



CAJ/60/3

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DATE: September 11, 2009

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

**ADMINISTRATIVE AND LEGAL COMMITTEE**

**Sixtieth Session**  
**Geneva, October 19 and 20, 2009**

**DEVELOPMENT OF INFORMATION MATERIALS  
CONCERNING THE UPOV CONVENTION**

*Document prepared by the Office of the Union*

Introduction

1. The Administrative and Legal Committee (CAJ), at its fifty-second session, held in Geneva on October 24, 2005, agreed an approach for the preparation of information materials concerning the UPOV Convention, as explained in paragraphs 8 to 10 of document CAJ/52/4. It also agreed to the establishment of an advisory group to the CAJ ("CAJ-AG") to assist in the preparation of documents concerning such materials, as proposed in paragraphs 11 to 14 of document CAJ/52/4 (see paragraph 67 of document CAJ/52/5, Report).
2. The agreed approach is summarized as follows: the Office of the Union will develop certain draft materials which it considers cover aspects of a straightforward nature and will circulate these to the CAJ for comments within a specified time. In other cases, where it is considered that there are difficult issues, where discussions at a CAJ session would be important for the development of suitable information materials, and also in cases where the drafts on seemingly straightforward materials provoke unexpected concerns when circulated for comments, it was agreed that the assistance of the CAJ-AG would be sought prior to the CAJ being invited to discuss those matters at its sessions.
3. An overview of the development of the information materials is provided in Annex I to this document.

4. The purpose of this document is to inform the CAJ of the progress and future work on the development of information materials under the UPOV Convention and to invite the CAJ to consider some proposals. The structure of the document is summarized as follows:

- (a) report concerning information materials considered by correspondence in 2009;
- (b) summary of the documents concerning information materials approved by the CAJ which the Council is invited to adopt at its forty-third ordinary session, to be held in Geneva on October 22, 2009;
- (c) work program for the fourth session of the CAJ-AG which was approved by the CAJ at its fifty-ninth session, held in Geneva on April 2, 2009;
- (d) proposal for the development of a new information document; and
- (e) participation of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) and the International Seed Federation (ISF) in the work of the CAJ-AG.

#### A. REPORT CONCERNING INFORMATION MATERIALS CONSIDERED BY CORRESPONDENCE IN 2009

5. The following information materials were considered by the CAJ by correspondence (see Circulars E-1016 and E-1021 of June 8, 2009 and June 24, 2009, respectively) and documents posted in the four UPOV languages at [www.upov.int/restrict/en/caj/index\\_caj\\_correspondence\\_2009.htm](http://www.upov.int/restrict/en/caj/index_caj_correspondence_2009.htm):

- (i) Explanatory Notes on Genera and Species to be Protected under the 1991 Act of the UPOV Convention (document UPOV/EXN/GEN Draft 1);
- (ii) Explanatory Notes on National Treatment under the 1991 Act of the UPOV Convention (document UPOV/EXN/NAT Draft 1);
- (iii) Proposed addition to the Explanatory Notes on Novelty under the UPOV Convention;
- (iv) Proposed addition to the Explanatory Notes on Provisional Protection under the UPOV Convention;
- (v) Guidance on How to Become a Member of UPOV (document UPOV/INF/13/1 Draft 1);
- (vi) Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention (document UPOV/INF/14/1 Draft 1).

6. In response to Circulars E-1016 and E-1021, comments were received. The proposals developed to address those comments were circulated to the CAJ by Circular E-1042 of July 29, 2009 (reproduced in Annex II to this document). No objections were received to those proposals by the deadline of August 29, 2009.

7. As agreed by the CAJ (see last paragraph of Circular E-1042, reproduced in Annex II to this document), the approved proposals for modification have been incorporated in the relevant documents which will be presented for adoption by the Council at its forty-third ordinary session.

8. *The CAJ is invited to take note of the report concerning information materials considered by correspondence in 2009.*

**B. SUMMARY OF THE DOCUMENTS CONCERNING INFORMATION MATERIALS APPROVED BY THE CAJ WHICH THE COUNCIL IS INVITED TO ADOPT AT ITS FORTY-THIRD ORDINARY SESSION, TO BE HELD IN GENEVA ON OCTOBER 22, 2009**

9. The CAJ agreed at its fifty-ninth session and by correspondence on July 8, 2009 (Circular E-1016) and on August 29, 2009 (Circular E-1042) that the Council be invited to adopt the following guidance documents and explanatory notes at its forty-third ordinary session:

