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

**DRAFT**

**GUIDANCE**

**ON HOW TO BECOME A MEMBER OF UPOV**

*Document prepared by the Office of the Union  
to be considered by the Council at its forty-third ordinary session  
to be held in Geneva on October 22, 2009*

Note for Draft version

**Endnotes** provide background information when considering the draft version, not to be retained in the approved version of the document.

**Footnotes** to be retained in the published version of the document.

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GUIDANCE ON HOW TO BECOME A MEMBER OF UPOV<sup>a</sup>

PREAMBLE

1. The purpose of this document is to provide guidance on how to become a member of the International Union for the Protection of New Varieties of Plants (member of the Union). The only binding obligations on members of the Union are those contained in the text of the UPOV Convention itself, and these Guidance Notes must not be interpreted in a way that is inconsistent with the relevant Act for the member of the Union concerned.
2. Part I provides information on eligibility to become a member of the Union. Part II explains the procedure to become a member of the Union.

PART I. ELIGIBILITY TO BECOME A MEMBER OF UPOV

STATES

*Relevant Article*

**Article 34**

**Ratification, Acceptance or Approval; Accession**

**(1) [*States and certain intergovernmental organizations*] (a) Any State may, as provided in this Article, become party to this Convention.**

[...]

INTERGOVERNMENTAL ORGANIZATIONS

*Relevant Article*

**Article 34**

**Ratification, Acceptance or Approval; Accession**

[...]

**(b) Any intergovernmental organization may, as provided in this Article, become party to this Convention if it**

**(i) has competence in respect of matters governed by this Convention,**

**(ii) has its own legislation providing for the grant and protection of breeders' rights binding on all its member States and**

**(iii) has been duly authorized, in accordance with its internal procedures, to accede to this Convention.**

[...]

## PART II. PROCEDURE TO BECOME A MEMBER OF UPOV

3. The procedure to become a member of the Union is summarized in the following sections of this document:

Section A. Development of a law<sup>1</sup> in conformity with the 1991 Act of the UPOV Convention (UPOV Convention);

Section B. Advice of the Council of UPOV (Council) in respect of the conformity of the law with the provisions of the UPOV Convention;

Section C. Implementation of the UPOV Convention;

Section D. Deposit of the instrument of accession;

Section E. Notification of the representative and alternate to the Council;

Section F. Entry into force of the UPOV Convention; and

Section G. Finances.

### *SECTION A. DEVELOPMENT OF A LAW IN CONFORMITY WITH THE 1991 ACT OF THE UPOV CONVENTION*

4. States or any intergovernmental organizations are invited to contact the Office of the International Union for the Protection of New Varieties of Plants (Office of the Union), at the earliest opportunity, for assistance in developing a law in accordance with the UPOV Convention and for becoming a member of the Union.

5. Guidance on developing a law in accordance with the UPOV Convention can be found in document “Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention” (document UPOV/INF/6/1 [+link](#))<sup>b</sup>. That document is available in English, Arabic, Chinese, French, German, Russian and Spanish.

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<sup>1</sup> Reference in this document to the term “law” should be understood to cover the term “draft law”, unless specified otherwise in the relevant paragraphs.

*SECTION B. ADVICE OF THE COUNCIL**Relevant Article***Article 34****Ratification, Acceptance or Approval; Accession**

[...]

**(3) [Advice of the Council] Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.**

6. In order to become a member of the Union the advice of the Council in respect of the conformity of the law with the provisions of the UPOV Convention (Article 34(3) of the UPOV Convention) is required.

7. The advice of the Council involves the following procedure:

- (a) request by the State/intergovernmental organization for the advice of the Council;
- (b) preparation of a document with the analysis of the law by the Office of the Union (“analysis document”);
- (c) posting of the analysis document and the law on the UPOV website;
- (d) preliminary examination of the law by the Consultative Committee; and
- (e) decision embodying the advice of the Council.

Further information on the procedure is provided below.

(a) Request by the State/intergovernmental organization for the advice of the Council

8. The request from any State or any intergovernmental organization for the advice of the Council in respect of the conformity of its law with the provisions of the UPOV Convention is required to be made in a letter addressed to the Secretary-General of UPOV (example letter available upon request). A copy of the law, or its translation, in one of the UPOV languages (English, French, German, Spanish) is required to be enclosed in the letter.

