The applicant shall state the name of the original breeder or breeders or discoverer or discoverers of the variety in the application for variety protection and shall certify that, to the best of his knowledge, no further persons have been involved in the breeding or discovery of the variety. If the applicant is not the original breeder or discoverer or is not the only original breeder or discoverer, he shall be required to state how the variety came into his possession. The Federal Office of Plant Varieties shall not be obliged to verify such statements.

(2) The applicant shall state the variety denomination. For the purposes of the procedure for granting variety protection, he may state, with the consent of the Federal Office of Plant Varieties, a provisional designation.

Article 23

Chronological Order of the Application for Variety Protection

(1) The chronological order of the application for variety protection shall be determined, in cases of doubt, by the order of the entries in the register of incoming mail at the Federal Office of Plant Varieties.

(2) If the applicant has already applied for breeders' rights for the variety in another Union State, he shall be entitled within one year of the correct filing of the initial application to claim the date of that application as priority for the application for variety protection. Priority may only be claimed in the application for variety protection. It shall lapse if the applicant does not submit to the Federal Office of Plant Varieties within three months of the date of the application copies of the documents of the initial application that have been certified by the authorities responsible for such application.

(3) If the variety denomination has been entered on behalf of the applicant in the Trademark Register at the Patent Office as a trademark, or if entry has been applied for, for goods that comprise the propagating material of the variety, he may claim the date of the trademark application as priority for the variety denomination. Priority shall lapse if the applicant does not submit to the Federal Office of Plant Varieties within three months of notifying the variety denomination a certificate issued by the Patent Office concerning the entry or application in respect of the trademark. The first and second sentences shall apply mutatis mutandis to marks registered under the Madrid

Agreement Concerning the International Registration of Marks of April 14, 1891, in its currently applicable version and which enjoy protection within the territorial scope of this Law.

Article 24

Publication of the Application for Variety Protection

(1) The Federal Office of Plant Varieties shall publish the application for variety protection together with a statement of the species, the proposed variety denomination or provisional designation, the application date and the name and address of the applicant, of the original breeder or discoverer and of a procedural representative.

(2) If the application is withdrawn following publication, it shall be deemed under Article 27(2) not to have been filed on grounds of failure to comply or if the grant of variety protection has been refused, these circumstances shall likewise be published by the Federal Office of Plant Varieties.

Article 25

Objections

(1) Any person may lodge an objection to the grant of variety protection with the Federal Office of Plant Varieties.

(2) Objections may only be based on the allegation that

1. the variety is not distinct, not homogeneous, not stable or not new,
2. the applicant is not entitled or
3. the variety denomination is not registrable.

(3) The time limit for objections shall be

1. the granting of variety protection, in the case of objections under paragraph (2), item 1,
2. three months after publication of the application for variety protection, in the case of objections under paragraph (2), item 2,
3. three months after publication of the proposed variety denomination in the case of objections under paragraph (2), item 3.

(4) The grounds for the objection shall be stated. The facts and elements of proof supporting the allegation under paragraph (2) shall be furnished in detail. Except where already set forth in the declaration of objection, they shall be furnished before the expiry of the time limit for objections.

(5) Where an objection under paragraph (2), item 2, leads to withdrawal of the application for variety protection or to refusal of grant of variety protection and if the objecting party files an application for variety protection within one month following withdrawal or within one month of the date on which the refusal becomes final in respect of the same variety, he may require that the date of the prior application shall apply to his application as the filing date.

Article 26

Examination

(1) For the purposes of examining whether a variety fulfills the requirements for the grant of variety protection, the Federal Office of Plant Varieties shall grow the variety or shall undertake any other necessary investigations. It may waive examination if it already has earlier examination findings of its own in its possession.

(2) The Federal Office of Plant Varieties may entrust growing or the other necessary investigations to other technically qualified services, even outside the territorial scope of this Law, and take into account the results of growing trials and other investigations carried out by such services.

(3) The Federal Office of Plant Varieties shall require the applicant to submit to the Office or to the service it designates, within a specified time limit, the necessary propagating and other material and the necessary further documents, to provide the necessary information and to permit its verification.

(4) Where the applicant claims priority under Article 23(2), he must submit the necessary propagating and other material and the necessary further documents within four years of the expiry of the priority period. He may not submit further propagating or further other material after such submission. If the first application is withdrawn or if the grant of breeders' rights is refused before the expiry of four years, the Federal Office of Plant Varieties may require the applicant to submit the propagating and other material in time for the following growing period and the other documents within a specified time limit.

(5) The Federal Office of Plant Varieties may supply authorities and services outside the territorial scope of this Law with information on examination results where necessary for mutual information.

(6) The Federal Office of Plant Varieties shall require the applicant to submit in writing within a specified time limit

1. a variety denomination, if he has stated a provisional designation,
2. another variety denomination, if the proposed denomination is not registrable.

Articles 24 and 25 shall apply mutatis mutandis.

Article 27

Failure to Comply

(1) If the applicant fails to comply, within the time limit notified to him, with a request of the Federal Office of Plant Varieties,

1. to submit the necessary propagating or other material or the necessary further documents,
2. to propose a variety denomination or
3. to pay the due examination fees,

the Federal Office of Plant Varieties may reject the application for variety protection if it has pointed out the consequences of failure to comply when notifying the time limit.

(2) If the applicant or the appellant does not pay the due fee for a decision on an application for variety protection or on an appeal, the application shall be deemed not to have been filed or the appeal not to have been lodged if the fee is not paid within one month of the Federal Office of Plant Varieties having notified the fee decision and thereby having pointed out the consequences of failure to comply.

Article 28

The Plant Variety Protection Register

(1) There shall be entered in the Plant Variety Protection Register, once the grant of variety protection has become final,

1. the species and the variety denomination,
2. the specified expressions of the characteristics important for distinctness; in the case of varieties whose plants are produced by crossing specific hereditary components, also reference thereto,

3. the name and address
   (a) of the original breeder or discoverer,
   (b) of the owner of variety protection,
   (c) of the procedural representative,
4. the time at which variety protection begins and ends, together with the reasons for the end of protection,
5. any exclusive exploitation right, including the name and address of its owner,
6. any compulsory exploitation right and the conditions laid down.

(2) The entry of the specified expressions of characteristics important for distinctness and the entry of the conditions attaching to a compulsory exploitation right may be replaced by a reference to documents of the Federal Office of Plant Varieties. The entry may be amended ex officio in respect of the number and type of characteristics or of the specified expressions of those characteristics, where necessary, in order to render the description of the variety comparable with the descriptions of other varieties.

(3) Amendments to the identity of the owner of variety protection or of a procedural representative shall only be entered if supporting evidence is provided. The registered owner of variety protection or procedural representative remains entitled and committed under this Law until any amendment is entered.

(4) The Federal Office of Plant Varieties shall publish the entries.

Article 29

Access

(1) All persons shall have access to
1. the Plant Variety Protection Register,
2. the documents
   (a) under Article 28(2), first sentence,
   (b) of a published application for variety protection and granted variety protection,
3. the growing
   (a) of a variety for the purpose of its examination,
   (b) of a variety for the purpose of verifying its continued existence.

(2) In the case of varieties whose plants are produced by crossing certain hereditary components, details of the hereditary components shall be excluded from access at the request of the person who has filed the application for variety protection. Such request may not be filed once the decision on the application for variety protection has been taken.

Article 30

Cancellation of Grant of Variety Protection in Respect of the Variety Denomination

(1) The grant of variety protection shall be withdrawn, insofar as it concerns the variety denomination, if grounds for exclusion under Article 7(2) or (3) existed at the time of entry and continue to exist. There shall be no claim to compensation for economic disadvantage under Article 48(3) of the Law on Administrative Procedure. Withdrawal on other grounds shall not be permitted.

(2) The grant of variety protection, insofar as it concerns the variety denomination, shall be cancelled if
1. grounds for exclusion under Article 7(2), items 5 or 6, subsequently occur,

2. a conflicting right can be proved and the owner of variety protection agrees to entry of another variety denomination,
3. the owner of variety protection has been prohibited by a final legal decision from using the variety denomination or
4. any other person required to use the variety denomination under Article 14(1) has been prohibited from using the variety denomination by a final legal decision and the owner of variety protection is a subsidiary party to the litigation or was informed of the proceedings, insofar as he was not prevented from asserting his rights by circumstances named in Article 68, second half-sentence, of the Code of Civil Procedure.

Cancellation on other grounds shall not be permissible.

(3) The Federal Office of Plant Varieties shall require the owner of variety protection to propose another variety denomination within a specified period of time. If that period of time expires without result, the Office may lay down a variety denomination ex officio. At the request of the owner of variety protection or of a third party, the Federal Office of Plant Varieties shall lay down a variety denomination if the petitioner can prove a justified interest. Articles 24 and 25 shall apply mutatis mutandis.

Article 31

Ending of Variety Protection

(1) Variety protection shall expire if the owner of variety protection makes a written denunciation to the Federal Office of Plant Varieties.

(2) The grant of variety protection shall be withdrawn if it transpires that on grant of variety protection the variety was not distinct or was not new. There shall be no claim to compensation for economic disadvantage under Article 48(3) of the Law on Administrative Procedure. Withdrawal on other grounds shall not be permissible.

(3) The grant of variety protection shall be cancelled if it transpires that the variety is not homogeneous or is not stable.

