



CAJ/51/5

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE**Fifty-First Session
Geneva, April 7, 2005****PROGRAM FOR THE DEVELOPMENT OF EXPLANATORY NOTES
ON THE 1991 ACT OF THE UPOV CONVENTION***prepared by the Office of the Union*

1. The Consultative Committee, at its sixty-second session, held in Geneva on October 24, 2001, endorsed the development of explanatory notes on the 1991 Act of the UPOV Convention (1991 Act). It was agreed that the purpose of those explanatory notes would not be to provide an interpretation of the provisions of the 1991 Act but to provide guidance and examples on the implementation of the relevant Articles of the 1991 Act. It was noted that as soon as draft explanatory notes corresponding to particular provisions were completed and approved by the Administrative and Legal Committee (CAJ), they would be submitted for consideration by the Consultative Committee and for adoption by the Council.
2. At its fiftieth session, on October 18 and 19, 2004, the CAJ agreed to elaborate a program for the development of explanatory notes. The Annex to this document presents a proposal for a program for the development of draft explanatory notes on the 1991 Act which is intended to illustrate certain priorities and to refer to relevant documents which might provide guidance for the elaboration of draft explanatory notes.
3. The proposed program is presented in three sections. Section I contains a selection of provisions on which the Office of the Union is often requested to provide clarifications to government officials, legislators, lawyers, breeders and where the advice of the CAJ is considered important for providing such clarification. Draft explanatory notes corresponding to the provisions selected under Section I and, if possible, Section II, had been scheduled within the framework of a three-year plan. It is proposed that the provisions, presented in

Section III, will be dealt with at a later stage, unless developments suggest the need to change the order of priorities.

4. The elaboration of draft explanatory notes has already started in relation to Article 15(1)(i) and (2) of the 1991 Act: “Acts done privately and for non-commercial purposes and provisions on farm-saved seed” (see document CAJ/51/3) and also with the assistance of the *Ad hoc* Working Group on Variety Denominations, a proposal on draft explanatory notes on Article 20 “Variety Denomination” will be submitted to the CAJ, at its fifty-second session in October 2005. There are also several documents adopted by the Council of UPOV which already provide useful guidance in the implementation of the UPOV Convention. Reference to those documents will be made in the corresponding draft explanatory note or, where relevant, the document itself will be incorporated.

5. At the time when the proposal to elaborate explanatory notes was presented to the Consultative Committee, it was suggested that the Office of the Union would consult with experts from members in order to take into account their experience in the implementation of the UPOV Convention. In that regard, it is proposed to establish an advisory group to assist the Office of the Union and the CAJ in the preparation of draft explanatory notes.

6. It is proposed that the Office of the Union, in consultation with the Chairman of the CAJ, would invite experts to participate in the advisory group. The group of experts would reflect the need to ensure that there is an appropriate range of expertise and experience and a good regional coverage while remaining at a sufficiently compact size to act as an effective advisory group. Depending on the draft explanatory notes under development, the need for particular expertise might be identified by the CAJ, or by the advisory group itself.

7. It is envisaged that the advisory group meet once a year in connection with the October session of the CAJ, perhaps on the Friday immediately following the ordinary session of the Council. The advisory group would report regularly to the CAJ on the progress of its work. Any meetings of the advisory group would be notified to CAJ members. Documents of the advisory group would be accessible to all members of the CAJ. Members of the CAJ would be able to send comments directly to the advisory group and/or, subject to prior notification, to participate at a meeting where so desired.

8. Observer organizations, in particular those representing the interests of breeders, might be invited by the advisory group to present their views on a particular provision of the 1991 Act to assist in their work. Where appropriate, those presentations might be made in conjunction with a CAJ session.

9. *The CAJ is requested:*

(a) to note and comment on the proposed program for the development of draft explanatory notes on the 1991 Act of the UPOV Convention reproduced in the Annex to this document; and

(b) to consider the proposal to establish an advisory group, as provided in paragraphs 5 to 8 of this document, to assist the Office of the Union and the CAJ in the elaboration of draft explanatory notes.

