

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

GENEVA

DRAFT**GUIDANCE FOR MEMBERS OF UPOV ON
ONGOING OBLIGATIONS AND
RELATED NOTIFICATIONS***Document prepared by the Office of the Union**to be considered by the Council at its forty-fourth ordinary session
to be held in Geneva on October 21, 2010*

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
ONGOING OBLIGATIONS AND
RELATED NOTIFICATIONS

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) on ongoing obligations and related notifications. 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. While guidance notes in this document relate to certain provisions of the 1991 Act of the UPOV Convention, they are also relevant for the corresponding provisions of the 1978 Act of the UPOV Convention, unless indicated otherwise.

3. Guidance is provided as follows:

Part I explains the notifications concerning the representatives and alternates to the Council and designated persons to the relevant UPOV bodies;

Part II explains the notifications concerning the legislation governing breeders' rights and, if appropriate, any extension of the application of the legislation to additional plant genera and species; and

Part III provides information on the financial obligations concerning the payment of contributions.

PART I. NOTIFICATIONS CONCERNING THE REPRESENTATIVES AND ALTERNATES 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.¹

A. Initial notification of the representative

4. Members of the Union are required to notify the Office of the Union of the names, titles and contact details of the representative and alternate to the Council.

5. On becoming a UPOV member, that 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 the competent authority(ies) for external relations of intergovernmental organizations (example text for the above notification is available upon request).

B. Subsequent notifications of any changes concerning the representative

6. Members of the Union are requested to communicate to the Office of the Union, as soon as possible, any changes concerning the representative.

7. After the initial notification, subsequent changes of the representative do not require a notification via the Ministry for Foreign Affairs. If the new representative holds the same title as the predecessor, a communication to the Office of the Union from the new representative or the supervisor will be sufficient. In exceptional cases (e.g. different communications from the same Government), the Office of the Union will request the Permanent Mission of the member of the Union concerned to coordinate the communication concerning the appointment of the new representative.

C. Responsibilities of the representative

8. 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 Access to UPOV Documents: <http://www.upov.int/en/documents/index.html>).

¹ The corresponding provision of the 1978 Act of the UPOV Convention can be found in Article 16(1).

9. Upon receipt of the notification, the Office of the Union will:

(a) communicate to the representative that has been officially appointed the User Id and passwords corresponding to that member of the Union. The User Id and passwords will enable access to both the first and second restricted areas of the UPOV website in order to download documents (<http://www.upov.int/en/documents/restrict.html>);

(b) draw the attention to the UPOV structure diagram of the UPOV bodies (<http://www.upov.int/en/about/structure.html>) and will ask the representative to provide the names and contact details of the “designated persons” to the Council, the Consultative Committee, the Administrative and Legal Committee (CAJ), Technical Committee (TC) and Technical Working Parties (TWPs). The Office of the Union will, if appropriate, attach the existing list for the relevant member of the Union, for confirmation or updating. The designated persons by the representative will receive copies of the invitations to the sessions of the relevant UPOV bodies and the corresponding notifications of the posting of documents for those sessions;

(c) send a copy of the “Rules Governing the Access to UPOV Documents” (<http://www.upov.int/en/documents/index.html>) to guide the representative in the distribution of the User Id and passwords. Any person from the member of the Union making a request to the Office of the Union for access to documents in the first and second restricted areas of the UPOV website will be invited to contact the representative; and

(d) request the representative to provide the contact details of the authority entrusted with the task of granting breeders’ rights in accordance with Article 30(1)(i) of the 1991 Act of the UPOV Convention, for publication under the section “PVP Offices” of the UPOV website (http://www.upov.int/en/about/members/pvp_offices.htm).

10. Another important role of the representative is in relation to the approval by correspondence of UPOV policy and guidance. Members of the Union agreed that, unless otherwise agreed by the Council, documents which set out UPOV policies or guidance, once approved by the relevant UPOV Committees, as appropriate, must be adopted by the Council. In cases where a rapid presentation of a UPOV policy or guidance is required, such that adoption could not be achieved by presentation of a document to the Council, approval would be sought by correspondence from the representatives to the Council of the members of the Union (see document C/43/17 “Report”, paragraph 13(i)).

11. The representative is also responsible of the notifications concerning changes in the legislation governing breeders’ rights and, if appropriate, any extension of the application of the UPOV Convention to additional plant genera and species (see Part II of this document).