(4) In other cases, the grant of variety protection may only be cancelled if the owner of variety protection

1. has not complied with a request under Article 30(3) to propose another variety denomination,
2. has not fulfilled, despite a reminder, an obligation in respect of verification of the continued existence of the variety in accordance with a statutory order under Article 32(1) or
3. has not paid due annual fees within the additional time limits.

Article 32

Powers to Issue Procedural Regulations

The Federal Minister for Food, Agriculture and Forestry shall be empowered

1. to regulate details of the procedure before the Federal Office of Plant Varieties, including the selection of the characteristics important for distinctness, the determination of the scope of examination and the subsequent verification of the continued existence of the protected variety,
2. to determine the gazette for notification of the Federal Office of Plant Varieties,

by way of statutory order.

Article 33

Costs

(1) The Federal Office of Plant Varieties shall charge costs for its official acts under this Law (fees and expenses) and an annual fee for each commenced year of the duration of variety protection (protection year).

(2) The Federal Minister for Food, Agriculture and Forestry shall be empowered, in agreement with the Federal Minister for Finance, to determine by statutory order the acts for which fees are due and the rates of such fees, whereby he may provide for fixed rates or basic rates and may determine the time for payment of fees. The importance, the economic value and any other utility of the official act, including for breeding and for the general public, shall be taken into appropriate account. The individual fees may not exceed the following maximum rates:

1. for the decision on an application for variety protection	600 DM
2. for the examination of the variety each year or for each growing period	700 DM
3. for the decision on an appeal (appeals fee)	1,200 DM
4. for other official acts	800 DM
5. for the annual fee	1,500 DM.

Where it is necessary in individual cases to carry out an examination outside the usual framework of examinations of varieties of the same species, the fee for examination may be increased up to the amount of the administrative expenditure that it occasions, with a maximum, however, of ten times that fee. The person liable to pay the fee shall be heard if it is expected that the fee is to be increased.

(3) Only those expenses designated in Article 10(1), items 1 to 3 and 5, of the Law on Administrative Costs shall be charged.

(4) In the case of fees for the examination of a variety and for a negative decision on an application for variety protection, no reduction under Article 15(2) of the Law on Administrative Costs shall be granted.

(5) In the case of a successful appeal, the appeals fee shall be refunded. In the case of a successful appeal to the Patent Court or a successful legal appeal, the appeals fee shall be refunded on request. In the case of a partial success, the corresponding part of the appeals fee shall be refunded. However, the refund can be fully or partly refused if the decision is based on facts that could have been asserted or proved at an earlier date. Sentences 1 to 4 shall apply mutatis mutandis for expenditure in appeals procedures. There shall be no claim to refund of costs under Article 80 of the Law on Administrative Procedure.

CHAPTER FOUR

COURT PROCEEDINGS

Article 34

Appeals

(1) Appeals shall lie to the Patent Court from the decisions of the opposition boards.

(2) Within the time limit prescribed for filing appeals, a fee shall be payable in accordance with the Law on the Fees of the Patent Office and the Patent Court; if the fee is not paid, the appeal shall be deemed not to have been lodged.

(3) An appeal against the laying-down of a variety denomination under Article 30(3) or against a decision for which immediate enforcement has been ordered shall have no staying effect.

(4) The President of the Federal Office of Plant Varieties may be a party in appeal proceedings.

(5) A Chamber of Appeal shall rule on appeals. In the cases referred to in Article 18(2), items 3 and 4, it shall take its decisions with three legal members and in other cases with one legal member as chairman, a further legal member and two technical members.

Article 35

Appeals on Points of Law

(1) Appeals on points of law from decisions of the Chamber of Appeal shall lie to the Federal Court if the Chamber of Appeal so allows in its decision.

(2) Article 34(3) shall apply mutatis mutandis.

Article 36

Application of the Patent Law

Unless otherwise stipulated by Articles 34 and 35, the provisions of the Patent Law concerning appeals proceedings before the Patent Court and proceedings for appeals on points of law before the Federal Court and concerning assistance with the costs of proceedings shall apply mutatis mutandis to such proceedings.

CHAPTER FIVE

INFRINGEMENTS

Article 37

Civil Law Claims

(1) Whosoever without the consent of the owner of variety protection

1. commits any of the acts referred to in Article 10, first sentence, or
2. uses the variety denomination of a protected variety or a designation that may be confused with it for a different variety of the same or a related species

may be sued by the injured party to enjoin such infringement.

(2) Whosoever acts intentionally or negligently shall be liable for compensation to the injured party for the damage resulting from the act in question. In the event of slight negligence, the court may fix, in lieu of compensation, an indemnity within the limits of the damage to the injured party and the profit which has accrued to the infringer.

(3) The owner of variety protection may require equitable remuneration from any person who has performed one of the acts referred to in Article 10, first sentence, in the time between publication of the application and grant of variety protection.

(4) Claims shall be barred by prescription after three years from the time at which the owner of variety protection obtains knowledge of the act and of the identity of the infringer or, irrespective of such knowledge, after 30 years from the act.

(5) Claims deriving from other statutory provisions shall remain unaffected.

Article 38

Litigation with Respect to Plant Variety Protection

(1) All actions whereby a claim is asserted under Article 37(1) to (3) (plant variety protection litigation) shall be heard by the Landgerichte (provincial courts) irrespective of the value in dispute.

(2) The provincial governments shall have power to allot by statutory order variety protection litigation for the areas of a number of provincial courts to one such court where this serves the technical furtherance of the proceedings. The provincial governments may transfer such powers to the provincial administrations of justice.

(3) The parties may also be represented by attorneys at law admitted to practice in the courts before which the action or the appeal would have been heard in the absence of an arrangement under paragraph (2). Any additional costs incurred by a party by reason of the fact that it is represented by an attorney at law not admitted to practice in the court hearing the case shall not be refunded.

(4) Of the costs arising from the collaboration of a patent attorney, fees up to the amount of a full fee according to Article 11 of the Federal Regulations on Lawyers' Fees, together with the necessary expenses of the patent attorney, shall be allowed.

(5) If a representative is briefed, the place in which he has his business premises or, if he has no business premises, his place of residence, shall be deemed to be the place at which property is located within the meaning of Article 23 of the Code of Civil Procedure.

Article 39

Criminal Acts

(1) Whosoever, without being entitled thereto, performs any of the following acts shall be punished by imprisonment not exceeding one year or by a fine:

1. in contravention of Article 10, first sentence, item 1, markets propagating material or produces it for marketing,
2. in contravention of Article 10, first sentence, item 2, uses plants or parts of plants for the production of ornamental plants or cut flowers,
3. in contravention of Article 10, first sentence, item 3, uses propagating material for the production of propagating material of another variety or
4. in contravention of Article 10, first sentence, item 4, introduces propagating material into an area referred to therein.

(2) Such acts shall only be prosecuted on request.

(3) In the event of a conviction, the sentence shall be published if the injured party so requests and if he has a justified interest. The nature of the publication shall be laid down in the judgment.

Article 40

Offences

(1) Whosoever intentionally or negligently

1. in contravention of Article 14(1) markets propagating material without thereby stating the variety denomination or without stating it in the prescribed manner or
2. in contravention of Article 14(3) uses a variety denomination or a designation that may be confused with it for another variety of the same or of a related species,

shall be deemed to have committed an offence.

(2) Such offence may be liable to a fine not exceeding 10,000 Deutschmarks.

(3) The Federal Office of Plant Varieties shall constitute the administrative authority within the meaning of Article 36(1), item 1, of the Law on Offences.

CHAPTER SIX

FINAL PROVISIONS

Article 41

Relationship with Patents

(1) Article 2, item 2, second sentence, of the Patent Law shall also apply if an application for a patent has already been filed for the variety before the species to which the variety belongs was included in the List of Species.

(2) If a patent has been granted or applied for in respect of a variety or of a process for breeding the variety prior to the inclusion of the relevant species in the List of Species, the patentee or patent applicant or his successor in title shall be entitled to claim the date of the patent application as priority for an application for variety protection if he applies for the grant of variety protection in respect of that variety; Article 23(2), second and third sentences, shall apply mutatis mutandis. The term of the granted variety protection shall be reduced by the number of full calendar years that have elapsed between the filing of the patent application and the date of the variety protection application. Once the grant of variety protection has become final, rights in respect of the variety deriving from the patent or the patent application may no longer be asserted; pending patent procedures shall not be pursued.

Article 42

Transitional Provisions

(1) Unless otherwise stipulated in paragraphs (2) to (4), the provisions of this Law shall apply in respect of varieties for which, on entry into force of this Law, variety protection

1. still exists under the Seed Law as published in a consolidated version in the Bundesgesetzblatt, Part III, section No. 7822-1, and last amended by the Law of December 23, 1966 (BGBl. I page 686), in conjunction with Article 52(1) of the Varieties Protection Law of May 20, 1968 (BGBl. I page 427) in the version notified on January 4, 1977 (BGBl. I pages 105, 286) or
2. has been granted or applied for under the Varieties Protection Law of May 20, 1968, in the applicable version.

(2) Variety protection under paragraph (1), item 1, can only be withdrawn under Article 31(2) if it transpires that the requirements of Article 2(2) of the Seed Law were not fulfilled at the time variety protection was granted.

(3) The rights deriving from this Law may continue to be enjoyed by legal persons and unincorporated trading companies to which variety protection was granted under the hitherto applicable provisions or who have legitimately applied for variety protection under those provisions, even where the scope of application to persons of this Law under Article 15(1), item 1, does not extend to them.

