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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

## ADMINISTRATIVE AND LEGAL COMMITTEE

**Sixty-Eighth Session  
Geneva, October 21, 2013**

### DEVELOPMENT OF INFORMATION MATERIALS CONCERNING THE UPOV CONVENTION

*Document prepared by the Office of the Union*

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1. The purpose of this document is to provide background information to assist the Administrative and Legal Committee (CAJ) in its consideration of relevant matters at its sixty-eighth session and to report on matters concerning the participation of observers in the advisory group to the CAJ (CAJ-AG) and on matters to be considered by the CAJ-AG at its eighth session.

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#### I. BACKGROUND

2. The 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 document CAJ/52/4, paragraphs 8 to 10. 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 document CAJ/52/4, paragraphs 11 to 14 (see document CAJ/52/5 "Report", paragraph 67).

3. The agreed approach is summarized as follows: the Office of the Union will develop certain draft materials which it considers covers 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.

## II. OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

4. An overview of the development of the information materials is provided in the Annex to this document.

## III. MATTERS TO BE CONSIDERED BY THE ADMINISTRATIVE AND LEGAL COMMITTEE AT ITS SIXTY-EIGHTH SESSION

(a) Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention

*Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/HRV Draft 10)*

5. The Delegation of Argentina, at its sixty-seventh session, held in Geneva on March 21, 2013, noted some discrepancies between the texts of document UPOV/EXN/HRV Draft 9 in English and in Spanish. It explained, for example, that in paragraph 3 “can potentially be used for propagating purposes” should read in Spanish “*potencialmente puede pueda utilizarse a los fines de reproducción o de multiplicación*”. It noted a further discrepancy, in section “(a) Relevant article” and paragraph 5 of document UPOV/EXN/HRV Draft 9, Article 14(1)(a)(vii) of the 1991 Act in English read “(vii) stocking for any of the purposes mentioned in (i) to (vi), above.” and in Spanish “*vii) la posesión para cualquiera de los fines mencionados en los puntos i) a vi), supra*”.

6. The Office of the Union agreed to verify the translations of the document but noted that it would need to use the text from the UPOV Convention where that was applicable. If there were considered to be discrepancies in the texts of the UPOV Convention the provisions of Article 41 of the 1991 Act of the UPOV Convention “Original and Official Texts of the Convention” would need to be considered.

7. The CAJ, at its sixty-seventh session, decided to postpone the approval of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” until its sixty-eighth session, to be held in Geneva on October 21, 2013, in order to verify the translations of the document and consider the following proposals:

Paragraph 11	To read as follows:  “Where a member of the Union decides to incorporate this optional exception into its legislation, ‘unauthorized use’ would not refer to acts that were covered by the optional exception. However, subject to Articles 15(1) and 16, ‘unauthorized use’ would refer to acts that <u>were included in the scope of the breeder’s right and</u> were not covered by the optional exception in the legislation of the member of the Union concerned. In particular, ‘unauthorized use’ would refer to acts that did not comply with the <u>terms and conditions of reasonable limits and the safeguarding of the legitimate interests of the breeder provided in</u> the optional exception.”
Title section [d]	To read as follows:  “ <u>Reasonable opportunity to</u> exercise his right”

(see document CAJ/67/14 “Report on the Conclusions”, paragraph 12).

8. *The CAJ is invited to consider document UPOV/EXN/HRV Draft 10 as the basis for the adoption of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” by the Council at its forty-seventh ordinary session, to be held in Geneva on October 24, 2013.*

*Future work concerning the Explanatory Notes on Acts in Respect of Harvested Material*

9. The CAJ, at its sixty-seventh session, agreed to invite the CAJ-AG to immediately start work on a future possible revision of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” in order to include illustrative examples of situations where breeders might be considered to be able to exercise their rights in relation to harvested material (see document CAJ/67/14 “Report on the Conclusions”, paragraph 13).

10. The CAJ agreed to invite the CAJ-AG to consider the development of guidance on “reasonable opportunity” in relation to a possible revision of the “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” (see document CAJ/67/14 “Report on the Conclusions”, paragraph 14).

11. On the above basis, document “Explanatory Notes on Acts in Respect of Harvested Material” (document CAJ-AG/13/8/3) will be considered by the CAJ-AG, at its eighth session to be held in Geneva on October 25, 2013.