- (c) UPOV/INF/13/1: Guidance on How to Become a Member of UPOV  
(document UPOV/INF/13/1 Draft 2)
- (d) UPOV/INF/14/1: Guidance for Members of UPOV on How to Ratify, or  
Accede to, the 1991 Act of the UPOV Convention  
(document UPOV/INF/14/1 Draft 2)
- (e) Explanatory notes:
  - UPOV/EXN/GEN/1: Explanatory Notes on Genera and Species to be Protected  
(Article 3)<sup>1</sup> under the 1991 Act of the UPOV Convention  
(document UPOV/EXN/GEN Draft 2)
  - UPOV/EXN/NAT/1: Explanatory Notes on National Treatment under the  
(Article 4)<sup>1</sup> 1991 Act of the UPOV Convention  
(document UPOV/EXN/NAT Draft 2)
  - UPOV/EXN/NOV/1: Explanatory Notes on Novelty under the  
(Article 6)<sup>1</sup> UPOV Convention  
(document UPOV/EXN/NOV Draft 3)
  - UPOV/EXN/PRI/1: Explanatory Notes on the Right of Priority under the  
(Article 11)<sup>1</sup> UPOV Convention  
(document UPOV/EXN/PRI Draft 2)
  - UPOV/EXN/PRP/1: Explanatory Notes on Provisional Protection under the  
(Article 13)<sup>1</sup> UPOV Convention  
(document UPOV/EXN/PRP Draft 2)

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<sup>1</sup> 1991 Act of the UPOV Convention.

- UPOV/EXN/EDV/1: Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Article 14(5))<sup>1</sup>  
(document UPOV/EXN/EDV Draft 3)
- UPOV/EXN/EXC/1: Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention (Article 15)<sup>1</sup>  
(document UPOV/EXN/EXC Draft 4)
- UPOV/EXN/NUL/1: Explanatory Notes on the Nullity of the Breeder's Right under the UPOV Convention (Article 21)<sup>1</sup>  
(document UPOV/EXN/NUL Draft 2)
- UPOV/EXN/CAN/1: Explanatory Notes on the Cancellation of the Breeder's Right under the UPOV Convention (Article 22)<sup>1</sup>  
(document UPOV/EXN/CAN Draft 2)
- UPOV/EXN/ENF/1: Explanatory Notes on the Enforcement of Breeders' Rights under the UPOV Convention (Article 30(1)(i))<sup>1</sup>  
document UPOV/EXN/ENF Draft 3)
- (f) UPOV/INF/6/1: Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention (document UPOV/INF/6/1 Draft 3)

*10. The CAJ is invited to take note of the summary of the documents concerning information materials approved by the CAJ which the Council is invited to adopt at its forty-third ordinary session, to be held in Geneva on October 22, 2009.*

**C. WORK PROGRAM FOR THE FOURTH SESSION OF THE CAJ-AG WHICH WAS APPROVED BY THE CAJ AT ITS FIFTY-NINTH SESSION**

11. In relation to the work program for the fourth session of the CAJ-AG which was approved by the CAJ at its fifty-ninth session, the documents to be considered by the CAJ-AG are the following (see paragraphs 29 and 30 of document CAJ/59/7 "Report on the Conclusions"):

- (a) UPOV/EXN/BRD: Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention (document UPOV/EXN/BRD Draft 2)
- (b) UPOV/EXN/VAR: Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention (document UPOV/EXN/VAR Draft 2)

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<sup>1</sup> 1991 Act of the UPOV Convention.

- (c) UPOV/EXN/CAL: Explanatory Notes on Conditions and Limitations Concerning the Breeder's Authorization (document UPOV/EXN/CAL Draft 1)
- (d) UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the UPOV Convention (document UPOV/EXN/HRV Draft 4)
- (e) UPOV/EXN/EDV: Explanatory Notes on Essentially Derived Varieties under the UPOV Convention (revision) (document CAJ-AG/09/4/3)

12. At its fifty-ninth session, the CAJ noted that the above CAJ-AG documents would be posted on the first restricted area of the UPOV website and the CAJ members and observers would be notified accordingly. Comments received will be considered by the CAJ-AG at its fourth session. It further noted that a new draft of document UPOV/EXN/HRV (draft 3) would be circulated to the CAJ for comments. On the basis of the comments received, the Office of the Union would prepare a further draft (draft 4) for consideration by the CAJ-AG at its fourth session. Document UPOV/EXN/HRV Draft 3 was notified to the CAJ for comments by Circular E-1059 of August 26, 2009 and posted at [www.upov.int/restrict/en/caj/index\\_caj\\_correspondence\\_2009.htm](http://www.upov.int/restrict/en/caj/index_caj_correspondence_2009.htm). The deadline for submission of comments on document UPOV/EXN/HRV Draft 3 is September 26, 2009.

