



UPOV/INF/9

**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

## AGREEMENT

between

the International Union for the Protection  
of New Varieties of Plants

and

the Swiss Federal Council

to determine the legal status in Switzerland  
of that Union

(HEADQUARTERS AGREEMENT)

signed in Berne on November 17, 1983

- - -

and related texts

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[Translation of the French  
original version]**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

## A G R E E M E N T

between

the International Union for the Protection of New Varieties of Plants  
and the Swiss Federal Council to determine the legal status in  
Switzerland of that Union

THE INTERNATIONAL UNION FOR THE PROTECTION OF  
NEW VARIETIES OF PLANTS

of the one part, and

THE SWISS FEDERAL COUNCIL

of the other part,

desiring to enter into an agreement for the purpose of determining the legal status in  
Switzerland of the International Union for the Protection of New Varieties of Plants (UPOV),  
have agreed upon the following provisions:

Article 1Status

The Federal Council shall recognize the international status and the legal capacity in  
Switzerland of the International Union for the Protection of New Varieties of Plants  
(hereinafter designated as “the Union”).

Article 2

Freedom of Action of UPOV

1. The Federal Council shall guarantee to the Union the autonomy and freedom of action to which it is entitled as an international organization.

2. In particular, it shall recognize that the Union and its members in their relations with the Union have absolute freedom to hold meetings, including freedom of discussion and decision.

Article 3

Immunities and Privileges

The Union shall enjoy such immunities and privileges as are customarily granted to international organizations.

Article 4

Inviolability

1. The buildings or parts of buildings and land which, whoever may be the owner thereof, are used for the purposes of the Union shall be inviolable. No agent of the Swiss public authorities may enter therein without the express consent of the Union. Only the Secretary-General of the Union or his duly authorized representative shall be competent to waive such inviolability.

2. The archives of the Union and, in general, all documents intended for its official use, belonging to it or in its possession, shall be inviolable at all times and in all places.

3. The Union shall exercise supervision of and police power over its premises.

Article 5

Immunity from Jurisdiction and in respect  
of Other Measures

1. The Union shall enjoy immunity from criminal, civil and administrative jurisdiction, save in so far as such immunity has been formally waived in any given case by the Secretary-General of the Union or his duly authorized representative. The insertion in any contract of a clause instituting the jurisdiction of a Swiss ordinary court shall constitute a formal waiver of immunity. However, unless expressly stated to the contrary, such waiver shall not extend to measures of execution.

2. The buildings or parts of buildings, land and property belonging to the Union or used by it for its own purposes, whether belonging to it or not, may not be subjected to search, requisition, seizure or measures of execution.

## Article 6

### Communications

1. The Union shall benefit, in respect of its official communications, from treatment at least as favorable as that which is granted to other international organizations in Switzerland, in so far as it is compatible with the International Telecommunication Convention.

2. The Union shall have the right to use codes for its official communications. It shall also have the right to send and receive correspondence by duly identified couriers or bags enjoying the same privileges as diplomatic couriers and bags.

3. Official correspondence and other official communications of the Union, when duly identified, may not be subjected to censorship.

## Article 7

### Publications

The importation and exportation of publications of the Union shall not be subject to any restriction.

## Article 8

### Tax Arrangements

1. The Union, its assets, income and other properties shall be exempt from direct federal, cantonal and communal taxes. With regard to buildings, however, such exemption shall apply only to those owned by the Union and occupied by its services, and to income deriving therefrom. The Union shall not be subject to taxation on the rent it pays for premises rented by it and occupied by its services.

2. The Union shall be exempt from indirect federal, cantonal and communal taxes. With regard to the federal turnover tax included in prices or separately charged, exemption shall apply only to purchases effected for the official use of the Union, provided that the amount invoiced for one and the same purchase exceeds 100 Swiss francs.

3. The Union shall be exempt from all federal, cantonal and communal dues, except dues charged as the price of actual services rendered.

4. Where appropriate, the exemptions mentioned above may take the form of reimbursement at the request of the Union and according to a procedure to be determined by the Union and the competent Swiss authorities.

#### Article 9

##### Customs Arrangements

The treatment by customs authorities of articles intended for the Union shall be governed by the customs regulations of the Federal Council applicable to international organizations, the said regulations being an integral part of the present Agreement.

#### Article 10

##### Advances of Funds by Switzerland

1. Switzerland shall grant advances to the Union if the working capital fund of the latter is insufficient. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between Switzerland and the Union.