(4) In the event of pending proceedings under paragraph (1), item 2, appeals from a decision of the examining section shall be transferred from the decision-making committee to the opposition boards and other proceedings from the decision-making committee to the examining sections.

Article 43

Repeal and Amendment of Statutory Provisions

(1) The following shall be repealed:

1. the Varieties Protection Law as notified on January 4, 1977 (BGBl. I page 105, 286), as amended by Article 3, item 3, of the Law of June 13, 1980 (BGBl. I page 677),
2. the Law on the Fees of the Patent Court in Plant Variety Protection Matters of May 20, 1968 (BGBl. I page 463), as amended by Article 9(1) of the Law of October 1, 1976 (BGBl. I page 2873),
3. the Law on the Charging of Costs Before the Federal Office of Plant Varieties of October 1, 1976 (BGBl. I page 2873),
4. the Ordinance on Fees at the Federal Office of Plant Varieties of October 25, 1976 (BGBl. I page 3033), as last amended by Ordinance of July 27, 1983 (BGBl. I page 1056),
5. the Ordinance on Remuneration for the Commercial Production of Certified Seed Potatoes of June 6, 1968 (BAnz. No. 107 of June 11, 1968).

(2) The Trademark Law as notified on January 2, 1968 (BGBl. I page 1), as last amended by Article 11 of the Law of July 26, 1979 (BGBl. I page 1269), and by Order of May 25, 1983 (BGBl. I page 607), shall be amended as follows:

1. Article 4 shall be amended as follows:
   (a) in paragraph (2), item 6 shall be deleted; the comma at the end of item 5 shall be replaced by a full stop;
   (b) the third sentence of paragraph (4) shall be deleted.
2. Article 5(4) shall be worded as follows:
   "(4) Opposition may be lodged against the registration of the newly-filed trademark on the grounds of a trademark filed earlier, within three months of publication, by any person who
   1. has previously filed an application for registration, in respect of identical or similar goods, of a trademark which is the same as the mark applied for (Article 31),
   2. on the grounds of earlier application or use, has acquired rights in another State in a trademark which is the same as the trademark applied for, for identical or similar goods, and who furnishes proof that the applicant is bound by an employment contract or other contractual relationship to protect the opponent's interests in matters of trade and has, without his consent, filed an application in respect of the trademark during the existence of that contractual relationship,
   3. has previously proposed to the Federal Office of Plant Varieties for entry in the Plant Variety Protection Register a variety denomination which is the same as the trademark applied for, insofar as the goods for which the trademark has been applied for constitute plants or parts of plants or products obtained therefrom of varieties of the same or of a related species.

   In the event of failure to comply with the time limit for lodging opposition, there shall be no reinstatement to the former position."
3. In Article 11(1), the following item shall be inserted after item 1a:
   " 1b. if he could have lodged opposition against the registration of the trademark under Article 5(4), item 3."

(3) The following items shall be added to the schedule of fees (Annex 2 to Article 1) of the Law on the Fees of the Patent Office and the Patent Court of August 18, 1976 (BGBl. I page 2188), as last amended by Article 9 of the Law of July 26, 1979 (BGBl. I page 1269):

Reference	Purpose	Fee in Deutschmarks
"240,000	IV. Variety protection proceedings	
244,000	Appeals proceedings	
244,100	For lodging an appeal against decisions of the opposition boards with the Federal Office of Plant Varieties (Article 34(2) of the Plant Variety Protection Law)	200"

(4) In Article 4(1) of the Regulations on Attorneys at Law of September 7, 1966 (BGBl. I page 557), as last amended by Article VIII of the Law of June 21, 1976 (BGBl. II page 649), the words "Law on the Protection of Plant Varieties (Varieties Protection Law)" shall be replaced by the words "Plant Variety Protection Law."

(5) Article 1 of the Law on Designation of Attorneys at Law in Cases of Legal Aid in the version contained in Article 187 of the Regulations on Attorneys at Law, amended by Article 3, item 5, of the Law of June 13, 1980 (BGBl. I page 677), shall be amended as follows:

1. In paragraph (1), the words "Law on Variety Protection and Seed of Cultivated Plants (Seed Law)" shall be replaced by the words "Plant Variety Protection Law."
2. In paragraph (2), the words "a variety protection right" shall be replaced by the words "variety protection."

Article 44

Berlin Clause

This Law shall also apply to the Land of Berlin pursuant to Article 13(1) of the Third Extension Law. Statutory orders promulgated by virtue of this Law shall apply to the Land of Berlin pursuant to Article 14 of the Third Extension Law.

Article 45

Entry into Force

This Law shall enter into force on the day following its promulgation.

FEDERAL REPUBLIC OF GERMANY

Order on the Procedure Before the Federal Office of Plant Varieties*

of December 30, 1985**

By virtue of Article 32 of the Plant Variety Protection Law of December 11, 1985 (BGBl. I p. 2170), and Articles 53 and 55(2), first sentence, of the Seed Trade Law of August 20, 1985 (BGBl. I p. 1633), the Federal Minister for Food, Agriculture and Forestry orders as follows

and

by virtue of Article 33(2) of the Plant Variety Protection Law and Article 54(2) of the Seed Trade Law, in conjunction in each case with Part II of the Law on Administrative Costs of June 23, 1970 (BGBl. I p. 821), the Federal Minister for Food, Agriculture and Forestry, in agreement with the Federal Minister for Finance, orders as follows:

CHAPTER ONE

PROCEDURE

Article 1

Application

(1) The application for variety protection shall be submitted in duplicate and the application for variety approval in triplicate; the variety denomination shall be filed in duplicate.

(2) The forms provided by the Federal Office of Plant Varieties shall be used for the applications and for filing the variety denomination.

(3) Where the application for variety approval concerns a variety of

1. cereal,
2. Italian ryegrass,
3. perennial ryegrass or
4. winter rape for seed utilization,

it shall be accompanied by the results of examinations that identify the properties of the variety. Where necessary to ensure the comparability of results, the Federal Office of Plant Varieties shall lay down, after hearing the professional associations concerned, general examination requirements, which it shall communicate on request.

Article 2

Registration Examination

(1) The Federal Office of Plant Varieties shall begin to examine the variety for distinctness, homogeneity and stability (registration trials) in the

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* German title: Verordnung über das Verfahren vor dem Bundessortenamt
Translation by the Office of the Union of the text published in the Bundesgesetzblatt, Part I, of January 7, 1986, on pages 23 to 30.

** Entry into force: January 9, 1986 (December 18, 1985, for Chapter Three and Article 15(2))

growing period following the date of the application if the application has been filed within the time limit announced for the species concerned. In the case of Article 26(4) of the Plant Variety Protection Law, the Federal Office of Plant Varieties shall begin the registration trials in the growing period following the time limit by which propagating material has been submitted. The registration trials shall be based on the propagating material or seed first submitted for trials by the applicant.

(2) In the case of varieties whose plants are produced by crossing certain hereditary components, the Federal Office of Plant Varieties may extend ex officio the registration trials to all hereditary components.

(3) In the case of varieties belonging to one of the species listed in Annex 2 to the Order on the List of Species under the Plant Variety Protection Law, the Federal Office of Plant Varieties may, on request, begin the registration trials at a later date, that is to say

1. in the case of varieties belonging to species group 6 in the Annex, until approval of the basic material in accordance with Articles 5 or 6 of the Law on Forestry Seed and Planting Material as promulgated on July 26, 1979 (BGBl. I p. 1242);
2. in the case of varieties of fruit species, including rootstock varieties, and woody plants for road and landscape gardening, until 15 years at the latest after filing of the application;
3. in the case of ornamental varieties, until eight years at the latest after filing of the application.

(4) The registration trials shall last until the decision on the grant of variety protection or on variety approval becomes final.

(5) The Federal Office of Plant Varieties may also use results of VCU trials when conducting the registration trials.

Article 3

Value Examination

(1) The Federal Office of Plant Varieties shall begin to examine the variety in respect of its value for cultivation and use (VCU trials) under the variety approval procedure as soon as it may assume from the results of the registration trials that the variety is likely to be distinct, homogeneous and stable. The Federal Office of Plant Varieties may begin the VCU trials at an earlier date, but not before the registration trials.

(2) On request, the Federal Office of Plant Varieties may begin the VCU trials at a date later than that under paragraph (1), first sentence, or, where they have already begun, suspend them if there is an important reason, in particular if the applicant is unable, without fault on his part, to provide the seed required for the VCU trials. In such case, the Office shall give the applicant a period of time within which he must submit the necessary seed.

(3) The Federal Office of Plant Varieties may suspend the VCU trials ex officio if the registration trials raise doubts as to the distinctness of the variety or as to a lack of homogeneity or stability.

(4) The VCU trials shall normally last for three crop years.

(5) In conducting the VCU trials, the Federal Office of Plant Varieties may also use results obtained in the registration trials.

Article 4

Testing of Physiological Characteristics of Vine

(1) In the procedure for variety approval, Articles 3(1) to (3) and (5) shall apply mutatis mutandis to the testing of the physiological characteristics of varieties of vine. The tests shall last for at least five crop years.

(2) In conducting the tests, the Federal Office of Plant Varieties may also make use of data obtained on the basis of comparative tests of varieties where these have been set up and evaluated officially or under official supervision.