*13. The CAJ is invited to take note of the documents to be considered by the CAJ-AG at its fourth session, as set out in paragraphs 11 and 12 above.*

#### D. PROPOSAL FOR THE DEVELOPMENT OF A NEW INFORMATION DOCUMENT

14. In the process of the development of documents UPOV/INF/13/1 "Guidance on How to Become a Member of UPOV" and UPOV/INF/14/1 "Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention", the Office of the Union considered that it would be useful to prepare an information document on ongoing obligations of members of the Union and related notifications (document UPOV/INF/15/1) for consideration by the CAJ by correspondence.

15. It is proposed that document UPOV/INF/15/1 provide guidance on the following ongoing obligations of members of the Union:

(a) notifications concerning changes in legislation governing breeders' rights and if appropriate, any extension of the application of the legislation to additional plant genera and species;

(b) notifications concerning changes of representatives and alternates to the Council and designated persons to the relevant UPOV bodies;

(c) reports to the Council on the situation in the legislative, administrative and technical fields, including matters relevant for cooperation in examination and plant variety protection statistics;

(d) financial obligations concerning the payment of contributions.

*16. The CAJ is invited to consider the proposal for the preparation of an information document on ongoing obligations of members of the Union and related notifications (document UPOV/INF/15/1), as set out in paragraphs 14 and 15, above.*

#### E. PARTICIPATION OF CIOPORA AND ISF IN THE WORK OF THE CAJ-AG

17. The CAJ agreed, at its fifty-ninth session, that CIOPORA and ISF should be invited to participate at part of the fourth session of the CAJ-AG, starting at 1:30 p.m. in order to present their comments and views on relevant matters. Those invitations have been sent to CIOPORA and ISF accordingly. The representatives of CIOPORA and of ISF have expressed to the Chair of the CAJ and the Office of the Union their interest for a more institutionalized cooperation with the CAJ-AG. It is suggested that the request of CIOPORA and ISF, for a more institutionalized cooperation with the CAJ-AG, be discussed in the first instance by the CAJ-AG at its fourth session, and that the recommendations of the CAJ-AG be reported for consideration by the CAJ at its sixty-first session to be held in Geneva on March 25, 2010.

*18. The CAJ is invited to consider the request of CIOPORA and ISF for a more institutionalized cooperation with the CAJ-AG, as set out in paragraph 17, above.*

[Annexes follow]

OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

Latest reference	Explanatory Notes on:	Status
UPOV/EXN/GEN Draft 2	Genera and Species to be Protected under the 1991 Act of the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/NAT Draft 2	National Treatment under the 1991 Act of the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/NOV Draft 3	Novelty under the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/PRI Draft 2	Right of Priority under the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/PRP Draft 2	Provisional Protection under the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/EDV Draft 3	Essentially Derived Varieties under the 1991 Act of the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/EXC Draft 4	Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/NUL Draft 2	Nullity of the Breeder's Right under the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/CAN Draft 2	Cancellation of the Breeder's Right under the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/ENF Draft 3	Enforcement of Breeders' Rights under the UPOV Convention	For adoption by Council in October 2009
UPOV/EXN/BRD Draft 2	Definition of Breeder under the 1991 Act of the UPOV Convention	For the fourth session of the CAJ-AG
UPOV/EXN/VAR Draft 2	Definition of Variety under the 1991 Act of the UPOV Convention	For the fourth session of the CAJ-AG
UPOV/EXN/CAL Draft 1	Conditions and Limitations Concerning the Breeder's Authorization	For the fourth session of the CAJ-AG
UPOV/EXN/HRV Draft 4	Acts in Respect of Harvested Material under the UPOV Convention	For the fourth session of the CAJ-AG
CAJ-AG/09/4/3	Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision)	For the fourth session of the CAJ-AG

Latest reference	INF documents	Status
UPOV/INF/6/1 Draft 3	Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention	For adoption by Council in October 2009
UPOV/INF/13/1 Draft 2	Guidance on How to Become a Member of UPOV	For adoption by Council in October 2009
UPOV/INF/14/1 Draft 2	Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention	For adoption by Council in October 2009

[Annex II follows]

ANNEX II



INTERNATIONALER  
VERBAND  
ZUM SCHUTZ VON  
PFLANZENZÜCHTUNGEN  
  
GENÈVE, SCHWEIZ

UNION INTERNATIONALE  
POUR LA PROTECTION  
DES OBTENTIONS  
VÉGÉTALES  
  
GENÈVE, SUISSE

UNIÓN INTERNACIONAL  
PARA LA PROTECCIÓN  
DE LAS OBTENCIONES  
VEGETALES  
  
GINEBRA, SUIZA

INTERNATIONAL UNION  
FOR THE PROTECTION  
OF NEW VARIETIES  
OF PLANTS  
  
GENEVA, SWITZERLAND

Subject: Proposals resulting from the consideration by correspondence of the CAJ of the information materials notified by Circulars E-1016 and E-1021 of June 8, 2009 and June 24, 2009, respectively.