2. Switzerland and the Union shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

#### Article 11

##### Free Disposal of Funds

1. The Union may receive, hold, convert and transfer any funds, gold, any foreign currency, cash and other transferable assets, and dispose freely thereof both within Switzerland and in its relations abroad.

2. This Article shall also apply to member States in their relations with the Union.

#### Article 12

##### Freedom of Access and Residence

1. The Swiss authorities shall take all the necessary steps to facilitate the entry into, departure from and residence in Swiss territory for all persons, irrespective of their nationality, who are to attend the Union in an official capacity, namely:

- (a) representatives of member States;

(b) the Secretary-General and the staff of the Union;

(c) any other person, regardless of his nationality, who is to attend the Union in an official capacity.

2. All measures concerning the Federal Office of Aliens and intended to restrict the entry of foreigners into Switzerland or to control the conditions of their residence shall have no effect on the persons referred to in this Article.

### Article 13

#### Status of Representatives of Members of the Union

The representatives of members of the Union attending meetings organized by the Union shall enjoy the following privileges and immunities in Switzerland:

(a) inviolability of the person and place of residence, and of all articles belonging to the party concerned;

(b) immunity from arrest and imprisonment and, with regard to acts accomplished by them in the discharge of their duties, including words spoken and writings, from any jurisdiction;

(c) customs facilities, granted in accordance with the customs regulations of the Federal Council applicable to international organizations;

(d) the same immunities and facilities concerning their personal baggage as those granted to representatives to other intergovernmental organizations in Switzerland;

(e) the right to use codes in official communications or to receive or send documents or correspondence by means of couriers or duly sealed diplomatic bags;

(f) exemption, for themselves and their spouses, from all measures restricting immigration, all registration formalities for aliens and all national service obligations;

(g) exemption from restrictions relating to freedom of exchange on the same terms as those granted to representatives of foreign governments on official missions.

### Article 14

#### Status of the Secretary-General and of Certain Categories of Officials

1. The Secretary-General of the Union and those categories of officials designated by him with the consent of the Federal Council shall enjoy such privileges and immunities, exemptions and facilities as are granted to diplomatic agents in accordance with the law of nations and international custom.

2. Customs privileges and facilities shall be granted in accordance with the customs regulations.

Article 15

Immunities and Facilities Granted to All Officials

Officials of the Union, whatever their nationality, shall enjoy immunity from any jurisdiction for acts accomplished in the discharge of their duties, including words spoken and writings, even after such persons have ceased to be officials of the Union.

Article 16

Immunities and Facilities Granted to Non-Swiss Officials

Officials of the Union who do not have Swiss nationality shall:

- (a) be exempt from all obligations relating to national service in Switzerland;
- (b) together with their spouses and dependent members of their families, not be submitted to any provisions restricting immigration and formalities concerning the registration of aliens;
- (c) enjoy, with respect to exchange facilities, the same privileges as those granted to the officials of other international organizations;
- (d) together with the members of their families and their household staff, benefit from the same repatriation facilities as officials of other international organizations;
- (e) enjoy the customs facilities provided by the customs regulations of the Federal Council for international organizations;
- (f) enjoy exemption from all federal, cantonal and communal taxes on salaries, fees and allowances paid to them by the Union. Capital payments due in whatever circumstances by a pension fund or provident institution within the meaning of Article 17 of the present Agreement shall also, at the time of payment, be exempt in Switzerland from any tax on capital or income; the same shall apply to any payments which may be made to agents, officials or employees of the Union by way of indemnity for sickness, accidents, etc.

Article 17

Pension Funds and Special Funds

1. Any pension fund or provident institution acting officially for the benefit of officials of the Union shall have legal capacity in Switzerland in so far as it complies with the form laid down by Swiss law for such institutions. It shall enjoy, to the extent that it acts for



the benefit of such officials, the same exemptions, immunities and privileges as the Union itself.

2. Funds and foundations, whether having legal personality or not, administered under the auspices of the Union and allocated to the achievement of its official objectives, shall benefit from the same exemptions, immunities and privileges as the Union itself with regard to their movable property.

### Article 18

#### Social Security

The Union shall be exempt from all compulsory contributions to general social security institutions such as compensation funds, unemployment benefit funds, accident insurance, etc., on the understanding that the Union shall, as far as possible and on terms to be agreed upon, affiliate to the Swiss insurance schemes those of its agents who do not benefit from equivalent social protection.

### Article 19

#### Purpose of Immunity

1. The privileges and immunities provided for in the present Agreement are not established for the personal benefit and convenience of officials of the Union. Their purpose is solely to ensure, in all circumstances, the freedom of action of the Union and the complete independence of its agents.