9. A State or intergovernmental organization may submit to the Council an adopted law or, alternatively, may submit a draft law as presented to its parliament or relevant legislative body. The draft law can provide the basis for a positive decision of the Council on accession to the UPOV Convention, provided that no modifications are introduced in the draft law during the parliamentary procedure<sup>c</sup> other than any modification proposed by the Council in its decision (see below subsection (e) “decision embodying the advice of the Council”).

10. Requests for examination of laws by the Council are required to reach the Office of the Union at least four weeks prior to the week of the relevant Council session<sup>d</sup>. In general, requests received after that date would be considered at the subsequent session of the

Council.<sup>e</sup> The Council holds its ordinary session in October and, where necessary, holds an extraordinary session in March/April. The dates of the sessions can be found at [http://www.upov.int/en/documents/meetings\\_calendar/](http://www.upov.int/en/documents/meetings_calendar/).

(b) Preparation of a document with the analysis of the law by the Office of the Union

11. In order to assist the Council in its examination of the law, the Office of the Union prepares a document that analyzes the law in relation to the text of the UPOV Convention (“analysis document”).

(c) Posting of the analysis document and the law on the UPOV website

12. The analysis document and the law are posted on the UPOV website in advance of the Council session at which the law will be examined to assist members and observers in their consideration of the law. This procedure also provides an opportunity for comments from members and observers prior to the examination of the law by the Council. Any comments received are communicated to the State or the intergovernmental organization requesting the examination of the law and to the members of the Union. Where so requested by the member or observer making the comment, comments are posted on the UPOV website on a section accessible to observers.

(d) Preliminary examination of the law by the Consultative Committee

13. Prior to consideration by the Council, the law will undergo a preliminary examination by the Consultative Committee, which is the body charged with the preparation of the sessions of the Council. The Consultative Committee is composed exclusively of members of the Union and, in general, meets immediately prior to the sessions of the Council. Although observers do not participate in the sessions of the Consultative Committee, a delegation from the State or intergovernmental organization concerned will be invited to participate in the session of the Consultative Committee in which the examination of its law will take place. The delegation will be present during the introduction of the law and will be invited to answer any questions raised by the Consultative Committee.

(e) Decision embodying the advice of the Council

14. At the Council session, the recommendations of the Consultative Committee will be considered and the Council will take its decision in respect of the conformity of the law with the provisions of the UPOV Convention.<sup>f</sup> The delegation from the State or intergovernmental organization concerned will be invited to participate in the session of the Council.

15. Some possible scenarios concerning the decisions of the Council are summarized below:

(i) if the decision of the Council embodying the advice concerning an adopted law is positive, the instrument of accession may be deposited (Article 34(3) of the UPOV Convention) (see Section C. “Implementation of the Convention”), provided that the law is not amended in the meantime;

(ii) if the decision of the Council embodying the advice concerning a draft law is positive, and if the draft law is adopted with no changes, and in force, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C “Implementation of the Convention”);

(iii) if the decision of the Council embodying the advice concerning a draft law is positive, subject to modifications, reference to those modifications will be made in the decision of the Council embodying the positive advice. Once the required modifications are made to the draft law and that law is adopted with no other changes, and in force, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C “Implementation of the Convention”);

(iv) if the decision of the Council is that modifications to a law are required, the Council decision would recommend that once the modifications have been incorporated in the law, the amended law would need to be submitted for examination by the Council at a subsequent session.<sup>8</sup>

16. The Secretary-General of UPOV will communicate the decision of the Council to the authority requesting the examination of the law.

## *SECTION C. IMPLEMENTATION OF THE CONVENTION*

### *Relevant Article*

#### **Article 30**

##### **Implementation of the Convention**

**(1) [Measures of implementation] Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall:**

**(i) provide for appropriate legal remedies for the effective enforcement of breeders’ rights;**

**(ii) maintain an authority entrusted with the task of granting breeders’ rights or entrust the said task to an authority maintained by another Contracting Party;**

**(iii) ensure that the public is informed through the regular publication of information concerning**

- **applications for and grants of breeders’ rights, and**
- **proposed and approved denominations.**

**(2) [Conformity of laws] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of this Convention.**



17. Article 30(2) of the UPOV Convention requires that, on depositing its instrument of accession, the State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of the UPOV Convention. In particular, a breeder should be able to file an application for a breeder's right in accordance with the UPOV Convention<sup>2</sup>.