[Annex follows]

ANNEX

PROPOSED PROGRAM FOR THE DEVELOPMENT OF EXPLANATORY NOTES
ON THE 1991 ACT OF THE UPOV CONVENTION

SECTION I

Article	Title	Relevant documents	CAJ/51 April 2005	CAJ/52 Oct. 2005	Advisory Group Oct. 2005	CAJ/53 April 2006	CAJ/54 Oct. 2006	Advisory Group Oct. 2006	CAJ/55 April 2007	CAJ/56 Oct. 2007	Advisory Group Oct. 2007
Article 5	Conditions of Protection	Annex III of C/37/21			Explanatory Document		Draft 1	Draft 1 + CAJ Comments	approve		
Article 18	Measures Regulating Commerce										
Articles 7, 8, 9	Distinctness, Uniformity, Stability	General Intro (TG/1/3) + TGP documents				TGP/4 TGP/9			TGP/4 TGP/9 TGP/10		
Article 12	Examination of the Application	General Intro (TG/1/3) + TGP documents; CAJ/51/4		Draft 1	Draft 1 + CAJ Comments	approve					
Article 14	Scope of the Breeder's Right (5) <i>Essentially derived and certain other varieties</i>	Annex III of CAJ/47/8		Presentation by Industry Organizations	Discussion			Draft 1	Draft 2	Draft 3	Draft 3 + CAJ Comments
Article 15	Exceptions to the Breeder's Right (1) [<i>Compulsory exceptions</i>] (i) acts done privately and for non-commercial purposes (2) [<i>Optional exception</i>] (farm-saved seed)	CAJ/51/3	Draft CAJ/51/3	approve							
Article 15	Exceptions to the Breeder's Right (1) <i>Compulsory exceptions</i> (ii) acts done for experimental purposes (iii) (The Breeder's exemption)	Annex III of C/37/21		Draft 1	Draft 1 + CAJ Comments	approve					
Article 20	Variety Denomination	WG-VD/7/2; TC/41/8 UPOV/INF/12 Rev. Annex III of C/XVIII/9 Add.		Approve							
Article 30	Implementation of the Convention (1) <i>Measures of implementation</i> (i) provide for appropriate legal remedies for the effective enforcement of breeders' rights;			Presentation by Industry Organizations	Discussion		Draft 1	Draft 1 + CAJ Comments	Draft 2	approve	

SECTION III

(Dates to be determined at a later stage)

Article	Title	Relevant documents
Article 1	Definitions	C(Extr.)/19/2 Rev.
Article 2	Basic Obligation of the Contracting Parties	
Article 3	Genera and Species to be Protected	
Article 4	National Treatment	
Article 10	Filing of Applications	TGP/7 Annexes II and IV, Part I of C/XVIII/9 Add.
Article 13	Provisional Protection	
Article 14	Scope of the Breeder's Right (1) <i>Acts in respect of the propagating material</i> (2) <i>Acts in respect of the harvested material</i> (3) <i>Acts in respect of certain products</i> (4) <i>Possible additional acts</i>	
Article 16	Exhaustion of the Breeder's Right	
Article 17	Restrictions on the Exercise of the Breeder's Right	
Article 19	Duration of the Breeder's Right	CAJ/39/3 CAJ/39/3 Add. CAJ/40/3 CAJ/41/4
Article 23	Members	
Article 24	Legal Status and Seat	UPOV/INF/9
Article 25	Organs	
Article 26	The Council	UPOV/INF/7
Article 27	The Office of the Union	

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Article	Title	Relevant documents
Article 28	Languages	
Article 29	Finances	
Article 30	Implementation of the Convention (except Article 30(1)(i))	UPOV/INF/5
Article 31	Relations Between Contracting Parties and States Bound by Earlier Acts	
Article 32	Special Agreements	
Article 33	Signature	
Article 34	Ratification, Acceptance or Approval; Accession	
Article 35	Reservations	
Article 36	Communications Concerning Legislation and the Genera and Species Protected; Information to be Published	
Article 37	Entry into Force; Closing of Earlier Acts	
Article 38	Revision of the Convention	
Article 39	Denunciation	
Article 40	Preservation of Existing Rights	
Article 41	Original and Official Texts of the Convention	
Article 42	Depositary Functions	

[End of Annex and of document]