2. The Secretary-General of the Union shall have the right and the duty to waive the immunity of any official when he considers that such immunity is hindering the normal course of justice, and that it is possible to take such action without prejudicing the interests of the Union. In respect of the Secretary-General himself, the Council shall have the power to waive immunity.

### Article 20

#### Prevention of Abuse of Privileges

The Union and the Swiss authorities shall cooperate at all times to facilitate the satisfactory administration of justice, ensure the observance of police regulations and prevent any abuse of the privileges, immunities and facilities provided for in the present Agreement.

Article 21

Identification Cards

1. The Federal Department of Foreign Affairs shall transmit to the Union an identification card, with a photograph of the holder, for each official and each dependent member of his family living with him and having no gainful occupation. This card shall be authenticated by the Federal Department of Foreign Affairs and by the Union and shall serve to identify the holder for the purposes of any federal, cantonal or communal authority.

2. The Union shall regularly communicate to the Federal Department of Foreign Affairs the list of the officials of the Union, and of the members of their families, indicating, in respect of each, date of birth, nationality, domicile in Switzerland, and category or class of employment.

Article 22

Private Disputes

The Union shall take the necessary steps to ensure the satisfactory settlement of:

(a) any disputes arising from contracts to which the Union is party and any other disputes relating to points of private law;

(b) any disputes involving any official of the Union who, by virtue of his official position, benefits from immunity, where immunity has not been waived in accordance with the provisions of Article 19.

Article 23

Non-Responsibility of Switzerland

Switzerland shall not, on account of the Union's activities on its territory, assume any international responsibility for acts or omissions of the Union or for acts committed or omissions made by its officials within the scope of their official functions.

Article 24

Security of Switzerland

1. Nothing in this Agreement shall affect the right of the Swiss Federal Council to apply appropriate safeguards in the interests of the security of Switzerland.

2. Should the Federal Council consider it necessary to apply the provisions of the first paragraph of the present Article, it shall, as promptly as circumstances permit, establish

contact with the Union in order to agree jointly upon such measures as may be necessary to protect the interests of the Union.

3. The Union shall cooperate with the Swiss authorities to prevent any prejudice to the security of Switzerland on account of any activity of the Union.

#### Article 25

##### Implementation of the Agreement by Switzerland

The Federal Department of Foreign Affairs is the Swiss authority responsible for the application of this Agreement.

#### Article 26

##### Jurisdiction

1. Any difference of opinion concerning the application or interpretation of this Agreement which direct consultations between the parties have failed to settle may be submitted, by either party, for consideration by an arbitration tribunal, composed of three members, including the president.

2. The Swiss Federal Council and the Union shall each designate one member of the tribunal.

3. The members thus designated shall choose their president.

4. In the event of disagreement between the members as to the choice of the president, the latter shall be designated by the President of the International Court of Justice at the request of the members of the arbitration tribunal.

5. The tribunal shall establish its own rules of procedure.

#### Article 27

##### Entry into Force

This Agreement shall enter into force on the day of its signature. It shall apply with retroactive effect as from November 8, 1981.

Article 28

Revision of the Agreement

1. This Agreement may be revised at the request of either party.
2. In such a case, the parties shall jointly examine any changes proposed to be made in the provisions of the present Agreement.

Article 29

Denunciation of the Agreement

The present Agreement may be denounced by either party, subject to a notice of two years.

Done and signed in two copies at Berne, on November 17, 1983.

For the International Union  
for the Protection of  
New Varieties of Plants:

For the Swiss Federal Council:

(Signed) A. Bogsch

(Signed) Brunner

Secretary-General

Head of the Directorate for  
International Organizations of  
the Federal Department of Foreign Affairs

(Official Seal)

(Official Seal)

## ARRANGEMENTS

for the Implementation of the Agreement concluded between the International Union for the Protection of New Varieties of Plants and the Swiss Federal Council to determine the legal status of that Union in Switzerland

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### Article 1

#### Visas

In order to facilitate the entry into Switzerland of persons mentioned in Articles 12, 13, 14 and 16 of the Agreement, Swiss embassies and consulates shall be given standing instructions to issue visas, in all cases where entry visas are required, upon presentation by the persons concerned of their passports or other, equivalent identity or travelling documents, together with sufficient evidence of their holders' status in relation to the Union.

Swiss embassies and consulates shall have instructions to grant visas without delay and without requiring the personal appearance of the applicants or the payment of fees.

