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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Twenty-seventh Session

Geneva, June 25 to 29, 1990

REVISION OF THE CONVENTION:

POSITION OF FIS ON THE "FARMER'S PRIVILEGE"

Document prepared by the Office of the Union

The Annex to this document contains a position paper on the "farmer's privilege" adopted by the International Federation of the Seed Trade (FIS) at its Congress held in Seville (Spain) from June 11 to 13, 1990.

[Annex follows]

ANNEX

FIS POSITION PAPER: MOTION OF THE FIS CEREAL SEED SECTION
REGARDING FARMERS' PRIVILEGE

(Adopted at the FIS Congress in Seville, June 11 - 13, 1990)

The members of the FIS Cereal Seed Section are convinced that only an adequate and sufficient legal protection of the results of plant breeding work will guarantee the continuity of the research and breeding work in the field of plant varieties. This is particularly true, in view of the resulting right for an adequate remuneration for the use of protected plant varieties.

Only an adequate variety protection provides the legal basis and incentive for objective-oriented breeding of plant varieties which meet the particular demands and needs such as yield, quality, adaptability to soil and climate as well as resistance to plant diseases.

A successful plant breeding operation, the results of which increasingly determine the progress within the crop cultivation, depends on the production of quality seed as well as on an efficient, demand-oriented marketing. This is the task of the seed economics and in particular of the seed trade. For the implementation of these tasks (production and sale) important investments (appropriate storage, seed conditioning, seed dressing etc.) are necessary. An extension or abusive use of the so-called farmers' privilege would thus not only prevent innovations within the framework of plant breeding, but also affect an economic area, which guarantees the necessary realization of precisely this breeding progress within agriculture. Finally, such a farmers' privilege works against the farmer himself, because it results in diminishing investment in breeding, decrease in the offer of varieties and consequently in variety competition, ebbing interest in seed production, seed conditioning and seed trade, and thus the whole logistics will finally lead to an impoverishment of the offer of varieties and prevent the increasingly important factor of progress in plant production - namely the continuously improving offer of varieties.

In this respect, the Section welcomes all efforts to strengthen the UPOV system of variety protection.

Regarding this issue, the FIS Section is of the opinion that limitations in view of the scope of protection or efficiency of the right of protection should only be made for reasons of public interest.

There is also a need for a clear limitation or definition of those practices, which are carried out in some countries under the name of "farmers' privilege". This definition must necessarily be formulated very strictly.

In no case should it happen that because of the commercial use of farm-saved seed - whether it comes from the production of seed or from the production for consumption purposes - a dubious situation of competition arise between the participants in the seed market.

The cost-free use of genetic improvements in protected varieties made possible this way would have as an immediate consequence the impossibility of financing the increasingly expensive breeding work.

A negligence of breeding work on smaller species, possibly for the time being of limited interest from the economic view-point (small market), would be followed by a decrease in the genetic diversity.

In spite of all the balance and adequacy of the UPOV system of protection for the living matter in the form of plant varieties, one would, in case of maintenance of an extensive farmers' privilege or a dubious use of this privilege, try increasingly to take advantage of the patent protection also for plant varieties, with its stronger degree of monopolization, because there is no farmers' privilege under the patent system.

On the one hand, the problem is the guarantee of a continuous, costly breeding work, and on the other hand there is the socio-politically conditioned safeguard of private, non-commercial use of farm-saved seed. The only just solution consists in finding agreements or possibilities also to subject the use of farm-saved seed to obligatory royalties. The FIS Cereal Seed Section supports suitable alternatives within the consultations on the revision of the UPOV Convention.

The FIS Cereal Section demands and supports adequate solutions within the consultations on the revision of the UPOV Convention, in the area of EEC variety protection and in corresponding national regulations.

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