Article 5

Propagating Material, Seed

The Federal Office of Plant Varieties shall determine when, where and in what quantity and quality are to be submitted the propagating material or seed for the registration trials and the seed for the VCU trials and, in the case of vine varieties, for the tests of the physiological characteristics. The propagating material and seed may not have been subjected to any treatment except where the Federal Office of Plant Varieties requires or permits such treatment.

Article 6

Conduct of Trials

(1) The Federal Office of Plant Varieties, taking into account the botanical conditions, shall select for the individual species those characteristics that are important for the distinctness of the varieties and shall lay down the type and scope of trials.

(2) Where the applicant refers in his application for variety approval to various growing methods or types of utilization which cannot be included in the same trials, the VCU trials and, in the case of vine varieties, the testing of the physiological characteristics, shall be carried out separately for each method of growing or for each type of utilization.

Article 7

Examination Reports

The Federal Office of Plant Varieties shall communicate an examination report to the applicant in each case as soon as it deems the results of the registration trials, the VCU trials or, in the case of vine varieties, the testing of the physiological characteristics, to be adequate to evaluate the variety.

Article 8

Verification of the Continued Existence of Varieties, Supervision of Variety Maintenance

(1) Articles 5 and 6(1) shall apply mutatis mutandis to the verification of the continued existence of the protected varieties and the supervision of the maintenance of approved varieties.

(2) To carry out its supervision, the Federal Office of Plant Varieties may also use samples

1. taken from enterprises producing seed,
2. taken from seed that is on the market or
3. taken for other purposes by the authorities responsible for such purposes.

(3) The owner of variety protection shall be required to provide the necessary information to the Federal Office of Plant Varieties for verification of the continued existence of the variety and permit verification of the measures taken to ensure the continued existence of the variety. The breeder and any further breeder shall be required to provide to the Federal Office of Plant Varieties the information required to supervise a variety or to supervise further maintenance breeding and to permit verification of the measures taken for systematic maintenance breeding.

(4) Where verification of the continued existence of the variety or supervision of the variety shows that the variety is not homogeneous or is not stable, the Federal Office of Plant Varieties shall transmit an examination report to the owner of variety protection or to the breeder.

Article 9

Agronomic and Economic Significance

In order to determine the agronomic and economic significance of a variety in accordance with Article 36(2), item 2, of the Seed Trade Law, the Federal Office of Plant Varieties may cultivate the variety. Articles 5 and 6 shall apply mutatis mutandis.

Article 10

Communications

The Plant Variety Gazette (Blatt für Sortenwesen) issued by the Federal Office of Plant Varieties shall constitute the gazette for communications of the Federal Office of Plant Varieties.

CHAPTER TWO

RECOGNITION OF SEED OF NON-APPROVED VARIETIES

Article 11

(1) Seed of varieties under Article 55(1) of the Seed Trade Law and of varieties that are entered in the catalogue of another Member State that corresponds to the list of varieties and in respect of which maintenance breeding is carried out within the territorial scope of the Seed Trade Law, may be recognized

1. where necessary to carry out propagating projects within the territorial scope of the Seed Trade Law, in order to improve the supply of seed in the Member States, and
2. where documents are available to provide the same information for recognition and verification as in the case of approved varieties.

(2) The Federal Office of Plant Varieties shall determine, on request, whether the requirements of paragraph (1) are met and shall advise the person making the request.

CHAPTER THREE

FEES

Article 12

Basic Provision

The acts liable for fees and the amounts of fees shall be determined in accordance with the schedule of fees (Annex*).

* Not reproduced here.

Article 13

Examination Fees

(1) The examination fees (fee references 102, 202, 203, 204, 222 and 232 in the Annex) shall be due for each trials period that has begun, unless otherwise stipulated in the Annex. Fees shall become due for each trials period at the time laid down by the Federal Office of Plant Varieties. Fees shall not be payable for a growing period in which the Federal Office of Plant Varieties has not yet begun trials of the variety or has not yet begun maintenance breeding.

(2) Where the expressions of the characteristics or properties of varieties of perennial species cannot be determined or cannot be completely determined within one trials period due to the specific development of the plants, one half of the examination fees shall be payable for such trials period.

(3) Where the applicant has stated more than one type of utilization or one method of growing for a variety, the fee shall be payable for each type of utilization or method of growing for which a special examination is necessary.

(4) In the case of varieties whose plants are produced by crossing certain hereditary components and for which the Federal Office of Plant Varieties extends the registration trials to the hereditary components, a fee in accordance with fee references 102 and 202 in the Annex shall be payable in addition for such examination.

Article 14

Annual Fees, Supervision Fees

(1) The fees for each protection year (annual fees) or for the supervision of a variety or of further maintenance breeding (supervision fees) shall be payable for the duration of variety protection, of approval of the variety or of entry of the further breeder for each calendar year or part thereof following the year in which grant of variety protection, approval or entry took place.

(2) In the cases under Article 13(2) and Article 41(2) of the Plant Variety Protection Law, those years shall be included in establishing the annual fees by which, according to these provisions, the duration of variety protection is to be reduced. Where approval of a variety is renewed, the periods of the earlier approval shall be included in calculating the supervision fees. When establishing the fee for supervision of further maintenance breeding, the time of variety approval shall be decisive.

(3) Where an annual fee has to be paid for a variety, no supervision fee shall be charged in addition.

CHAPTER FOUR

FINAL PROVISIONS

Article 15

Transitional Provisions

(1) The inclusion of examination results in accordance with Article 1(3), first sentence, shall not be necessary for varieties of the species listed in that provision under items 2 to 4 in respect of which an application for variety approval has been filed by June 30, 1987.

(2) Annual fees and supervision fees under this Order shall be charged as from January 1, 1986; examination fees under this Order shall be charged as from the first point in time under Article 13(1), second sentence, that follows the

day of promulgation of this Ordinance. Until such time, fees shall be payable in accordance with the provisions applicable in each case up to December 18, 1985.

Article 16

Berlin Clause

This Ordinance shall also apply to the Land of Berlin pursuant to Article 14 of the Third Extension Law in conjunction with Article 44 of the Plant Variety Protection Law and Article 64 of the Seed Trade Law.

Article 17

Entry into Force

(1) Subject to paragraph (2), this Ordinance shall enter into force on the day of its promulgation. At the same time, the following shall no longer have force:

1. the Varieties Protection Ordinance of December 16, 1974 (BGBl. I page 3551),
2. the Ordinance on Variety Registration of July 2, 1975 (BGBl. I page 1654).

(2) Chapter Three and Article 15(2) shall enter into force with effect from December 18, 1985.

Development of Plant Variety Protection Throughout the World in 1985

Following established practice, the representatives of the States and organizations having participated in the nineteenth ordinary session of the Council (October 17 and 18, 1985) reported on the development of plant variety protection and related matters in their country or at the international level.

A summary of the statements, as recorded in the report on the session, is given hereinafter.

a. Statements by the Representatives of Member States

Belgium.- The Bill approving the 1978 Act of the Convention and amending the Law of May 20, 1975, on the Protection of New Plant Varieties will probably be presented to Parliament in 1986.

By a Royal Order dated May 21, 1985, which came into force on July 19, 1985, the list of protected taxa was extended to 35 entries; the total number of entries--corresponding to taxa ranging from the family (Orchidaceae) to the botanical variety--is now 139. This extension of protection has been made possible by cooperation in examination.

With regard to the interest shown by breeders in the variety protection system, detailed statistics are to be found in the table on pages 42 and 43 below. It will be noted that certificates have been issued for 37 taxa only.

Denmark.- The work on the revision of the national legislation on plant variety protection continues. There is however no further information to add to the report made to the last session of the Council. The committee entrusted with the revision will be meeting again before the end of the current month.

The list of protected taxa has been extended on two occasions: on January 7, 1985, by the inclusion of Aeschynanthus Jack., and on June 30 by the inclusion of Dieffenbachia Schott and Exacum spp. The extension of protection to triticale should be taking place shortly.

Aeschynanthus and Dieffenbachia are examined by the Federal Republic of Germany and France respectively. Triticale will be examined by the Federal Republic of Germany. Denmark has offered to examine Exacum varieties for other member States under the cooperation scheme.

As mentioned earlier, the agreements on cooperation in examination are undergoing revision and adaptation to the new UPOV Model Administrative Agreement. Discussions are now in progress with the authorities of the Federal Republic of Germany and France. Revision of the agreements with those countries will also cause changes to be made in the agreements with the Netherlands and the United Kingdom, with which it is hoped that new agreements based on the new Model Agreement will also be concluded. Finally, there are plans to enter into agreements with the authorities of Belgium, Sweden and Switzerland. It is hoped that, in spite of the workload of the Danish authorities, these agreements can be completed before the next session of the Council.

