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ADMINISTRATIVE AND LEGAL COMMITTEE

Sixty-Sixth Session Geneva, October 29, 2012

DEVELOPMENT OF INFORMATION MATERIALS CONCERNING THE UPOV CONVENTION

Document prepared by the Office of the Union

1. The purpose of this document is to present developments concerning the development of information materials concerning the UPOV Convention, as follows:

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I. BACKGROUND

2. The Administrative and Legal Committee (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 (CAJ)

Matters to be considered by the CAJ at its sixty-sixth session

UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation" (Revision) (document UPOV/INF/15/2 Draft 1)

5. The CAJ, at its sixty-fifth session held in Geneva on March 29, 2012, agreed to prepare a proposal to revise document UPOV/INF/15/1 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications" in order to include guidance on the provision of data for the UPOV Plant Variety Database. The CAJ agreed that the Office of the Union should prepare a proposed revision for document UPOV/INF/15/1 for consideration by the CAJ at its sixty-sixth session, to be held in October 2012 (see document CAJ/65/12 "Report on the Conclusions", paragraph 20). In addition to guidance on the provision of data for the UPOV Plant Variety Database, the proposed revision contains guidance concerning the provision of information by members of the Union on experience and cooperation (see document UPOV/INF/15/2 Draft 1, Part IV).

6. The CAJ is invited to consider document UPOV/INF/15/2 Draft 1 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation".

Matters to be considered by the CAJ at its sixty-seventh session

UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" (Revision)

7. Document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" was adopted by the Council on October 18, 1979 (see document C/XIII/17, paragraphs 12 and 12a).

8. The CAJ at its sixty-fourth session, held in Geneva on October 17, 2011, agreed that document UPOV/INF/5 should be updated in order to:

(a) reflect the wording of the 1991 Act of the UPOV Convention and of documents recently adopted by the Council (e.g. UPOV Model Form for the Application of Plant Breeders' Rights (document TGP/5 Section 2/3));

(b) address relevant developments in the formats of national/regional Gazettes of members of the Union; and

(c) simplify the structure of the document (see document CAJ/64/11 "Report on the Conclusions", paragraph 8).

9. The CAJ, at its sixty-fifth session, agreed the program for the updating of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette", as set out above and noted that a document providing background information on the proposed changes and a first draft of the revision of document UPOV/INF/5 would be presented to the CAJ at its sixty-seventh session, to be held in March 2013 (see document CAJ/65/12 "Report on the Conclusions", paragraph 19).

10. *The CAJ is invited to recall that a document providing background information on the proposed changes and a first draft of the revision of document UPOV/INF/5 "UPOV Model Plant Breeders' Rights Gazette" is planned to be presented to the CAJ at its sixty-seventh session, to be held in March 2013.*

IV. MATTERS TO BE CONSIDERED BY THE ADVISORY GROUP TO THE CAJ (CAJ-AG)

Program for the seventh session of the CAJ-AG

11. At its sixty-fifth session, the CAJ approved the program for the seventh session of the CAJ-AG, to be held in Geneva on October 29 (p.m.) and 30, 2012 (see document CAJ/65/12 "Report on the Conclusions", paragraph 21). A report on the work of the CAJ-AG, at its seventh session, will be presented to the sixty-seventh session of the CAJ, to be held in March 2013. The draft agenda of the seventh session of the CAJ-AG (see document CAJ-AG/12/7/1) is reproduced below:

1. Opening of the session
2. Adoption of the agenda
3. Explanatory Notes (document CAJ-AG/12/7/2)
 - (a) UPOV/EXN/BRD: Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention (document UPOV/EXN/BRD Draft 5)
 - (b) UPOV/EXN/HRV: Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/HRV Draft 8)
4. Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (revision) (documents CAJ-AG/12/7/3 and UPOV/EXN/EDV/2 Draft 2)
5. Matters arising after the grant of a breeder's right (document CAJ-AG/11/6/4)
6. Explanatory Notes on Propagation and Propagating Material (document CAJ-AG/12/7/4)
7. Matters referred by the CAJ to the CAJ-AG for consideration since the sixth session of the CAJ-AG (document CAJ-AG/12/7/5)
8. Date and program for the eighth session
9. Adoption of the report on the conclusions (if time permits)
10. Closing of the session

Background information

Explanatory Notes on Acts in Respect of Harvested Material

12. At its sixth session, held in Geneva on October 18, 2011, the CAJ-AG agreed that the Office of the Union should prepare a revised version of the "Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention" for consideration by the CAJ-AG, at its seventh session, to be held in October 2012. In order that the matter might be advanced in the meantime, it was agreed that the Office of the Union should consider the preparation of an interim draft, which might be circulated for comment by correspondence (see document CAJ-AG/11/6/7 "Report", paragraph 11). On that basis, document UPOV/EXN/HRV Draft 7 was circulated to the CAJ-AG for comment by correspondence. Comments were invited by August 31, 2012, in order for the comments to be taken into account for the version of the Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/HRV Draft 8) to be considered by the CAJ-AG at its seventh session.