Distribution: Members and observers to the CAJ

Circular E-1042

July 29, 2009

Madam,  
Sir,

The following information materials were considered by the Administrative and Legal Committee (CAJ) by correspondence (see Circulars E-1016 and E-1021 of June 8, 2009 and June 24, 2009, respectively, and documents posted in the four UPOV languages at [www.upov.int/restrict/en/caj/index\\_caj\\_correspondence\\_2009.htm](http://www.upov.int/restrict/en/caj/index_caj_correspondence_2009.htm)):

- (i) Explanatory Notes on Genera and Species to be Protected under the 1991 Act of the UPOV Convention (document UPOV/EXN/GEN Draft 1);
- (ii) Explanatory Notes on National Treatment under the 1991 Act of the UPOV Convention (document UPOV/EXN/NAT Draft 1);
- (iii) Proposed addition to the Explanatory Notes on Novelty under the UPOV Convention;
- (iv) Proposed addition to the Explanatory Notes on Provisional Protection under the UPOV Convention;
- (v) Guidance on How to Become a Member of UPOV (document UPOV/INF/13/1 Draft 1);
- (vi) Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention (document UPOV/INF/14/1 Draft 1).

In response to Circulars E-1016 and E-1021, comments were received. The following proposals have been developed to address those comments.



## **Explanatory Notes on National Treatment under the 1991 Act of the UPOV Convention (document UPOV/EXN/NAT Draft 1)**

### Comment:

*The Chair of the CAJ expressed some concerns with regard to the presentation of paragraph 6 of document UPOV/EXN/NAT Draft 1, concerning the extension of national treatment provisions beyond the members of the Union.*

In consultation with the Chair of the CAJ, it is proposed that paragraph 6 of document UPOV/EXN/NAT Draft 1 be deleted and a general explanation be provided in document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention” to address the extension of relevant provisions beyond the members of the Union. The proposal is for the following explanation to be included after paragraph 5 of the Introduction of document UPOV/INF/6/1 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention”:

“The example provisions in this document corresponding to certain provisions of the 1991 Act of the UPOV Convention, such as national treatment or the right of priority provide for the requirements under the UPOV Convention. Each State or Intergovernmental Organization may choose to extend those provisions, for example, in order to comply with other international agreements. Guidance on the development of such provisions is available upon request from the Office of the Union.”

## **Proposed addition to the Explanatory Notes on Provisional Protection**

### Comment:

*The Chair of the CAJ proposed the inclusion of an explanation on the purpose of the highlighted text in square brackets*

It is proposed, to add a footnote with that explanation in paragraph 1 of the “Proposed addition to the Explanatory Notes on Provisional Protection”, as follows:

“The highlighted text in square brackets is intended for drafters involved in the preparation of laws and identifies, as appropriate, text to be completed, numbering of provisions that might need to be modified, or provisions of the 1991 Act of the UPOV Convention providing for a choice.”

### Comment:

*The Chair of the CAJ considered that the brackets in Example A relating to the words “shall at least be entitled to equitable remuneration” should be removed, because those words provided for the minimum requirement of the 1991 Act of the UPOV Convention.*

It is proposed to remove the square brackets relating to the words of Example A “shall at least be entitled to equitable remuneration”.

## **Guidance on How to Become a Member of UPOV (document UPOV/INF/13/1 Draft 1)**

### Comment:

*The Delegation of the Netherlands requested a clarification on the “law” in paragraph 22 of document UPOV/INF/13/1 Draft 1 that provided the basis for the positive decision of the Council on accession to the UPOV Convention.*

In relation to that request for clarification, it is proposed to modify paragraph 22 of document UPOV/INF/13/1 Draft 1, as follows (changes in revision mode):

“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 that provided the basis 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” subsection (e), paragraph 15(i) “decision embodying the advice of the Council”); 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)).”

## **Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention (document UPOV/INF/14/1 Draft 1)**

### Comment:

*The Delegation of the European Community noticed a discrepancy between the French version of document UPOV/INF/14/1 Draft 1 and the other language versions, the words “de l’Acte de 1991” were missing after “l’article 30.2)” in paragraph 5 and after “l’article 3.1)i et ii)” in paragraph 12.*

No other comments with proposals for changes were received in relation to the information materials notified by Circulars E-1016 and E-1021 of June 8, 2009 and June 24, 2009, respectively.

In the absence of objections by **August 29, 2009**, the above proposals for modification will be incorporated in the relevant documents which will be presented for adoption by the Council at its forty-third ordinary session, to be held in Geneva on October 22, 2009.

Yours sincerely,

[signed]

Rolf Jördens

Vice Secretary-General

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[End of Annex II and of document]