*12. The CAJ is invited to note the developments concerning the future work on the Explanatory Notes on Acts in Respect of Harvested Material.*

(b) Seminar on Essentially Derived Varieties and Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision)

13. The CAJ, at its sixty-seventh session, agreed that consideration of document UPOV/EXN/EDV/2 Draft 3 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” should be postponed until after the seminar on essentially derived varieties (EDVs), proposed to be held on October 22, 2013, and the consideration of that seminar by the CAJ-AG at its eighth session, to be held on October 25, 2013. The CAJ also agreed that consideration should be given to moving paragraph 8 of document UPOV/EXN/EDV/2 Draft 3 after paragraph 4 (see document CAJ/67/14 “Report on the Conclusions”, paragraph 15).

14. The CAJ, at its sixty-seventh session, noted that the Office of the Union would prepare a text on the possibility to use molecular marker data information of an initial variety to obtain essentially derived varieties for consideration by the CAJ-AG at its eighth session, to be held on October 25, 2013 (see document CAJ/67/14 “Report on the Conclusions”, paragraph 20).

15. The CAJ, at its sixty-seventh session, noted that, at an appropriate future session of the CAJ-AG, the Delegations of Australia, Brazil and the European Union and other members of the Union would be invited to make presentations on their systems concerning essentially derived varieties (see document CAJ/67/14 “Report on the Conclusions”, paragraph 17).

16. The CAJ, at its sixty-seventh session, noted that the Office of the Union would prepare draft guidance on the relationship between Article 14(5)(b)(i) and (iii) of the 1991 Act of the UPOV Convention, on the basis of the explanatory note 6(ii) on Article 5 “Effects of the Right Granted to the Breeder” presented in document IOM/IV/2, for consideration by the CAJ-AG at its eighth session, to be held on October 25, 2013. To further assist the CAJ-AG in preparing draft guidance, the CAJ agreed to propose to the Council that a seminar on essentially derived varieties (EDVs) be organized on October 22, 2013 (see document CAJ/67/14 “Report on the Conclusions”, paragraph 17).

17. The Council, at its thirtieth extraordinary session, held in Geneva on March 22, 2013, approved the organization of a seminar on essentially derived varieties (EDVs) on October 22, 2013, to consider the following:

(a) technical and legal views on “predominantly derived”, “essential characteristics” and “differences which result from the act of derivation” (see Article 14(5)(b) of the 1991 Act of the UPOV Convention), the relationship between Article 14(5)(b)(i) and (iii) of the 1991 Act of the UPOV Convention and the possible impact on breeding and agriculture;

(b) existing experience in relation to EDVs; and

- (c) the possible role of future UPOV guidance on EDVs in cases before the courts.

(see document C(Extr.)/30/7 "Report on the Decisions", paragraph 19)

18. With regard to the possible impact on breeding and agriculture, the Council, at its thirtieth extraordinary session, agreed that the seminar should include the perspective of farmer-breeders. It further agreed that the program for the seminar and the speakers should be agreed between the Office of the Union and the Chair and Vice-Chair of the CAJ, and the President of the Council. The Council agreed that the seminar should be open to the public, subject to reservation of sufficient space for members and observers, with the presentations and discussions at the seminar being made available on the UPOV website after a suitable broadcast delay (see document C(Extr.)/30/7 "Report on the Decisions", paragraph 20).

19. The draft program of the Seminar on Essentially Derived Varieties (document UPOV/SEM/GE/13/1) and the biographies of the speakers are available on the UPOV website at [http://www.upov.int/meetings/en/topic.jsp?group\\_id=73](http://www.upov.int/meetings/en/topic.jsp?group_id=73)

20. The CAJ is invited to request the CAJ-AG to consider the conclusions of the Seminar on Essentially Derived Varieties in relation to its work on future guidance concerning essentially derived varieties.

*21. The CAJ is invited to request the CAJ-AG to consider the conclusions of the Seminar on Essentially Derived Varieties in relation to its work on future guidance concerning essentially derived varieties, as set out in paragraphs 13 to 16, above.*

#### IV. PARTICIPATION OF OBSERVERS IN THE CAJ-AG

22. The CAJ, at its sixty-seventh session, agreed to invite the Consultative Committee and the Council to provide guidance on the proposals concerning participation of observers in the Advisory Group of the Administrative and Legal Committee (CAJ-AG), as set out in paragraphs 25 to 27 of document CAJ/67/2 (see document CAJ/67/14 "Report on the Conclusions", paragraph 22).

