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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

EXPLANATORY NOTES ON
NATIONAL TREATMENT
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 NATIONAL TREATMENT UNDER THE 1991 ACT OF
THE UPOV CONVENTION

PREAMBLE

1. The purpose of these Explanatory Notes is to provide guidance on “National Treatment” 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.

2. These Explanatory Notes provide guidance on certain aspects of the provisions on national treatment contained in Article 4 of the 1991 Act of the UPOV Convention.

SECTION I: PROVISIONS ON NATIONAL TREATMENT

3. The provisions on national treatment contained in Article 4 of the 1991 Act of the UPOV Convention are reproduced below:

1991 Act of the UPOV Convention

Article 4

National Treatment

(1) [*Treatment*] Without prejudice to the rights specified in this Convention, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of each other Contracting Party the same treatment as is accorded or may hereafter be accorded by the laws of each such other Contracting Party to its own nationals, provided that the said nationals, natural persons or legal entities comply with the conditions and formalities imposed on the nationals of the said other Contracting Party.

(2) [*"Nationals"*] For the purposes of the preceding paragraph, "nationals" means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organization, the nationals of the States which are members of that organization.

SECTION II: CERTAIN ASPECTS OF THE PROVISIONS ON
NATIONAL TREATMENT

4. These Explanatory Notes provide guidance on certain aspects of the provisions on national treatment contained in Article 4 of the 1991 Act of the UPOV Convention.

5. The following example provision is intended to provide assistance to States/ intergovernmental organizations wishing to draft a provision on national treatment in their laws in accordance with the 1991 Act of the UPOV Convention.

**Article [4]
National Treatment**

[1] [*Treatment*] Without prejudice to the rights specified in this Law, nationals of a member of UPOV as well as natural persons resident and legal entities having their registered offices within the territory of a member of UPOV shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of [name of the State/Intergovernmental Organization] the same treatment as is accorded by this Law to the nationals of [name of the State/Intergovernmental Organization]. The said nationals, natural persons or legal entities of a member of UPOV shall comply with the conditions and formalities imposed on the nationals of [name of the State/Intergovernmental Organization].

[2] [*"Nationals"*] For the purposes of paragraph [1], "nationals" means, where the member of UPOV is a State, the nationals of that State and, where the member of UPOV is an intergovernmental organization, the nationals of the States which are members of that organization.

6. A national treatment provision is not required if, in relation to the filing of applications, the law does not place any restriction on the nationality, place of residence of natural persons or place of registered offices for legal entities.

7. If the law provides for a national treatment provision, the authority may request the necessary information in the application form to determine if, based on the nationality, place of residence or registered office, of the applicant (as appropriate), the applicant is entitled to file an application. The UPOV Model Form for the Application for Plant Breeders' Rights (document TGP/5 "Experience and Cooperation in DUS Testing", [Section 2](#), Item 1) provides the following request of information:

1. (a) Applicant(s)¹

Name(s) _____

Address(es) _____

Telephone No.(s) _____

Fax No.(s) _____

E-mail address(es) _____

(b) nationality(ies): _____

(c) residence (State): _____

(d) registered offices for legal entities (State): _____

(e) A procedural representative/agent/proxy will be used: Yes No

¹ The “applicant” should be the “breeder” according to the definition of “breeder” in Article 1(iv) of the 1991 Act of the UPOV Convention which is:

- the person who bred, or discovered and developed, a variety,
- 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
- the successor in title of the first or second aforementioned person, as the case may be”.

[End of document]