



INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
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EXPLANATORY NOTES ON THE DEFINITION OF VARIETY
UNDER THE 1991 ACT OF THE UPOV CONVENTION

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Note for Draft version

Footnotes will be retained in published document

Endnotes are background information for the CAJ-AG when considering this draft and will not appear in the final, published document

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EXPLANATORY NOTES ON THE DEFINITION OF VARIETY
UNDER THE 1991 ACT OF THE UPOV CONVENTION

PREAMBLE

1. The purpose of these Explanatory Notes is to provide guidance on the definition of “Variety” under the 1991 Act of the International Convention for the Protection of New Varieties of Plants. 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.

DEFINITION OF VARIETY CONTAINED IN ARTICLE 1(VI)
OF THE 1991 ACT OF THE UPOV CONVENTION

(a) Relevant Article of the 1991 Act of the UPOV Convention

2. The definition of variety provided in Article 1(vi) of the 1991 Act of the UPOV Convention is reproduced below:

<p style="text-align: center;">1991 Act of the UPOV Convention</p> <p style="text-align: center;">Article 1</p> <p style="text-align: center;">Definition</p> <p>(vi) “variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be</p> <ul style="list-style-type: none">- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,- distinguished from any other plant grouping by the expression of at least one of the said characteristics and- considered as a unit with regard to its suitability for being propagated unchanged;

(b) Certain aspects of the definition of variety

3. The following paragraphs explain certain aspects of the definition of variety.

(i) *Plant grouping within a single botanical taxon of the lowest known rank*

4. The definition of “variety” under the 1991 Act of the UPOV Convention starts by stating that it is “a plant grouping within a single botanical taxon of the lowest known rank, ... ” thereby confirming that a variety may not, for example, consist of plants of more than one species.

5. The definition that a variety means a “plant grouping” clarifies that the following, for example, do not correspond to the definition of a variety:

- a single plant,
- a trait (e.g. disease resistance, flower color),
- a chemical or other substance (e.g. oil, DNA),
- a plant breeding technology (e.g. tissue culture).

(ii) Irrespective of whether the conditions for the grant of a breeder's right are fully met

6. The definition of “variety” in Article 1(vi) of the 1991 Act of the UPOV Convention specifies that a plant grouping within a single botanical taxon of the lowest known rank can be a variety, “irrespective of whether the conditions for the grant of a breeder’s right are fully met”. Thus, the definition of a “variety” is wider than “protectable variety”.

7. The definition of “variety” plays an important role in the context of the examination of distinctness. Article 7 of the 1991 Act of the UPOV Convention provides that “[t]he variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.” The words “irrespective of whether the conditions for the grant of a breeder’s right are fully met” make it clear that varieties of common knowledge which are not protected may, nevertheless, still be varieties which correspond to the definition of variety in Article 1(vi), from which a “candidate variety” (a “variety” for which an application for a breeder’s right has been filed) must be clearly distinguishable. Guidance on varieties of common knowledge is provided in 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 TGP/4/1 “Constitution and Maintenance of Variety Collections”.

8. In general, the authorities do not examine whether a “candidate variety” corresponds to the definition of a variety according to Article 1(vi) of the 1991 Act of the UPOV Convention. Authorities are required to examine whether the application for a breeder’s right meets the requirements for the grant of a breeder’s right including, in particular, whether the candidate variety is distinct, uniform and stable (DUS). A variety which fulfills the DUS criteria will meet the definition of variety. In general, in the case of a rejected application, the authorities will not indicate whether they consider that the candidate variety corresponds to the definition of a “variety” or not.

(iii) Defined by the expression of characteristics resulting from a given genotype or combination of genotypes

9. The notion of “combination of genotypes” covers, for example, synthetic varieties and hybrids.

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