### Article 2

#### Status of Representatives of Members of the Union

In cases where liability for a given tax is subject to the taxpayer's residence in Switzerland, the periods spent in Switzerland, in the discharge of their duties, by the representatives of members of the Union attending meetings convened by it shall not be considered periods of residence.

### Article 3

#### Immunities and Facilities Granted to Non-Swiss Officials

1. Non-Swiss officials shall be exempt from federal, cantonal and communal taxes on income earned by them from sources outside the Swiss Confederation.
2. Customs examination of the baggage of such officials shall be reduced to a strict minimum.

Article 4

Consultants

Persons of other than Swiss nationality who are called upon by the Union to act as consultants and who devote all their time to such activity shall be treated as officials of the Union for the duration of their duties.

Article 5

Military Service of Swiss Officials

1. The Secretary-General of the Union shall communicate to the Federal Council a list of the officials of Swiss nationality subject to military service obligations.

2. The Secretary-General and the Federal Council shall jointly draw up a list of a limited number of officials of Swiss nationality whose activities shall entitle them to dispensation.

3. In the event of the mobilization of other Swiss officials, the Union may request the Federal Department of Foreign Affairs to grant provisional exemption or to take whatever other measures may be appropriate.

Article 6

Entry into Force

These Arrangements shall enter into force at the same time as the Headquarters Agreement. It shall apply with retroactive effect as from November 8, 1981.

Article 7

Revision of these Arrangements

1. The present Arrangements may be revised at the request of either party.

2. In such a case, the parties shall jointly examine any changes proposed to be made in the provisions of the present Arrangements.

Article 8

Denunciation of these Arrangements

The present Arrangements may be denounced by either party, subject to a notice of two years.

Done and signed in two copies at Berne, on November 17, 1983.

For the International Union  
for the Protection of  
New Varieties of Plants:

For the Swiss Federal Council:

(Signed) A. Bogsch

(Signed) Brunner

Secretary-General

Head of the Directorate for  
International Organizations of  
the Federal Department of Foreign Affairs

(Official Seal)

(Official Seal)

LETTER

from the Federal Department of Foreign Affairs  
to the Secretary-General of UPOV

FEDERAL DEPARTMENT  
OF FOREIGN AFFAIRS

0.107.120

3003 Berne, November 17, 1983.

International Union for the  
Protection of New Varieties of  
Plants  
1211 Geneva 20

Sir,

In your letter of October 10, 1983, you brought to our attention that all officials of your Union were subject to internal taxation.

We have the honor to inform you that the Federal Council has decided, in the light of your communication, to apply to the International Union for the Protection of New Varieties of Plants its decree of June 26, 1964, concerning the taxation of Swiss officials of international organizations. In accordance with this decision, officials of your Union who are of Swiss nationality and reside within the territory of the Confederation will continue to be exempt from Federal taxes in respect of their salaries, as long as your Union maintains the system of internal taxation on the salaries of all its officials.

We would ask you to take note of this decision of the Federal Council; at the same time we wish to point out that this communication must not be regarded as an amendment of either the Headquarters Agreement or the Arrangements for its implementation which we signed in Berne on November 17, 1983.

Accept, Sir, the assurances of my highest consideration.

Directorate for International Organizations

(Signed) Brunner



LETTER

from the Permanent Mission of Switzerland to the International  
Organizations in Geneva, to the Secretary-General of UPOV

PERMANENT MISSION OF  
SWITZERLAND TO THE  
INTERNATIONAL ORGANIZATIONS  
IN GENEVA

1211 Geneva 20, November 17, 1983

Mr. Arpad Bogsch  
Secretary-General of the  
International Union for the Protection  
of New Varieties of Plants

1211 Geneva 20

Sir,

I refer to the Headquarters Agreement signed today by your Union and by the Swiss Federal Council and take this opportunity to inform you on the following.

The cantonal fiscal administration has authorized me to confirm to you that it will continue to apply the decision taken on December 12, 1969, by Mr. Jean Babel, Counsellor of State, to extend to the Swiss officials of the International Union for the Protection of New Varieties of Plants the effects of the Agreement concluded on April 5, 1957, between the State of Geneva and BIRPI.

Consequently, Swiss and non-Swiss officials domiciled in the Canton of Geneva and working within your Union will, in that capacity, be exempt from cantonal and communal taxes on such salaries, fees and indemnities as they may receive from your Union.

Accept, Sir, the assurances of my highest consideration.

The Head of the Permanent  
Mission of Switzerland

(Signed) Pictet  
Ambassador

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