The workload mentioned is shown clearly by the following table:

	1984	1985 (up to October 8)
Number of applications for protection	173	179
including: - agricultural crops	63	
- fruit crop	2	
- ornamental plants	108	
Number of certificates issued	101	108
including: - agricultural crops	33	
- fruit crops	2	
- ornamental plants	66	

USE MADE BY BREEDERS OF THE PLANT VARIETY PROTECTION SYSTEM IN BELGIUM*

	1977	1978	1979	1980	1981	1982	1983	1984	1985**	total
Agricultural Crops										
Barley	-	17	1	2	2	8	4	4	2	40
	-	-	15	2	2	2	8	5	2	36
Field Bean	-	-	-	-	-	-	-	1	-	1
	-	-	-	-	-	-	-	1	-	1
White Clover	-	-	-	1	-	-	-	-	-	1
	-	-	-	1	-	-	-	-	-	1
Meadow Fescue	-	-	-	2	1	-	-	-	-	3
	-	-	-	2	-	-	-	-	1	3
Red Fescue	-	-	-	7	-	-	-	-	-	7
	-	-	-	7	-	-	-	-	-	7
Flax, Linseed	-	-	2	6	2	-	-	1	-	11
	-	-	-	7	-	-	3	-	-	10
Hop	-	-	-	-	-	-	-	2	-	2
	-	-	-	-	-	-	-	2	-	2
Smooth Stalked	-	-	-	4	-	-	-	-	-	4
Meadow-grass	-	-	-	4	-	-	-	-	-	4
Oat	-	10	2	-	2	2	1	1	-	18
	-	-	11	-	2	2	-	1	1	17
Potato	-	-	-	33	-	-	4	2	1	40
	-	-	-	29	3	1	-	2	5	40
Rye	-	1	1	-	-	-	-	-	-	2
	-	-	2	-	-	-	-	-	-	2
Hybrid Ryegrass	1	1	-	-	-	-	-	-	-	2
	-	-	1	1	-	-	-	-	-	2
Italian Ryegrass	-	4	-	-	-	-	-	-	-	4
	-	-	4	-	-	-	-	-	-	4
Perennial Ryegrass	1	6	3	3	-	1	-	1	-	15
	-	-	7	-	1	2	-	-	1	11
Spelt	-	1	-	1	-	1	-	-	-	3
	-	-	1	-	1	1	-	-	-	3
Turnip	-	-	-	1	-	-	-	-	-	1
	-	-	-	-	-	-	1	-	-	1
Bread Wheat	1	20	4	3	2	4	1	8	1	44
	-	1	20	4	2	2	4	6	3	42
Fruit Crops										
Apple	-	1	1	1	1	4	8	-	4	20
	-	1	-	1	-	1	1	-	6	10
Cherry	-	-	-	-	-	-	1	-	2	3
	-	-	-	-	-	-	-	-	-	-

* First line: applications filed; second line: titles of protection issued.
** Until September 30, 1985

	1977	1978	1979	1980	1981	1982	1983	1984	1985**	total
Black Currant	-	-	-	-	-	-	-	-	2	2
	-	-	-	-	-	-	-	-	2	2
Red and White Currants	-	-	-	-	-	-	-	-	3	3
	-	-	-	-	-	-	-	-	-	-
Pear	-	-	-	-	-	-	2	-	1	3
	-	-	-	-	-	-	-	-	-	-
Plum	-	-	-	1	-	2	-	-	-	3
	-	-	-	1	-	-	-	-	-	1
Raspberry	-	-	-	-	-	-	-	1	-	1
	-	-	-	-	-	-	-	-	-	-
Strawberry	-	8	2	-	3	1	4	-	-	18
	-	8	-	2	-	-	5	1	1	17
Vegetables										
Cauliflower	-	-	-	-	1	-	-	-	-	1
	-	-	-	-	-	-	1	-	-	1
French Bean	-	13	1	-	2	-	-	-	1	17
	-	5	3	4	-	-	1	-	-	13
Lettuce	-	-	2	1	1	-	-	-	-	4
	-	-	-	2	-	1	-	-	-	3
Pea	-	17	2	-	-	2	1	2	2	26
	-	6	7	2	2	-	-	1	1	19
Black Salsify	-	-	-	2	-	1	-	1	-	4
	-	-	-	1	-	-	-	-	-	1
Ornamental Species										
Azalea	-	4	1	3	3	-	3	1	8	23
	-	-	2	3	5	1	1	3	-	15
Bromeliaceae	-	-	-	-	-	2	1	1	-	4
	-	-	-	-	-	-	-	-	-	-
Carnation	-	-	4	-	2	-	-	-	-	6
	-	-	-	4	2	-	-	-	-	6
Chrysanthemum	-	-	-	-	-	13	14	12	-	39
	-	-	-	-	-	1	12	1	6	20
Freesia	-	-	-	-	-	-	1	-	-	1
	-	-	-	-	-	-	-	1	-	1
Rose	-	40	8	17	21	11	23	26	21	167
	-	-	19	9	26	27	12	18	13	124
Forest Trees										
Poplar	-	13	-	-	-	-	-	-	-	13
	-	-	-	13	-	-	-	-	-	13
TOTAL	3	156	34	88	43	52	68	64	48	556
	-	21	92	99	46	41	49	42	42	432

The Danish authorities have been investigating how best to accede to the wish expressed in professional circles, mainly those concerned with ornamentals, that protection be extended to more species. In this respect the main problem is that the species have to be examined in glasshouses, which could involve the authorities in expenses considerably in excess of the fees charged. The Governing Board of the Danish Research Service for Plant and Soil Science, of which the Plant Variety Protection Office is part, has therefore decided that the examination system of the United States of America has to be studied more closely to determine whether it could provide a solution to the problem.

Mr. Flemming Espenhain undertook a one-month study tour of the United States of America, where he was able to visit the offices responsible for protection matters, professional organizations and breeders from the agricultural and horticultural sectors, and also seed certification agencies. The main questions covered were examination for distinctness, homogeneity and stability, minimum distances between varieties, variety denominations and biotechnology. A report is being drawn up and will be submitted to the above-mentioned Governing Board, which will decide whether it should be translated and distributed.

Mr. Espenhain thanked Mr. Schlosser, who had taken care of the organization of the study tour, and all those of his American hosts who had enabled the tour to take place and to be as instructive as it was.

The question of the protection of plant varieties by means of a special system or by patents has also been considered in Denmark. In addition, students at the Agricultural University have set up a study group on questions concerning developing countries. That group recently organized a session during which questions of gene banks, plant patents, plant breeding activities of multinational firms in developing countries and biotechnology were dealt with.

Mr. Espenhain took part in the session as representative of the Plant Variety Protection Board, and gave a talk on the possible conflicts between patents and plant breeders' rights, and on the consequences of the patent protection of genes. The "developing countries group" had previously published a handbook, to serve also as a discussion basis for the group of guest speakers, entitled "Playing With Seed--Playing With the Future." It should be mentioned that the group had allowed Mr. Espenhain to see the manuscript, which had enabled most of the factual errors concerning plant variety protection to be eliminated. It should also be mentioned that the group collaborates with the International Coalition for Development Action (ICDA), among other bodies.

The group has recommended that the above subjects be discussed in schools, and that they should be brought to the attention of the political class. Whether that will be useful or whether it will have adverse consequences will be seen when the draft Revised Law on Plant Variety Protection is presented to Parliament.

The Delegation of the Federal Republic of Germany asked Mr. Espenhain whether he could not submit a more detailed report on his study tour of the United States of America to the next session of the Technical Committee, in view of the fact that his conclusions could have a bearing on the future of international cooperation in examination. Mr. Espenhain replied that he would ask the Governing Board of the Danish Research Service for Plant and Soil Science for authorization to do that.

France.- No addition has been made to the list of protected taxa during the past year. However, the extension of protection to brome grass, Dieffenbachia and white lupin, announced at the previous session of the Council, is at the publication stage. Another extension is under consideration in response to the recommendation made by UPOV and requests made at the national level. Due account has to be taken in this respect of the difficulties that arise, in particular when the bodies responsible for examination attain such proportions that any excess of work causes a very considerable increase in cost. Such proportions have practically been reached, which makes cooperation all the more necessary.

In reply to certain concerns expressed, notably during the second Meeting with International Organizations, the Delegation of France wished to revert to certain peculiarities of its country's legislation.

(i) The national provisions specify, for each category of species, the elements of the plant to which the breeders' rights relate. In the case of ornamental plants, the rights relate also to the cut flower and, in the case of fruit crops, to all or part of the plant intended for the establishment of plantations for the commercial production of the fruit. This system gives full satisfaction.

(ii) The term of protection is 20 or 25 years, depending on the species and the constitution of their production elements. It does not seem desirable to increase this term at the national level as long as substantial differences subsist between States of the Union.

(iii) An Order issued in 1982 has amended the rules applied since 1974 to variety denominations in conformity with the Recommendations adopted by the UPOV Council. In spite of the greater flexibility that has been given to them by the amendment, these rules are still considered too restrictive by users. The frequency of litigation is high, which does present problems both for users and for the Committee for the Protection of New Plant Varieties. In spite of that, there is no intention of amending the Order concerned.

A Ministerial Order dated June 25, 1985, increased examination fees to 2,330 francs for important species and 1,295 francs for garden or pot-grown ornamentals. Moreover, it was wondered whether there should not be a reduction in the administrative fee of 35o Swiss francs set at Union level for the transmittal of an examination report already drawn up for the purposes of another State.

With regard to cooperation in examination, the Delegation of the Federal Republic of Germany had already reported on the agreement recently concluded between the two countries (see paragraph 11 above). The agreement concluded with Belgium has been extended to five more taxa.

Whereas the agreements concluded by France to date have been with parties from Northern Europe, France has also had regular contact with its neighbors to the South, namely Spain and Italy, with which it is satisfied. This situation has to do with the geographical position of France, which affords benefits as well as imposes constraints. One of those benefits is the possibility of enjoying cooperation both with Northern and with Southern Europe.

