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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE
ADVISORY GROUP**

**Fifth Session
Geneva, October 18, 2010**

**OBJECTIVES OF THE POSSIBLE DEVELOPMENT OF A DOCUMENT ON THE
NOTION OF “OWN HOLDINGS” UNDER ARTICLE 15(2) OF THE
1991 ACT OF THE UPOV CONVENTION**

Document prepared by the Office of the Union

Introduction

1. Article 15(2) of the 1991 Act of the International Convention for the Protection of New Varieties of Plants (“1991 Act of the UPOV Convention”) provides the following:

**“Article 15
“Exceptions to the Breeder’s Right**

“[...]

“(2) [*Optional exception*] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder’s right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or (ii).”

2. At the sixty-first session of the Administrative and Legal Committee (CAJ) held in Geneva on March 25, 2010, the Delegation of the European Union reported that discussions had taken place within the European Union in relation to the notion of “own holdings” in the context of the optional exception of the breeder’s right under Article 15(2) of the 1991 Act of the UPOV Convention. The Delegation proposed that the CAJ consider including the notion of “own holdings” in the future program of the Administrative and Legal Committee Advisory Group (CAJ-AG).

3. The CAJ, at its sixty-first session, agreed to request the CAJ-AG, at its fifth session, to consider the objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention (see document CAJ/61/11 “Report on the Conclusions”, paragraph 33).

Background

4. At the fifty-eighth session of the CAJ, held in Geneva on October 27 and 28, 2008, the International Seed Federation (ISF) suggested the inclusion of an explanation on “own holdings” in the context of the consideration of the “Explanatory Notes on Exceptions to the Breeder’s Right under the 1991 Act of the UPOV Convention”, which were subsequently adopted by the Council on October 22, 2009 as document UPOV/EXN/EXC/1 (http://www.upov.int/export/sites/upov/en/publications/pdf/upov_exn_exc_1.pdf).

5. In relation to the request by ISF, the Report of the fifty-eighth session of the CAJ (see document CAJ/58/7, paragraphs 68 and 69) recorded the following:

“68. The representative of ISF requested the addition of an explanation of “holding” in section II (d) “Farmer’s holding” of document UPOV/EXN/EXC Draft 3 (document CAJ/58/4, Annex II, page 1 of the English version).

“69. The Chair [of the CAJ] considered that the intention of the UPOV Convention was to relate to individual farmers rather than groups of farmers, but recalled the previous discussions in the CAJ and, in particular, the difficulty in developing a common definition that would be suitable for all members of the Union.”

Objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention

6. In recognition of the difficulty in developing a common definition of “own holdings” that would be suitable for all members of the Union, it is proposed that the CAJ-AG should not seek to develop such a definition.

7. With regard to the possibility of providing information on the notion of “own holdings”, it might be of interest to consider, as a first step, how the notion has been implemented by existing members of the Union. As a second step, such information could be reviewed by the CAJ-AG with a view to considering if it would be appropriate to include the examples provided by members of the Union in an explanatory note.

8. *The CAJ-AG is invited to express its views concerning the approach to consider the objectives of the possible development of a document on the notion of “own holdings” under Article 15(2) of the 1991 Act of the UPOV Convention, as set out in paragraphs 6 and 7, above.*

[End of document]