PART II. NOTIFICATIONS CONCERNING THE LEGISLATION GOVERNING BREEDERS' RIGHTS AND, IF APPROPRIATE, ANY EXTENSION OF THE APPLICATION OF THE CONVENTION TO ADDITIONAL PLANT GENERA AND SPECIES

A. Notifications concerning changes in the legislation governing breeders' rights

*Relevant article*²

Article 36

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

[...]

(2) [Notification of changes] Each Contracting Party shall promptly notify the Secretary-General of

(i) any changes in its legislation governing breeders' rights and

[...]

(3) [Publication of the information] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

(i) the legislation governing breeders' rights and any changes in that legislation, and

[...]

12. The adopted law governing breeders' rights giving effect to the provisions of the UPOV Convention is notified at the time of the deposit of the instrument of ratification or accession.³ Any changes to that legislation governing breeders' rights shall be notified promptly to the Secretary-General in one of the UPOV languages (English, French, German or Spanish). The English version of those changes in the legislation and/or the relevant consolidated text will then be published in the UPOV Gazette and Newsletter and in the "legal resources" section of the UPOV website (http://www.upov.int/en/about/legal_resources/) at the earliest opportunity.

13. Members of the Union are invited to contact the Office of the Union if they require assistance in the translation into English of the changes in their legislation governing breeders' rights.

² See Article 35(2)(d)(e)(f) and (g) of the 1978 Act of the UPOV Convention.

³ Document [UPOV/INF/13](#) provides "Guidance on How to Become a Member of UPOV" and document [UPOV/INF/14](#) provides "Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention".

B. Notification of any extension of the application of the UPOV Convention to additional plant genera and species

*Relevant articles*⁴

Article 36

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

[...]

(2) [*Notification of changes*] Each Contracting Party shall promptly notify the Secretary-General of

[...]

(ii) any extension of the application of this Convention to additional plant genera and species.

(3) [*Publication of the information*] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

[...]

(ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

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.

(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.

⁴ See Article 35(2)(a)(b) and (c) of the 1978 Act of the UPOV Convention.

14. Where the State or Intergovernmental Organization concerned does not, in the first instance, apply the UPOV Convention to all plant genera and species, any extension of the application of the UPOV Convention to additional plant genera and species shall be notified to the Secretary-General⁵. That notification shall be made promptly to the Office of the Union and should include the relevant legal source for such an extension (Regulations, decision of the Minister, etc...). The notification will then be published in the UPOV Gazette and Newsletter (http://www.upov.int/en/publications/gazette_newsletter.htm) at the earliest opportunity.

15. In the preparation of the notification concerning the extension of the application of the UPOV Convention to additional plant genera and species, members of the Union are invited to consult the “Explanatory Notes on Genera and Species to be Protected under the 1991 Act of the UPOV Convention” (document *UPOV/EXN/GEN/1*) and the GENIE database (<http://www.upov.int/genie/en/>).

16. The above notifications, on changes in the legislation governing breeders’ rights and on any extension of the application of the UPOV Convention to additional plant genera and species should be made by the representative.

⁵ Document *UPOV/INF/13* provides “Guidance on How to Become a Member of UPOV” and document *UPOV/INF/14* provides “Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention”.

PART III. FINANCIAL OBLIGATIONS CONCERNING THE PAYMENT OF CONTRIBUTIONS

17. In accordance with the UPOV Convention,⁶ the Secretary-General shall communicate, each year, to the members of the Union the amount of their annual contributions for the forthcoming year on the basis of the applicable number of contribution units. The amount corresponding to the annual contribution is due in January (document UPOV/INF/4 “Financial Regulations and Rules of UPOV”). The communication by the Secretary-General is addressed to the Ministry of Foreign Affairs with copy to the authority entrusted with the task of granting breeders’ rights, in accordance with Article 30(1)(i) of the 1991 Act of the UPOV Convention (see information provided by the representative under paragraph 9(d) above), and the Permanent Mission in Geneva.

18. More information on financial matters can be found in document [UPOV/INF/13](#) “Guidance on How to Become a Member of UPOV” and in document [UPOV/INF/14](#) “Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention”.

[End of document]

⁶ See Article 29 of the 1991 Act of the UPOV Convention and Article 26 of the 1978 Act of the UPOV Convention.