The activity of the Committee for the Protection of New Plant Varieties is summarized in the table on page 46 below in the form of cumulative data. In 1984, 554 applications were filed and 288 certificates issued.

In reply to a question from the Delegation of Denmark, the Delegation of France pointed out that its thoughts on the administrative fee of 350 Swiss francs charged for the transmittal of an examination report were prompted by the fact that it was sometimes higher than the examination fee charged in certain States. Clearly that was going to be an obstacle to cooperation. The process of reflection at the national level had not ended. Proposals would be made, if appropriate, but in any case it did seem that the question should soon be examined at Union level.

Federal Republic of Germany.- On August 28, 1984, Parliament approved the 1978 Act of the Convention; it now has before it the draft of a new Plant Variety Protection Law under which domestic law will be brought into line with the above Act. The instrument of ratification of the Act is expected to be deposited with the Secretary-General before the end of the current year.

The draft legislation also provides for a general extension of the term of protection from 20 to 25 years and, in the case of potato, trees and shrubs, from 25 to 30 years. The extension of protection to some further species is also planned.

The Federal Plant Varieties Office has continued its negotiations with its counterparts in other member States with a view to the extension of cooperation in examination on the basis of the Model Administrative Agreement adopted by the Council at its last session. Negotiations with the French authorities have just been completed. Under the resulting new agreement, some 20 species will be examined under the cooperation scheme in the Federal Republic of Germany and some 20 others in France. For about 20 further species, each of the parties has agreed to take over the results of examinations carried out by the other. Agreements of the same kind are expected to be concluded shortly with Denmark, the Netherlands and the United Kingdom.

USE MADE BY BREEDERS OF THE PLANT VARIETY PROTECTION SYSTEM IN FRANCE

Cumulative data as at the 31st of December of each year

Years / Data	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Number of applications	608	739	855	1038	1311	1695	2075	2456	2910	3336	3834	4450	5004
Number of withdrawals	-	14	46	80	138	174	232	326	415	536	671	821	953
Number of rejections	-	-	-	2	9	15	30	33	51	59	66	77	89
Number of applications examined	-	36	319	494	701	970	1266	1489	1802	2385	2871	3409	3843
Number of certificates issued	6	28	279	418	560	687	910	1036	1242	1696	2040	2217	2505
Number of certificates expired or abandoned	0	5	26	26	53	80	122	194	279	405	481	629	876
Number of certificates in force	6	27	274	392	513	607	788	842	963	1291	1559	1788	1929

The annual number of applications for protection has taken a sharp upward turn: during the year ending on June 30, 1985, 870 applications were filed, compared with 771 the previous year and 623 the year before that.

Hungary.- The competent authorities have continued their public information effort started at the time of Hungary's accession to the UPOV Convention. In particular, the General Introduction to the UPOV Test Guidelines has been published in an Annex to the Official Gazette of the National Office of Inventions and made available to breeders. The examination of varieties carried out by the Institute for Plant Production and Qualification for the purposes of protection was based on the Introduction.

The Institute is now publishing annually the list of protected varieties in its list of varieties passed for multiplication. It has also published a handbook on the general principles governing variety denominations, which take the corresponding recommendations of UPOV into account.

In addition, the conduct of testing of varieties for distinctness, homogeneity and stability has been explained by means of posters at the National Agriculture and Food Exhibition.

In 1984 and during the first six months of 1985, the National Office of Inventions received 60 patent applications for plant varieties, a third of them coming from abroad, especially the United States of America. In 1985, the Institute for Plant Production and Qualification was given 38 varieties of nine species to examine, namely: 15 sunflower, 8 maize, 6 soft wheat, 1 durum wheat, 2 lucerne, 3 lupin, 1 onion, 1 sweet sorghum and 1 foxglove. The varieties are of Hungarian (24), American (7) and French (7) origin.

Ireland.- There has been no change in legislation in the course of the past year. However, there are plans to extend protection shortly to 11 further taxa of agricultural crops.

A cooperation agreement has recently been concluded with the Netherlands; it relates to the examination of potato and perennial ryegrass.

Since the last session of the Council, 26 applications for protection have been received and 29 titles issued for varieties of potato (16), barley (6), wheat (3), oats (2), hybrid ryegrass (1) and Italian ryegrass (1). To date, 211 acceptable applications have been filed and 145 titles granted (16 of them since abandoned).

Israel.- The past year has not been marked by any event in particular. Protection applies to 75 taxa at present, but extension to another taxon is in progress.

In the course of the past year, 124 applications for protection have been filed, including 73 for foreign varieties. Titles of protection have been granted for 95 varieties (5 for agricultural or vegetable crops, 8 for fruit crops and 82 for ornamentals), including 74 of foreign origin. The number of titles at present in force is 266.

With regard to varieties of ornamental plants of foreign origin, the Israeli authorities have continued to base their decisions on the results of testing done by other member States. The authorities are however conscious of the limitations of this system, owing to the differences in the degree of expression of characteristics, seemingly due to climatic conditions and light intensity. These limitations make a year's further examination necessary under local conditions. With regard to varieties originating in the United States of America, the Israeli authorities have to undertake a full examination, as for local varieties, in view of the different examination system used by the United States of America.

Italy.- The Law ratifying the 1978 Act of the Convention has just been approved by Parliament and should shortly be published in the Official Gazette. This Law also amends the Plant Variety Protection Law. In particular it extends the possibility of providing protection to all types of plant, in other

words including algae, mushrooms and bacteria, the only condition being that they be bred for agricultural or industrial purposes. It also changes the examination fees, which will be fixed by the Ministry of Agriculture and Forestry according to the actual cost of testing. Finally it introduces the one-year period of grace provided for in Article 6(1)(b)(i) of the Convention.

The Advisory Commission for the Technical Examination of Varieties, set up within the Ministry of Agriculture and Forestry, has continued its work and has given favorable reports on 109 varieties of vegetable crops, 9 varieties of fruit plants, 7 varieties of forest trees and 212 varieties of ornamental plants. The Patent and Trademark Office has also resumed its activity and in the course of the last fifteen months has granted 87 patents for the following species (the bracketed figures correspond to the total number of patents granted for the species concerned): carnation 45 (79), rose 13 (16), rice 9 (18), strawberry 6 (6), soft wheat 5 (18), durum wheat 4 (4), barley 2 (9), lucerne 1 (1), peach 1 (1), apple 1 (1), poplar - (7). The total number of patents for varieties is now 160.

Finally, the Patent Office is at present considering a computerization project.

In reply to a question from the Delegation of the Federal Republic of Germany, the Delegation of Italy confirmed that the authorities of its country had not entered into any agreements on cooperation in examination with other member States. To its knowledge the question was one of fees. Agreements would however be concluded in the future, whereupon it would be possible to take over the results of testing carried out by other member States.

Japan.- The implementing regulations of the Seeds and Seedlings Law were amended on October 1, 1985, to extend protection to 37 further taxa. The extension will come into operation on December 1, 1985.

The Ministry of Agriculture, Forestry and Fisheries does not have enough test fields, and consequently much examination has to be carried out at the various institutes of prefectoral governments. There are now plans to set up a new institute, which could be called "Center for Genetic Resources, Seeds and Seedlings," by reorganizing a number of national institutes. The new institute is expected to be entrusted with the testing of varieties for the purposes of plant variety protection. It should also serve as the framework for cooperation in examination, which the authorities expect to come into being in the near future. To that end the authorities are studying the examination systems of the other member States in order to align theirs on them.

Work continues on the drafting of test guidelines: 165 documents of this kind have been adopted so far, and 31 are in preparation. Also, the project for the development of objective methods of determining characteristics such as fragrance and pungency has entered its third year. Varieties of chili, tea, roses, grape vine and garlic have already been examined by gas chromatography, but the method has yet to be perfected before it is used as a routine test. In addition, studies are at present being made on the fragrance components of common stock and the pungency components of onion.

Netherlands.- The Netherlands is observing with great interest the progress of the technology whereby genetic codes can be directly modified. Applied to plants, this technology is a fundamental method of plant breeding. Some consider a new era to be dawning for plant breeding. It should however be borne in mind that this new technology can adversely affect the availability of plants and the legal protection of the breeder. Its introduction, whether already effected or expected in the future, may call for legislative amendments.

One important aspect of the question in particular, which the Netherlands is examining closely, is the improvement of propagation techniques whereby plantlets may be produced on the farm. This question sheds new light on that of the desirable extent of protection.

Of course the Netherlands will also consider with interest any opinion reached at the international level on this development; such an opinion could well be forthcoming within UPOV.

It should also be mentioned in that connection that the English translation of the report on "Plant Breeders' Rights and Patent Rights in Relation to Plant Genetic Engineering" has been published and distributed.

The Netherlands plans to amend the provision on novelty according to the new text of Article 6(1)(b) and to introduce a transitional limitation of the requirement of novelty under Article 38 of the 1978 Act of the Convention.

With regard to cooperation in examination, a report has already been given on the agreement concluded with Ireland (see paragraph 55 above). The Netherlands is convinced that great progress will also be made on the basis of the Model Agreement that the Council adopted at its last session. By expressing their willingness to accept test results from their partners, States participating in the cooperation system will be able to achieve a higher degree of efficiency; still more important is the fact that better harmonization of methods of testing and of interpretation of their results can be expected.

A mention should be made at the present stage of the relation between cooperation in examination and the extension of the Netherlands' list of protected taxa. The procedure has been initiated for extension of protection to some 35 taxa. The extension should come into effect by the middle of next year.

