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

**EXPLANATORY NOTES ON THE DEFINITION OF BREEDER**  
**UNDER THE 1991 ACT OF THE UPOV CONVENTION**

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EXPLANATORY NOTES ON THE DEFINITION OF BREEDER  
UNDER THE 1991 ACT OF THE UPOV CONVENTION

PREAMBLE

1. The purpose of these Explanatory Notes is to provide guidance on the definition of “Breeder” under the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV Convention). The only binding obligations on members of the Union are those contained in the text of the UPOV Convention itself, and these Explanatory Notes must not be interpreted in a way that is inconsistent with the relevant Act for the member of the Union concerned.

Note for Draft version

**Footnotes** will be retained in published document

**Endnotes** are background information for the Administrative and Legal Committee (CAJ) when considering this draft and will not appear in the final, published document

DEFINITION OF BREEDER CONTAINED IN ARTICLE 1(IV) OF THE  
1991 ACT OF THE UPOV CONVENTION

(a) *Relevant article of the 1991 Act of the UPOV Convention*

2. The definition of breeder provided in Article 1(iv) of the 1991 Act of the UPOV Convention, is reproduced below:

<p style="text-align: center;"><b>1991 Act of the UPOV Convention</b></p> <p style="text-align: center;"><b>Article 1</b></p> <p style="text-align: center;"><b>Definition</b></p> <p>(iv) “breeder” means</p> <ul style="list-style-type: none"><li>- the person who bred, or discovered and developed, a variety,</li><li>- the person who is the employer of the aforementioned person or who has commissioned the latter’s work, where the laws of the relevant Contracting Party so provide, or</li><li>- the successor in title of the first or second aforementioned person, as the case may be;</li></ul>
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(b) *Entitlement to a breeder’s right*

3. Only the breeder as defined in Article 1(iv) of the 1991 Act of the UPOV Convention is entitled to be granted a breeder’s right. The 1991 Act of the UPOV Convention provides, under its Article 21(1)(iii), that “[e]ach Contracting Party shall declare a breeder’s right granted by it null and void when it is established [ ... ] (iii) that the breeder’s right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.”

(c) *Person*

4. The term “person” in Article 1(iv) of the 1991 Act of the UPOV Convention should be understood to embrace both physical and legal persons.

(d) *Bred, or discovered and developed, a variety*

5. In accordance with the first indent of Article 1(iv) of the 1991 Act of the UPOV Convention, “breeder” means

“- the person who bred, or discovered and developed, a variety”.

6. The UPOV Convention makes no restriction with regard to the methods or techniques by which a new variety is “bred.”

7. With regard to “discovered and developed”, a discovery might be the initial step in the process of breeding a new variety. However, the term “discovered and developed” means that a mere discovery, or find, would not entitle the person to obtain a breeder’s right. Development of a variety is necessary for a breeder to be entitled to obtain a breeder’s right.

*(e) Employer*

8. In accordance with the second indent of Article 1(iv) of the 1991 Act of the UPOV Convention, where the person who bred, or discovered and developed, a variety is an employee, the employer will be the person entitled to obtain a breeder’s right, where the applicable laws so provide.

*(f) Successor in title*

9. In accordance with the third indent of Article 1(iv) of the 1991 Act of the UPOV Convention, the person who bred, or discovered and developed, a variety or, if appropriate, his employer may transfer his title (i.e. the entitlement to obtain a breeder’s right) to a third person (the successor in title).

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