

Questionnaire by Special Committee on Q 114 (Biotechnology incl. Plant Breeders Rights)

Report of the Dutch Group with regard to the following questions:

a. Has implementing legislation been adopted and is it already in force and if not, what is the actual situation?

Implementing legislation has not yet been adopted by the Dutch parliament. A legislative proposal was submitted as early as July 4, 1999¹: the proposal sought to implement the Directive by amending the Netherlands Kingdom Patent Act, the Netherlands Kingdom Patent Act 1995 and the Sowing Seeds and Plants Act.

The proposal is still being discussed in the Dutch parliament. However, it appears that the predominantly moral objections of the parliament against the Directive and therefore against the legislative proposal have been overcome (see below under d) or have been crystallised into several amendments. As recent as March 1, 2002 the State Secretary of Economic Affairs again urged the parliament to conclude the procedure, stating that, in his opinion, all possible means to avoid implementation of the Directive have been exhausted by now².

b. If legislation is in force, is it in line with the Directive? If not, on what point(s) does deviation exist?

Not relevant, legislation is not in force.

c. Have additional provisions (not mentioned in the Directive) concerning protection of biotechnological inventions been made and if so, what are these provisions?

No additional provisions have been made.

d. In general terms: it is known that in some countries implementation faced problems because of concerns that exist concerning biotechnology in general. Did these concerns appear in the context of the implementation of this Directive and/or was this the reason of the legislation in your country not being in line with the Directive?

These concerns certainly did appear in the Netherlands. At specific request of the parliament, the Dutch government voted in the Council of the European Union against the Directive and later, by lodging an application at the European Court of Justice on 19 October 1998, brought an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for annulment of Directive. This application was dismissed by the Court on October 9, 2001³. Pending the outcome of the court proceedings, the mostly ethical objections of the Dutch parliament also initiated several motions to amend the legislative proposal of the government. The motions were thoroughly examined by the government, discussed with representatives of the European Commission and found to be possibly conflicting with the directive. The government therefore strongly advised against these motions to amend the legislative proposal. The motions have not yet been brought to a vote and, as said, the legislative proceedings have not yet been concluded. It is therefore uncertain whether the Dutch legislation, when finally adopted, will be in line with the Directive.

15/03/2002

¹ Kamerstuk 1998-1999, 26568, nr. 1-2, Tweede Kamer

² Brief aan de Voorzitter van de Vaste Commissie voor EZ, 01/03/2002.

³ Case C-377/98