Finally, in 1984, 918 applications for protection were filed and 316 titles issued (60 for varieties of agricultural crops, 43 for varieties of vegetable and fruit crops and 213 for ornamental varieties). 2,198 varieties were protected at the end of 1984.

New Zealand.- Considerable efforts have been made since 1981 to remedy certain defects in the plant breeders' rights legislation that has now been in force for 12 years. Two Bills have been presented to Parliament but, even though the two major parties support the principle of plant variety protection, the Bills have not become law for political reasons. A third Bill was presented to Parliament on July 3 of this year; it was referred to a select committee, which completed the hearing of 25 organizations concerned at the beginning of this month.

The introduction of the Bill coincided with the first showing of a documentary film on various aspects of the seed question, entitled "The Neglected Miracle." The showing of the film stimulated a certain amount of anti-protection sentiment.

Certain groups have alleged that plant variety protection is a threat to indigenous flora. It should be remembered that the flora is quite unique owing to the geographical isolation of the country; unknown species are still being discovered by botanists. The environmentalists have expressed the fear that those discoveries could be at risk if they had to be placed under plant variety protection. It has been suggested that protection should not apply to indigenous plants or, failing that, to discoveries.

The Bill provides for a three-year period of exclusive rights, calculated from the grant of the title of protection, during which no compulsory license may be issued. This proposal has caused very strong reactions, some favorable and others opposed to it.

At present the Law applies to all types of plants, with the exception of algae, fungi and bacteria. A number of interventions were made asking for the new Act to be so drafted that it left open the possibility of extending protection to varieties of fungi and bacteria if there should be a need for it.

In the course of the past year, fees have been increased by about 36%.

For the first time the New Zealand authorities are considering basing a decision on an examination report supplied by another member State, namely the Netherlands, for a variety of alstroemeria.

The volume of work of the Plant Varieties Office during the period from October 1, 1984, to September 30, 1985, is summarized in the table overleaf.

	Applications received	Titles granted	Titles in force
Agricultural crops	16	4	56
Fodder crops	2	9	10
Ornamentals	42	19	131
Fruit crops	12	4	25
T O T A L	72	36	222

It should be mentioned that, during this period, applications have been filed for the first time in respect of the following species: ginger, sulla (Hedysarum coronarium), rye, kiwifruit, gooseberry, persimmon, alstroemeria, camellia, everlasting and waratah (Telopea speciosissima).

South Africa.- The only change that has occurred in the legislative field since the last session of the Council is a fee increase, applicable as from May 1, 1985. The list of protected taxa has not been enlarged but, in view of the growing interest in the protection of certain ornamentals, extension of protection will be contemplated as soon as the necessary agreements on cooperation in examination have been concluded. It is hoped that this stage will be reached in the very near future.

Since the last session of the Council, 64 applications for protection have been received (including 46 from other member States) and 40 titles have been granted (including 26 to breeders from other member States).

Spain.- Work continues on the revision of national legislation to bring it into line with the 1978 Act of the Convention and to modify the schedule of fees. A working group composed of representatives of all interested circles has been set up, and a preliminary draft has been submitted to it for consideration.

Fees have been increased by about 25% in the course of the year. In addition, protection has been extended to lettuce, lucerne, fruit varieties of apple, pure lines of maize and soya bean. The list of protected taxa now comprises 23 entries.

From January to October 1985, 120 applications for protection were received and 80 titles granted, bringing to 326 the number of titles in force. In view of the possibilities offered by the transitional limitation of the requirement of novelty, there has been an increase in the number of applications following the extension of protection mentioned in the previous paragraph.

With regard to cooperation in examination, the position is unchanged: the examination of varieties still takes place in Spain.

Sweden.- There has been no legislative amendment in the course of the past year, except for an extension of protection to triticale.

As far as the implications of genetic engineering are concerned, it is hoped that there will in the near future be discussions in Sweden between industry and the competent plant variety protection and patent authorities. It is also hoped that the motion adopted by the Governing Board of the Nordic Gene Banks will be submitted to Parliament, and that there will be a working group in Sweden, and thereafter at Nordic level, to consider these highly delicate questions. The text of the motion is as follows:

> "Not being able to deny that it might be reasonable to ensure to an enterprise which has created a valuable new gene by means of biotechnology an adequate remuneration, the Governing Board recommends that the problems be subject to a study in depth, preferably if possible on an international basis, of the possibilities to ensure

to other persons than the patentee the right to use plants created by genetic engineering for the purposes of further breeding and other activities which the UPOV Convention allows and at the same time ensure to the enterprise having performed the genetic engineering an adequate remuneration."

In the course of last year, 47 applications were filed and 21 titles of protection issued. At the end of the same year, 182 titles were in force. A third of them related to varieties of ornamental plants of foreign origin.

Switzerland.- In the course of the past year, events and the general situation in Switzerland have not been very favorable to the protection of plant varieties.

Mr. Roger Kämpf died suddenly in September. Mr. Kämpf was Section Head at the Federal Intellectual Property Office; he took part in the 1978 Diplomatic Conference and also in a number of meetings of the Administrative and Legal Committee when the questions dealt with related also to patents and trademarks. The Plant Variety Protection Office has lost a highly competent adviser, and UPOV circles a friend.

At the last session of the Council, a project for amendment of the Law was announced, the effect of which would be to extend protection to the propagation of a protected variety of fruit plant for the propagator's own purposes. The draft passed through all the stages of the administrative proceedings without any problem, but then it came up against the very full work program of Parliament. It now seems that the process of outside consultation and Parliamentary approval will have to be postponed to the next legislature, in other words to 1988 at the earliest.

The extension of protection to further taxa has never presented as many difficulties. The problem arises mainly with ornamentals, and it appears to be due to a "freeze" on staff. Other means of bringing this about will therefore have to be found. However, even in the present state of discussions, it seems unlikely that protection will be extended to Swiss chard. On the other hand, the Fruit Section of the Federal Agronomic Research Station of Wädenswil is showing interest in the protection of kiwifruit, with a view to the renewal of the variety assortment. Moreover, the list of ornamental plants to be protected could be enlarged to include Exacum.

The development of the volume of activities of the Plant Variety Protection Office is shown in the table on page 52 below. Briefly, as of October 7, 1985, a total of 301 applications have been received, including 20 that have subsequently been rejected or withdrawn. As of the same date, 172 varieties are under protection, and 28 titles of protection have been abandoned.

United Kingdom.- The plant variety protection system has not undergone any major change in the course of the past year. It should however be noted that the fee schedule has been revised and simplified.

Protection has also been extended to Choysia, to Crocosmia, to Curtonus, to Epiphyllopsis, Rhipsalidopsis, Schlumbergera and their hybrids, to Euphorbia pulcherrima, to Gerbera and to Nerine, and also to the whole of the genus Rubus.

Generally speaking, the plant variety protection system is still under a heavy strain, particularly in the agricultural sector, and testing potential is being used to the full in a climate of budgetary stringency and rising costs. This is the climate in which the United Kingdom wishes to take as active a part as possible in the cooperation system, notably in order to reduce costs. Very profitable discussions have been held with the Federal Republic of Germany and the Netherlands, and attention is now being given to the revision of the bilateral agreements concluded with those countries. Discussions will be started with other countries, mainly Denmark and France, before the end of the present year or at the beginning of next year.

With regard to genetic engineering and its implications for plant variety protection and patents, the Plant Variety Rights Office has taken steps towards improving relations with the United Kingdom Patent Office in order to establish mutual understanding.

USE MADE BY BREEDERS OF THE PLANT VARIETY PROTECTION SYSTEM IN SWITZERLAND*

Year	1977	1978	1979	1980	1981	1982	1983	1984
Number of protected taxa	5	5	5	23	23	23	44	44
Number of applications	6 (6)	22 (28)	7 (35)	62 (97)	17 (114)	35 (149)	47 (196)	64 (260)
Number of withdrawn or rejected applications	- (-)	- (-)	- (-)	1 (1)	- (1)	6 (7)	4 (11)	4 (15)
Number of protected varieties	- (-)	1 (1)	16 (17)	3 (20)	21 (41)	40 (81)	10 (91)	44 (135)
Number of abandoned or lapsed titles of protection	- (-)	- (-)	- (-)	- (-)	- (-)	- (-)	- (-)	14 (14)

* The numbers in parentheses correspond to cumulative data as at the 31st of December of each year

Finally, in the course of the past year, 370 applications were filed and 278 titles of protection issued. 850 varieties are expected to be tested in 1985, including 210 for other member States.

United States of America.- With regard to the Plant Patent Law, which is administered by the US Patent and Trademark Office and applies to vegetatively propagated varieties, draft legislation has just been introduced for the extension of protection to parts of plants, notably cut flowers. It will be recalled that the import of cut flowers from other countries is a serious problem in the face of which breeders holding patents are at a loss. It is hoped that the Law will be voted on in the near future.

Apart from that, draft rules of procedure for variety denominations have been published in order to elicit comments from interested parties. The rules will be put in their final form after these comments have been evaluated. The rules of procedure complement Article 13 of the Convention as necessary on certain points of detail and on procedural aspects.

In the course of the past year, the number of applications filed has been relatively high, as it rose to 248, which compares with an average of 185 for the previous five years. In the course of the same year, 174 plant patents were granted, as against an average of 168 for the previous five years. About a quarter of the applications come from abroad, in particular the United Kingdom, the Federal Republic of Germany and France.