18. Article 30(1)(i) of the UPOV Convention requires that appropriate legal remedies for the effective enforcement of breeders' rights are available. Further information on this requirement is provided in the "Explanatory Notes on the enforcement of breeders' rights under the UPOV Convention" (see document UPOV/EXN/ENF/1 [+link](#)).<sup>h</sup>

#### *SECTION D. DEPOSIT OF THE INSTRUMENT OF ACCESSION*

19. The following are required for the deposit of the instrument of accession:

- (a) instrument of accession;
- (b) legislation governing breeders' rights;
- (c) declaration on the number of contribution units; and
- (d) declaration on genera and species to be protected.

Further information on those requirements is provided in the subsections below.

(a) Instrument of accession

*Relevant article*

#### **Article 34**

#### **Ratification, Acceptance or Approval; Accession**

[...]

**(2) [*Instrument of adherence*] Any State which has signed this Convention shall become party to this Convention by depositing an instrument of ratification, acceptance or approval of this Convention. Any State which has not signed this Convention and any intergovernmental organization shall become party to this Convention by depositing an instrument of accession to this Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.**

20. The instrument of accession must be signed by the Head of State, or the Head of Government or the Minister for Foreign Affairs or, in the case of an intergovernmental organization, by the competent authority(ies) for external relations of intergovernmental organizations (example text for an instrument of accession is available upon request).

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<sup>2</sup> The UPOV Model Form for the Application for Plant Breeders' Rights (document TGP/5 "Experience and Cooperation in DUS Testing" Section 2), provides guidance for the development of application forms for breeders' rights ([http://www.upov.int/en/publications/tgp/documents/tgp5\\_section\\_2\\_2.pdf](http://www.upov.int/en/publications/tgp/documents/tgp5_section_2_2.pdf)). For the UPOV Technical Questionnaire to be Completed in Connection with an Application for Plant Breeders' Rights, see document TGP/5 "Experience and Cooperation in DUS Testing" Section 3 ([http://www.upov.int/en/publications/tgp/documents/tgp5\\_section3-1.pdf](http://www.upov.int/en/publications/tgp/documents/tgp5_section3-1.pdf)).

21. The instrument of accession must be deposited with the Secretary-General of UPOV. It may be deposited in person, or by mail, usually by the Permanent Representative to the Office of the United Nations and other International Organizations in Geneva, or by an official of the Permanent Mission or, in the case of an intergovernmental organization, the Permanent Representative in Geneva or an official of the Liaison Office.

(b) Legislation governing breeders' rights

*Relevant article*

**Article 36**

**Communications Concerning Legislation and the Genera  
and Species Protected; Information to be Published**

**(1) [Initial notification] When depositing its instrument of ratification, acceptance or approval of or accession to this Convention, as the case may be, any State or intergovernmental organization shall notify the Secretary-General of**

**(i) its legislation governing breeder's rights;**  
[...]

22. The adopted law governing breeder's rights that is required to be notified at the time of the deposit of the instrument of accession is:

(i) the adopted law for which there was a positive decision of the Council on accession to the UPOV Convention (see above, in Section B "Advice of the Council", paragraph 15(i); or

(ii) the adopted version of the draft law for which there was a positive decision of the Council on accession to the UPOV Convention (see above, in Section B "Advice of the Council", paragraph 15(ii) and (iii)).

(c) Declaration on the number of contribution units

*Relevant article*

**Article 29**

**Finances**

[...]

**(3) [Contributions: share of each member] (a) The number of contribution units applicable to any member of the Union which is party to the Act of 1961/1972 or the Act of 1978 on the date on which it becomes bound by this Convention shall be the same as the number applicable to it immediately before the said date.**

**(b) Any other State member of the Union shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.**

[...]