23. The CAJ, at its sixty-seventh session, noted that the request by the representative of the Association for Plant Breeding for the Benefit of Society (APBREBES) to participate in the discussions on matters concerning observers would be transmitted to the Consultative Committee and the Council (see document CAJ/67/14 "Report on the Conclusions", paragraph 23).

24. The Consultative Committee, at its eighty-fifth session, held in Geneva on March 22, 2013, agreed to invite APBREBES to be present, at the relevant part of the item on observers in the program for its eighty-sixth session, in order to present its views on matters concerning the participation of observers in the CAJ-AG.

25. The Consultative Committee, at its eighty-sixth session to be held in Geneva on October 23, 2013, will consider relevant matters concerning the participation of observers in the CAJ-AG. The conclusions of the Consultative Committee will be reported to the CAJ.

26. Pending the outcome of the considerations in the Consultative Committee and the Council, the CAJ-AG agreed, by correspondence, to issue *ad hoc* invitations to the organizations that the CAJ-AG had previously agreed to invite in order to enable them to continue to present their views on relevant matters (see document CAJ-AG/12/7/7 "Report", paragraph 2). On that basis, the following organizations have been invited to participate in the relevant part of the eighth session of the CAJ-AG: APBREBES, the European Coordination Via Campesina (ECVC), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) and the International Seed Federation (ISF).

*27. The CAJ is invited to note that:*

*(a) the conclusions of the Consultative Committee, at its eighty-sixth session to be held in Geneva on October 23, 2013, concerning the participation of observers in the CAJ-AG will be reported to the CAJ; and*

*(b) the Association for Plant Breeding for the Benefit of Society (APBEBES), the European Coordination Via Campesina (ECVC), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOFORA) and the International Seed Federation (ISF) have been invited to participate in the relevant part of the eighth session of the CAJ-AG, as set out in paragraph 26, above.*

#### V. MATTERS TO BE CONSIDERED BY THE CAJ-AG AT ITS EIGHTH SESSION

28. At its sixty-seventh session, the CAJ approved the program for the eighth session of the CAJ-AG, to be held in Geneva on October 25, 2013 (see document CAJ/67/14 "Report on the Conclusions", paragraph 28). A report on the work of the CAJ-AG, at its eighth session, will be presented to the sixty-ninth session of the CAJ, to be held in April 2014. The draft agenda of the eighth session of the CAJ-AG (see document CAJ-AG/13/8/1) is reproduced below:

1. Opening of the session
2. Adoption of the agenda
3. Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) (document CAJ-AG/13/8/2)
4. Explanatory Notes on Propagation and Propagating Material (document UPOV/EXN/PPM Draft 1)
5. Explanatory Notes on Acts in Respect of Harvested Material (document CAJ-AG/13/8/3)
6. Matters concerning cancellation of the breeder's right (document CAJ-AG/13/8/4)
7. Matters concerning nullity of the breeder's right (document CAJ-AG/13/8/5)
8. Matters concerning variety denominations (document CAJ-AG/13/8/6)
9. Matters concerning variety descriptions (document CAJ-AG/13/8/7)
10. Matters arising after the grant of a breeder's right on: provisional protection, filing of applications and enforcement of breeders' rights (document CAJ-AG/13/8/8)
11. Matters concerning observers in the CAJ-AG (document CAJ-AG/13/8/9)
12. Matters referred by the CAJ to the CAJ-AG for consideration since the seventh session of the CAJ-AG
13. Date and program for the ninth session

*29. The CAJ is invited to note the information concerning the eighth session of the CAJ-AG, to be held in Geneva on October 25, 2013, as set out in paragraph 28, above.*

[Annex follows]

