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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

EXPLANATORY NOTES ON
GENERA AND SPECIES TO BE PROTECTED
UNDER THE 1991 ACT OF THE UPOV CONVENTION

adopted by the Council
at its forty-third ordinary session
on October 22, 2009

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EXPLANATORY NOTES ON GENERA AND SPECIES TO BE PROTECTED UNDER
THE 1991 ACT OF THE UPOV CONVENTION

PREAMBLE

1. The purpose of these Explanatory Notes is to provide guidance concerning the genera and species to be protected (Article 3 of the 1991 Act) under 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.

RELEVANT ARTICLE

2. The 1991 Act of the UPOV Convention has the following requirements with regard to genera and species to be protected:

1991 Act of the UPOV 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.

(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.

NOTES

3. States or intergovernmental organizations may, in the first instance, apply the provisions of the UPOV Convention to all plant genera and species. Where the legislation of the State or Intergovernmental Organization 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:

(a) States already members of UPOV

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, at the latest by the expiration of five years, to all plant genera and species (see Article 3(1)(i) and (ii) of the 1991 Act);

(b) New members of UPOV

to 15 genera or species on the date of the entry into force of the UPOV Convention and, at the latest by the expiration of 10 years from that date, to all plant genera and species (see Article 3(2)(i) and (ii) of the 1991 Act).

4. Where the legislation of the State or Intergovernmental Organization concerned does not provide protection to all plant genera and species, eligibility for protection can be clarified by presenting the list of plant genera and species by botanical name.

5. Guidance on information that can be provided in the form for the application for plant breeders' rights, to assist applicants in determining whether a plant genus or species is one to which the legislation applies, is provided in document TGP/5 "Experience and Cooperation in DUS Testing" Section 2/2 "UPOV Model Form for the Application for Plant Breeders' Rights" (see Instructions for converting the UPOV model form for the application for plant breeders' rights into an authority's own form: B Item 3) (http://www.upov.int/en/publications/tgp/documents/tgp5_section_2_2.pdf).

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