23. The UPOV Convention requires that any State shall, or any intergovernmental organization may (Article 29(7)), on joining the Union, indicate, in a declaration addressed to the Secretary-General of UPOV, the number of contribution units applicable to it. The UPOV Convention clarifies (Article 29(2)(b)) that the number of contribution units shall be expressed in whole numbers or fractions thereof, provided that no fraction shall be smaller than one-fifth. The value of a contribution unit is 53,641 Swiss Francs.<sup>i</sup>

24. In addition to the annual contribution, a State/intergovernmental organization that joins UPOV is required to make a one-time payment to the Working Capital Fund of UPOV. This payment is 8,333 Swiss Francs multiplied by the number of contribution units. The decisions of the Council concerning the Working Capital Fund of UPOV can be found in the Annex to this document.<sup>j</sup>

(d) Declaration on Genera and Species to be Protected

*Relevant articles*

### Article 36

#### **Communications Concerning Legislation and the Genera and Species Protected; Information to be Published**

**(1) [Initial notification] When depositing its instrument of ratification, acceptance or approval of or accession to this Convention, as the case may be, any State or intergovernmental organization shall notify the Secretary-General of**

[...]

**(ii) the list of plant genera and species to which, on the date on which it will become bound by this Convention, it will apply the provisions of this Convention.**

### Article 3

#### **Genera and Species to be Protected**

[...]

**(2) [New members of the Union] Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,**

**(i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species and,**

**(ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.**

25. The instrument of accession must be accompanied by a declaration of the plant genera and species to which the State or intergovernmental organization will apply the 1991 Act of the UPOV Convention when it becomes bound by the Convention (Article 36(1)(ii) of the UPOV Convention) (see Explanatory Notes on Genera and Species to be Protected under the 1991 Act of the UPOV Convention (document UPOV/EXN/GEN/1 [+link](#))).<sup>k</sup>

26. The above declarations, on the number of contribution units and on the genera and species to be protected, may be made either by a letter from the Minister for Foreign Affairs, a Note from the Ministry of Foreign Affairs, a letter from the Permanent Representative or a Note from the Permanent Mission in Geneva, or from competent authority(ies) for external relations of intergovernmental organizations (example texts for the above declarations are available upon request).

*SECTION E. NOTIFICATION OF THE REPRESENTATIVE AND ALTERNATE TO THE COUNCIL*

*Relevant article*

**Article 26**

**The Council**

**(1) [Composition] The Council shall consist of the representatives of the members of the Union. Each member of the Union shall appoint one representative to the Council and one alternate. Representatives or alternates may be accompanied by assistants or advisers.**

27. Members of the Union are required to notify the Office of the Union the names, titles and contact details of the representative and alternate to the Council. One of the responsibilities of the representative to the Council is to appoint persons to the relevant UPOV bodies and to decide on persons to be given access to UPOV documents in the first and second restricted areas of the UPOV website (see Rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies and access to UPOV documents (document C/39/13) [http://www.upov.int/export/sites/upov/en/about/members/pdf/Rules\\_Observer\\_Status\\_e.pdf](http://www.upov.int/export/sites/upov/en/about/members/pdf/Rules_Observer_Status_e.pdf)).<sup>1</sup>

28. On becoming a UPOV member, the above notification can be made either by a letter from the Minister for Foreign Affairs, a Note from the Ministry of Foreign Affairs, a letter from the Permanent Representative or a Note from the Permanent Mission in Geneva or from competent authority(ies) for external relations of intergovernmental organizations (example text for the above notification is available upon request).

*SECTION F. ENTRY INTO FORCE OF THE UPOV CONVENTION*

29. The State or intergovernmental organization becomes bound by the UPOV Convention one month after the successful deposit of the instrument of accession (Article 37(2) of the UPOV Convention).

30. More information on ongoing obligations of members of the Union and related notifications is provided in document UPOV/INF/15/1<sup>m</sup>.

*SECTION G. FINANCES*

31. The amount corresponding to the Working Capital Fund and the first annual contribution is due in January of the year following the date on which the State/ intergovernmental organization becomes bound by the Convention (document UPOV/INF/4 “UPOV Financial Regulations and Rules”).