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ANNEX

OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

EXPLANATORY NOTES

Reference	Explanatory Notes on:	Status
UPOV/EXN/BRD	Definition of Breeder under the 1991 Act of the UPOV Convention	(Adoption to be considered by the Council in October 2013: document UPOV/EXN/BRD Draft 7)
UPOV/EXN/CAL	Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material under the UPOV Convention	UPOV/EXN/CAL/1 adopted in October 2010
UPOV/EXN/CAN	Cancellation of the Breeder's Right under the UPOV Convention	UPOV/EXN/CAN/1 adopted in October 2009 (Possible revision to be considered by the CAJ-AG in October 2013: document CAJ-AG/13/8/4)
UPOV/EXN/EDV	Essentially Derived Varieties under the 1991 Act of the UPOV Convention	UPOV/EXN/EDV/1 adopted in October 2009 (Possible revision to be considered by the CAJ-AG in October 2013: document CAJ-AG/13/8/2)
UPOV/EXN/ENF	Enforcement of Breeders' Rights under the UPOV Convention	UPOV/EXN/ENF/1 adopted in October 2009
UPOV/EXN/EXC	Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention	UPOV/EXN/EXC/1 adopted in October 2009
UPOV/EXN/GEN	Genera and Species to be Protected under the 1991 Act of the UPOV Convention	UPOV/EXN/GEN/1 adopted in October 2009
UPOV/EXN/HRV	Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention	(Adoption to be considered by the CAJ and the Council in October 2013: document UPOV/EXN/HRV Draft 10) (Possible revision to be considered by the CAJ-AG in October 2013: document CAJ-AG/13/8/3)
UPOV/EXN/NAT	National Treatment under the 1991 Act of the UPOV Convention	UPOV/EXN/NAT/1 adopted in October 2009
UPOV/EXN/NOV	Novelty under the UPOV Convention	UPOV/EXN/NOV/1 adopted in October 2009
UPOV/EXN/NUL	Nullity of the Breeder's Right under the UPOV Convention	UPOV/EXN/NUL/1 adopted in October 2009 (Possible revision to be considered by the CAJ-AG in October 2013: document CAJ-AG/13/8/5)
UPOV/EXN/PPM	Propagation and Propagating Material under the UPOV Convention	Draft: CAJ-AG session in October 2013: document UPOV/EXN/PPM Draft 1
UPOV/EXN/PRI	Right of Priority under the UPOV Convention	UPOV/EXN/PRI/1 adopted in October 2009
UPOV/EXN/PRP	Provisional Protection under the UPOV Convention	UPOV/EXN/PRP/1 adopted in October 2009
UPOV/EXN/VAR	Definition of Variety under the 1991 Act of the UPOV Convention	UPOV/EXN/VAR/1 adopted in October 2010

INFORMATION DOCUMENTS

Latest reference	INF documents	Status
UPOV/INF-EXN	List of UPOV/INF-EXN Documents and Latest Issue Dates	UPOV/INF-EXN/4 adopted in March 2013 (Revision to be considered for adoption by the Council in October 2013: document UPOV/INF-EXN/5 Draft 1)
UPOV/INF/4	Financial Regulations and Rules of UPOV	UPOV/INF/4/3 adopted in March 2013
UPOV/INF/5	UPOV model plant breeders' rights gazette	UPOV/INF/5 adopted in October 1979 (Program for revision to be considered by the CAJ in October 2013: document CAJ/68/3)
UPOV/INF/6	Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention	UPOV/INF/6/2 adopted in October 2011 (Revision to be considered for adoption by the Council in October 2013: document C/47/13, Annex)
UPOV/INF/7	Rules of Procedure of the Council	UPOV/INF/7 adopted in October 1982
UPOV/INF/8	Agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants	UPOV/INF/8 signed in November 1982
UPOV/INF/9	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)	UPOV/INF/9 signed in November 1983
UPOV/INF/10	Internal Audit	UPOV/INF/10/1 adopted in October 2010
UPOV/INF/12	Explanatory Notes on Variety Denominations under the UPOV Convention	UPOV/INF/12/4 adopted in November 2012 (Possible revision to be considered by the CAJ-AG in October 2013: document CAJ-AG/13/8/6)
UPOV/INF/13	Guidance on how to become a member of UPOV	UPOV/INF/13/1 adopted in October 2009
UPOV/INF/14	Guidance for members of UPOV on how to ratify, or accede to, the 1991 Act of the UPOV Convention	UPOV/INF/14/1 adopted in October 2009
UPOV/INF/15	Guidance for Members of UPOV on Ongoing Obligations and Related Notifications	UPOV/INF/15/2 adopted in March 2013
UPOV/INF/16	Exchangeable Software	UPOV/INF/16/2 adopted in October 2011 (Revision to be considered by the CAJ and by the Council for adoption in October 2013: document UPOV/INF/16/3 Draft 1)
UPOV/INF/17	Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines")	UPOV/INF/17/1 adopted in October 2010
UPOV/INF/18	Possible use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)	UPOV/INF/18/1 adopted in October 2011
UPOV/INF/19	Rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies	UPOV/INF/19/1 adopted in November 2012
UPOV/INF/20	Rules governing access to UPOV documents	UPOV/INF/20/1 adopted in November 2012
UPOV/INF/21	Alternative Dispute Settlement Mechanisms	UPOV/INF/21/1 adopted in November 2012