The Plant Variety Protection Office, which administers the Plant Variety Protection Act, applicable to sexually reproduced varieties, was given its new data processing system in July 1984. The remainder of that year was devoted to the transfer and reorganization of data and to staff training, although this did not hold up the examination of applications.

Since January 1985 the Office has been particularly busy bringing files up to date and examining outstanding applications. It has made up its barley and tomato backlog, and is at present concentrating on wheat and beans. When work is completed on those two species, the entire backlog will have been made up, except for certain species for which one or two applications have been pending for more than 18 months. In fact a certain time-lag is desirable, as it provides the possibility of grouping the examination of applications relating to a particular species and increases the efficiency of examiners.

In the course of the 1985 fiscal year, which ended on September 30, 1985, the Office has received 219 applications (against 157 in 1984), thus beating the previous yearly record by 28. Forty-one applications were filed in April, which is also a new record. Finally, 155 certificates have been granted in the course of 1985.

The increase in administrative costs has brought about an increase in fees, which since December 1984 have totalled 2,000 dollars for the examination of a standard application.

The Delegation of the Netherlands pointed out that the number of applications filed was far smaller for the United States of America than for a number of European countries. It also noted that the examination systems differed on opposite sides of the Atlantic. It wondered whether there was any correlation between the two, for instance whether the countries of Europe protected very similar varieties and whether the distances had to be greater in the United States of America.

The Delegation of the United States of America replied that the statistics were the only thing beyond dispute. The difference could be due to a number of factors. It was possible that different conceptions of minimum distances between varieties was one of them, but the Delegation could not say any more. Even if the question were considered in depth, it was not certain that conclusions would emerge.

In reply to a question from the Delegation of Belgium, the Delegation of the United States of America pointed out that the rules of procedure for variety denominations did no more than codify a practice that had been observed ever since the United States of America had accepted the 1978 Act of the Convention, with the addition of a few details of an administrative nature. In other words, since 1981, the variety denomination was required to appear in the title of the patent.

In reply to a question from the Delegation of the Federal Republic of Germany, the Delegation of the United States of America mentioned that the above rules were based on the International Code of Nomenclature for Cultivated Plants, which some might judge stricter than the rules applied in European States.

b. Statements by the Representatives of Non-Member States

Argentina.- Argentina has a Law on the Protection of Plant Varieties, and is considering the possibility of acceding to UPOV shortly.

A seminar will be organized in Buenos Aires next December on the subject of plant variety protection and seed questions. The Argentine authorities are intent on obtaining UPOV cooperation.

Finland.- The desirability of plant variety protection under an international treaty was considered between 1973 and 1977. It resulted in a Law to promote plant breeding, which was adopted in 1978. The Law does not conform to the principles laid down in the UPOV Convention: it provides for the charging of a fee on marketed seed in the case of the main agricultural crops. The amount of the fee is laid down by law, and it was revised in 1983. The revenue collected by the State Seed Testing Station is shared out between breeders.

The fees charged for foreign varieties are paid to their breeders if there is reciprocity in that respect between Finland and the State of which they are nationals. Such fees have been paid to Danish, Dutch, Swedish and (since this year) Norwegian breeders.

A mention should be made in this connection that since 1975 there has been a seed certification system in Finland which also takes breeders' interests into account in so far as the production of seed of a variety relies on seed from them.

Interest has recently been revived in protection conforming to the principles of UPOV. Finland will keep its position under review in this respect.

Greece.- The Parliament of Greece has voted a new Seed and Seedlings Law, which was published in the Official Gazette on September 26, 1985. This Law also provides for the protection of plant varieties; in that respect it conforms to the UPOV Convention, as it has been based on the UPOV Model Law, apart from which the comments made by the Office of the Union on the draft Law have been taken into account.

Implementing regulations will be introduced and administrative and technical structures established at the beginning of next year. It is hoped that Greece will submit its application for accession to the Union at the end of that same year.

Morocco.- Morocco has seed and seedlings legislation, and in particular an official catalogue of varieties. It is at present considering the possibility of completing that legislation, which is all the more desirable since the country has dealings with a large number of countries, especially those of the European Economic Community, with which it has very close relations.

This step calls for considerable reflection, as the practical position is somewhat complex. There are in Morocco varieties that belong to private companies, either Moroccan or foreign, the latter mainly European established in Morocco. Those varieties belong mainly to market-garden, ornamental, sugar and oil crops. There are also varieties bred by national research bodies, particularly the National Agronomic Research Institute. Those are mainly cereal varieties. In view of the fact that the cereal sector has priority in Morocco, a special effort has been made with plant breeding in recent years, and an average of five to six new varieties of durum wheat, soft wheat, barley and maize are released every year. Some fodder varieties have also been bred by the Institute, notably a sweet lupin which seems to be of considerable interest to certain European States.

The thoughts on legislation also relate to the possibilities for improvement of the situation. Morocco's participation in UPOV meetings as an observer State, and the advice that UPOV could give where required, will be useful to the rapid introduction of plant variety protection. Nevertheless, that protection will perhaps have special characteristics determined by Morocco's circumstances.

Norway.- As far as plant variety protection is concerned, there have not been any new events in Norway since the last session of the Council. However, a fee system comparable to Finland's (see paragraph 98 above) was introduced on July 1 of this year.

Poland.- A great deal of time has been devoted during the past year to the writing of the draft law dealing with all seed problems, including plant variety protection. A draft has been accepted by all the Ministers concerned. At present the Legal Office of the Council of Ministers, in cooperation with the Ministry of Agriculture and Food Economy, is putting the draft into its final legal form for submission to the Council of Ministers. It is hoped that the draft will be presented to the Diet by the Government in the spring of 1986.

All the departments concerned have agreed to conform to the rules and principles of the UPOV Convention in the draft law, which has to lay down the legal foundation that will enable Poland to accede to UPOV. The Polish authorities value the international cooperation within UPOV, and are showing a great interest in Poland's accession to the organization.

The Chairman noted with pleasure the progress made by Poland, and expressed the wish that the Delegation of that country might soon leave its observer seat to take up that of a fully-fledged member of UPOV.

c. Statements by the Representatives of Organizations

European Communities.- With regard to the introduction of a European/Community system for the protection of new plant varieties, the Commission is still engaged in the necessary action. A preliminary draft may be expected to circulate in 1986, whereupon the consultation procedure may be set in motion.

United Nations Food and Agriculture Organization (FAO).- The activities of the FAO in the varieties and seed sector are various. First, the matter of plant variety protection and patents is being carefully considered. In particular, a certain number of national seed laws are being examined, and FAO officials have had discussions on the subject with national authorities and international organizations, including UPOV.

The question of genetic engineering and its use for plant improvement and seed and seedling production has also been embarked upon. Studies have been started and guidelines have already been published, notably on the micropropagation of potatoes, or are in the process of being made, as in the case of sweet potatoes.

The FAO is in the process of devising a new seed quality control system, owing to the fact that it has had difficulty in using the systems operating in the United States of America and Europe for its aid to developing countries. The new system is based on recognized varieties descriptions, official criteria, especially with respect to purity, and a statement by the producer on the quality of the seed.

With regard to genetic resources, it will be remembered that the Conference of the FAO adopted Resolution 8/83, containing an international undertaking, while the Council of the FAO adopted Resolution 1/85, concerning the Plant Genetic Resources Commission. Since the first session of the Commission, and in response to circular letters from the Director General of the FAO dated February 22 and April 6, 1984, 76 member States have announced their endorsement of or support for the undertaking. Of the 13 non-member States, only three have replied so far. In addition, the number of members of the Commission has increased from 67 to 77.

Pursuant to the recommendations of the Commission, a 23-member working group has been formed to follow up the application of the work program of the Commission, and to deal with any other question referred to it by the latter. The working group will be meeting on April 17 and 18, 1986, to review activities in progress.

In addition, in order to initiate the activities deriving from the recommendations of the Commission, a working group has been set up within the Secretariat and has started work. In this connection a special mention should be made of the legal questions concerning the exchange of plant genetic resources in situ and ex situ, the question of the participation of non-member States in the work of the Commission, and questions concerning research, conservation in situ, information systems and training.

LAST MINUTE

†

Heribert Mast

It is with the greatest sadness that we have to announce the death of

Heribert MAST
Vice Secretary-General of UPOV

on August 15, 1986.

An obituary will be published in the next issue of this periodical.

CALENDAR

UPOV Meetings

September 17 to 19 Wädenswil (Switzerland)	Technical Working Party for Fruit Crops (Subgroup on September 16)
September 29	Council (extraordinary session)
November 18 and 19	Administrative and Legal Committee
November 20 and 21	Technical Committee
December 1 Paris (France)	Consultative Committee
December 2 to 5 Paris (France)	Council (and Symposium at the occasion of the celebration of the 25th anniversary of the signing of the UPOV Convention)

Meetings of Other International Organizations

October 15 to 21 Valencia (Spain)	AIPH Congress

The International Union for the Protection of New Varieties of Plants (UPOV)--an international organization established by the International Convention for the Protection of New Varieties of Plants--is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plant breeders--for their benefit and for the benefit of agriculture and thus also of the community at large--in accordance with uniform and clearly defined principles.

"Plant Variety Protection" is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only--although some items are trilingual (English, French and German)--at irregular intervals, usually at a rate of four issues a year. Subscription orders may be placed with:

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