Matters concerning Observer Organizations

13. The CAJ, at its sixty-fifth session, noted the suggestion of the Association for Plant Breeding for the Benefit of Society (APBREBES) to include a limited number of permanent places for observers representing various stakeholder groups such as farmers, breeders and certain other observer non-governmental organizations (NGOs) (e.g. two per stakeholder group) in the CAJ-AG and to allow the stakeholder groups to coordinate on the persons to occupy those places at each session of the CAJ-AG, according to the matters under consideration. It also noted the APBREBES suggestion that those permanent places could be supplemented on an *ad hoc* basis, as considered appropriate by the CAJ-AG. The CAJ agreed to invite the CAJ-AG to consider that approach at its seventh session, in October 2012. The conclusions of the CAJ-AG will be presented to the CAJ at its sixty-seventh session, to be held in March 2013.

14. The CAJ, at its sixty-fifth session, noted the arrangements concerning the posting of CAJ-AG documents and comments, and the *ad hoc* invitations to observer organizations, as set out in document CAJ/65/2, paragraphs 33 to 36, and noted in particular the following:

(a) In order to ensure that the CAJ-AG had sufficient time to consider written comments, the CAJ-AG had agreed that comments should be sent, in English, to the Office of the Union at least two weeks prior to the relevant session of the CAJ-AG;

(b) The CAJ-AG had agreed that, in cases where written comments were received from an observer organization, the CAJ-AG would invite the observer organization to the relevant part of the next CAJ-AG session if the presence of the organization was considered necessary to present its views or to provide further explanations concerning its written comments. In that regard, the CAJ-AG had agreed that the CAJ-AG would, if necessary, decide by correspondence whether to invite the observer organization to the relevant part of the CAJ-AG session; and

(c) On the basis of comments received for the sixth session of the CAJ-AG, the CAJ-AG had agreed at its sixth session to invite CIOPORA, the European Coordination Via Campesina (ECVC) and the International Seed Federation (ISF) to the relevant part of the seventh session of the CAJ-AG.

15. In accordance with the procedure above, invitations were issued to CIOPORA, ISF and ECVC to join the seventh session of the CAJ-AG at 3.00 p.m., on October 29, 2012, in order to enable those organizations to present their views on items 3 to 6 of the draft agenda.

16. The CAJ is invited to note the information concerning the seventh session of the CAJ-AG, to be held in Geneva on October 29 (p.m.) and 30, 2012, as set out in paragraphs 11 to 15, above.

[Annex follows]

OVERVIEW OF THE DEVELOPMENT OF INFORMATION MATERIALS

Reference	Explanatory Notes on:	Status
(UPOV/EXN/BRD)	Definition of Breeder under the 1991 Act of the UPOV Convention	(Draft: CAJ-AG session in October 2012 document UPOV/EXN/BRD Draft 5)
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
UPOV/EXN/EDV	Essentially Derived Varieties under the 1991 Act of the UPOV Convention	UPOV/EXN/EDV/1 adopted in October 2009 (Revision: CAJ-AG session in October 2012 documents UPOV/EXN/EDV/2 Draft 2 and CAJ-AG/12/7/3)
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	(Draft: CAJ-AG session in October 2012 document UPOV/EXN/HRV Draft 8)
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
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
	<u>Possible Future Explanatory Notes</u>	
	Propagation and Propagating Material	CAJ-AG session in October 2012: document CAJ-AG/12/7/4

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Latest reference	INF documents	Status
UPOV/INF-EXN	List of UPOV/INF-EXN Documents and Latest Issue Dates	UPOV/INF-EXN/2 adopted in March 2012
UPOV/INF/4	Financial Regulations and Rules of UPOV	UPOV/INF/4/2 adopted in March 2012
UPOV/INF/5	UPOV model plant breeders' rights gazette	UPOV/INF/5 adopted in October 1979 (Revision: CAJ session in March 2013)
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
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/12/3 adopted in October 2010 (Revision to be considered for adoption by the Council in November 2012: document C/46/13, Annex)
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/15/1 adopted in October 2010 (Revision: CAJ session in October 2012 document UPOV/INF/15/2 Draft 1)
UPOV/INF/16	Exchangeable Software	UPOV/INF/16/2 adopted in October 2011
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	C/39/13, Annex, adopted in October 2005 (Revision to be considered for adoption by the Council in November 2012: document UPOV/INF/19/1 Draft 2)
(UPOV/INF/20)	Rules governing access to UPOV documents	C/39/13, Annex, adopted in October 2005 (Revision to be considered for adoption by the Council in November 2012: document UPOV/INF/20/1 Draft 2)
(UPOV/INF/21)	Alternative Dispute Settlement Mechanisms	(UPOV/INF/21/1 Draft 1 to be considered for adoption by Council in November 2012)

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