



UPOV/INF/14/1 Draft 2

ORIGINAL: English

DATE: August 31, 2009

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

DRAFT

GUIDANCE
FOR MEMBERS OF UPOV
ON HOW TO RATIFY, OR ACCEDE TO,
THE 1991 ACT OF THE UPOV CONVENTION

*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 FOR MEMBERS OF UPOV ON HOW TO RATIFY,
OR ACCEDE TO, THE 1991 ACT OF
THE UPOV CONVENTION^a

PREAMBLE

1. The purpose of this document is to provide guidance, for members of the International Union for the Protection of New Varieties of Plants (members of the Union) bound by an earlier Act of the UPOV Convention, on how to ratify, or accede to, the 1991 Act of the UPOV Convention. 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. The procedure for members of the Union on how to ratify, or accede to, the 1991 Act of the UPOV Convention is summarized in the following parts of this document:

- Part I. Development of a law in conformity with the 1991 Act of the UPOV Convention;
- Part II. Implementation of the 1991 Act of the UPOV Convention;
- Part III. Deposit of the instrument of ratification or accession;
- Part IV. Entry into force of the 1991 Act of the UPOV Convention; and
- Part V. Finances.

PART I. DEVELOPMENT OF A LAW IN CONFORMITY WITH THE 1991 ACT OF THE UPOV CONVENTION

3. Members of the Union 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 1991 Act of the UPOV Convention.

4. Guidance on developing a law in accordance with the 1991 Act of 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](#))^b. That document is available in Arabic, Chinese, English, French, German, Russian and Spanish.

PART II. IMPLEMENTATION OF THE 1991 ACT OF THE UPOV 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.

5. Article 30(2) of the 1991 Act of the UPOV Convention requires that, on depositing its instrument of ratification,¹ acceptance, approval or accession, the member of the Union must be in a position, under its laws, to give effect to the provisions of the 1991 Act of the UPOV Convention.

¹ Reference in this document to “ratification” should be understood as covering also acceptance and approval.

PART III. DEPOSIT OF THE INSTRUMENT OF RATIFICATION OR ACCESSION

6. The requirements for the deposit of the instrument of ratification or accession are summarized in the following sections of this document:

Section A. Instrument of ratification or accession;

Section B. Legislation governing breeders' rights; and

Section C. Declaration on genera and species to be protected.

SECTION A. INSTRUMENT OF RATIFICATION OR ACCESSION

Instrument of ratification, acceptance or approval: for members of the Union that have signed the 1991 Act of the UPOV Convention

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. [...]

7. Information of members of the Union which have signed the 1991 Act of the UPOV Convention and, consequently, would become party to the 1991 Act of the UPOV Convention by depositing an instrument of ratification,² acceptance or approval is provided in Annex I to the Council document concerning the annual report of the Secretary-General (http://www.upov.int/en/documents/index_c_c_extr.htm).

Instrument of accession: for members of the Union that have not signed the 1991 Act of the UPOV Convention

Relevant article

Article 34

Ratification, Acceptance or Approval; Accession

[...]

(2) [*Instrument of adherence*] [...] 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. [...]

² Reference in this document to "ratification" should be understood as covering also acceptance and approval.

Requirements concerning the instrument of ratification or accession

8. The instrument of ratification or accession must be signed by the Head of State, or the Head of Government or the Minister for Foreign Affairs (example text for an instrument of ratification or accession is available from the Office of the Union upon request).

9. The instrument of ratification or 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.

SECTION 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;
[...]

10. The adopted law governing breeder's rights giving effect to the provisions of the 1991 Act of the UPOV Convention is required to be notified at the time of the deposit of the instrument of ratification or accession.

SECTION C. 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

(1) [States already members of the Union] Each Contracting Party which is 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 all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978 and,

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

[...]

11. The instrument of ratification or accession must be accompanied by a declaration of the plant genera and species to which the member of the Union will apply the 1991 Act of the UPOV Convention when it becomes bound by the 1991 Act of the UPOV Convention (Article 36(1)(ii) of the 1991 Act of the UPOV Convention).

12. Where the legislation of the member of the Union concerned does not, in the first instance, apply to all plant genera and species, the minimum requirement is to apply the provisions of the 1991 Act of the UPOV Convention to the plant genera and species to which it applied, on the date of the entry into force of the 1991 Act of the UPOV Convention, the provisions of the previous Act of the UPOV Convention by which it was bound and, by the expiration of five years, to all plant genera and species (see Article 3(1)(i) and (ii) of the 1991 Act of the UPOV Convention and the Explanatory Notes on Genera and Species to be Protected under the 1991 Act of the UPOV Convention (document UPOV/EXN/GEN/1 [+link](#))).^c

13. The declaration on genera and species 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 (example text for the above declaration is available from the Office of the Union upon request).

PART IV. ENTRY INTO FORCE OF THE 1991 ACT OF THE UPOV CONVENTION

14. The member of the Union becomes bound by the 1991 Act of the UPOV Convention one month after the successful deposit of the instrument of ratification or accession (Article 37(2) of the 1991 Act of the UPOV Convention).

PART V. FINANCES

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.

[...]

15. In accordance with Article 29(3)(a) of the 1991 Act of the UPOV Convention, the number of contribution units applicable to the member of the Union, on the date on which it becomes bound by the 1991 Act of the UPOV Convention, shall be the same as the number applicable to it immediately before the said date. Consequently, in relation to the ratification of, or accession to the 1991 Act of the UPOV Convention by a member of the Union, no declaration on contribution units is required.

16. More information on ongoing obligations of members of the Union and related notifications is provided in document UPOV/INF/15/1^d.

[End of document]

^a Document approved by the CAJ by correspondence on August 29, 2009 (Circular E-1042).

^b To be updated according to latest draft/approved text of document UPOV/INF/6/1.

^c To be updated according to latest draft/approved text of document UPOV/EXN/GEN/1.

^d 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).