32. Further information on how to become a member of UPOV, may be obtained from the Office of the Union:

Tel: (+41-22) 338 9111

E-mail: [upov.mail@upov.int](mailto:upov.mail@upov.int)

Fax: (+41-22) 733 0336

Website: [www.upov.int](http://www.upov.int)

[Annex follows]

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- <sup>a</sup> Document approved by the CAJ by correspondence on August 29, 2009 (Circular E-1042).
- <sup>b</sup> To be updated according to latest draft/approved text of document UPOV/INF/6/1.
- <sup>c</sup> Guidance developed by the Consultative Committee.
- <sup>d</sup> See document C/42/21 “Report” (paragraph 30). The proposed change from three to four weeks takes into consideration particular translation requirements when the law is not submitted in English.
- <sup>e</sup> See document C/42/21 “Report” (paragraph 30).
- <sup>f</sup> See documents C/42/13 “Measures to improve the efficiency, effectiveness and time flexibility of the UPOV sessions” (paragraph 8) and C/42/21 “Report” (paragraph 29).
- <sup>g</sup> Guidance developed by the Consultative Committee.
- <sup>h</sup> To be updated according to latest draft/approved text of document UPOV/EXN/ENF/1.
- <sup>i</sup> Status 2008-2009 financial period. To be updated as necessary.
- <sup>j</sup> Consolidated decision adopted by the Council of UPOV at its twenty-third extraordinary session on April 7, 2006.
- <sup>k</sup> To be updated according to latest draft/approved text of document UPOV/EXN/GEN/1.
- <sup>l</sup> To be updated according to latest draft/approved text of document C/39/13.
- <sup>m</sup> The Office of the Union will propose, for consideration at the sixtieth session of the CAJ, to be held in Geneva on October 19 and 20, 2009, the preparation of an information document on ongoing obligations of members of the Union and related notifications (document UPOV/INF/15/1).

ANNEX:

UPOV WORKING CAPITAL FUND<sup>1</sup>

1. The Working Capital Fund was established by a decision of the Council of the International Union for the Protection of New Varieties of Plants (UPOV) at its third meeting on October 9, 1969, in accordance with the provisions of the Financial Regulations of UPOV (documents CPU Doc. 11, 17, 20 and UPOV/C/IV/17 and UPOV/C/VI/12):

“Article 8

Working Capital Fund

“1. UPOV shall have a special fund hereby named the Working Capital Fund, which shall be constituted by advances made by member States. Such advances shall be entered to the credit of the members which have made them.

“2. The amount of the initial, or any subsequent, advance which each of the member States is called upon to make to the Working Capital Fund, and the procedure according to which such advances are to be made shall be fixed by the Council on the basis of proposals submitted by the Secretary General.

“3. The purposes for which the Working Capital Fund shall be utilized shall be:

“(a) to meet budgeted expenditure pending the receipt of the contributions of member States;

“(b) to meet unavoidable unforeseen expenses arising from the execution of the approved program;

“(c) to meet such other expenses as may be determined by the Council.

“4. Advances made from the Fund under paragraph (3)(a) shall be reimbursed as soon as, and to the extent that, income is available for that purpose. The amounts required for the reimbursement of advances provided for in paragraphs (3)(b) and (3)(c) shall be covered by additional budgets or by the budget for the following year. Advances provided for in paragraph 3(c) shall be subject to prior approval by the Council.

“5. Interest received on the Working Capital Fund shall be credited to the general funds of UPOV.”

2. The Council recalls its earlier decisions on the Working Capital Fund of UPOV (paragraph 57 of document C/VI/12, paragraph 42 of document C/XII/15 and paragraph 14 of document C/26/15) and the recommendation of the Consultative Committee at its seventy-first session, and decides to consolidate them as follows:

(a) to base the share of the members of the Union in the Working Capital Fund on the number of contribution units applicable to it for the purpose of the annual contributions under the UPOV Convention;<sup>2</sup>

[End of Annex and of document]

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<sup>1</sup> Decision adopted by the Council at its twenty-third extraordinary session on April 7, 2006.

<sup>2</sup> Article 29(3) of the 1991 Act, Article 26(4) of the 1978 Act and Article II of the 1972 Act.