



CAJ-AG/07/2/2

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

GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE  
ADVISORY GROUP****Second Session  
Geneva, October 26, 2007**

ARTICLE 5(2) OF THE 1991 ACT: CONDITIONS OF PROTECTION (ARTICLE 6(2) OF THE 1978 ACT); AND ARTICLE 18 OF THE 1991 ACT: MEASURES REGULATING COMMERCE (ARTICLE 14 OF THE 1978 ACT)

*Document prepared by the Office of the Union*

1. At its first session held in Geneva on October 20, 2006, the Administrative and Legal Committee Advisory Group ("CAJ-AG") agreed that the Office of the Union should prepare a document on Article 5(2) of the 1991 Act: Conditions of Protection (Article 6(2) of the 1978 Act) and Article 18 of the 1991 Act: Measures Regulating Commerce (Article 14 of the 1978 Act) for its second session (paragraph 11 of document CAJ-AG/06/1/3). It was noted that the document would be based on existing materials.
2. It was further agreed that the document would clarify the different aspects between the relevant Articles in the Convention: who is entitled to file an application (Article 1(iv) of the 1991 Act); requirements for the examination of the application (Article 12 of the 1991 Act); conditions for the grant of the plant breeder's right (Article 5 of the 1991 Act); the requirement for the plant breeder's right to be independent of measures regulating commerce (Article 18 of the 1991 Act); and restrictions on the exercise of the plant breeder's right only for reasons of public interest (Article 17 of the 1991 Act) (paragraph 11 of document CAJ-AG/06/1/3).
3. The CAJ-AG concluded that it would not be appropriate to seek to provide guidance on provisions that might be incompatible with Articles 5(2) and 18 of the 1991 Act. It agreed that such provisions in draft laws or laws of future members should be dealt with on a

case-by-case basis in the preliminary examination of those draft laws or laws (paragraph 12 of document CAJ-AG/06/1/3).

4. In order to seek to provide coherent guidance, document UPOV/EXN/COND Draft 1 “Conditions of Protection” seeks to provide guidance on conditions for the grant of the plant breeder’s right (Article 5 of the 1991 Act) whilst including reference to who is entitled to file an application (Article 1(iv) of the 1991 Act) and the requirement for the plant breeder’s right to be independent of measures regulating commerce (Article 18 of the 1991 Act). The document is built on existing materials and, in particular, documents TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” and its associated TGP documents, UPOV/INF/12/1 “Explanatory notes on variety denominations under the UPOV Convention” and the “Reply of UPOV to the Notification of June 26, 2003, from the Executive Secretary of the Convention on Biological Diversity (CBD)” (see Annex III of document C/37/21).

5. Document UPOV/EXN/COND Draft 1 does not seek to address restrictions on the exercise of the plant breeder’s right only for reasons of public interest (Article 17 of the 1991 Act) nor measures regulating commerce after the grant of the breeder’s right (Article 18 of the 1991 Act), because those matters do not relate to the conditions for the grant of the plant breeder’s right.

6. *The CAJ-AG is requested to:*

*(a) comment on the draft explanatory notes contained in document UPOV/EXN/COND Draft 1; and*

*(b) consider if information materials should be developed for the matters referred to in paragraph 5.*

[End of document]