



CAJ-AG/12/7/2

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

ADMINISTRATIVE AND LEGAL COMMITTEE ADVISORY GROUP

Seventh Session Geneva, October 29 and 30, 2012

EXPLANATORY NOTES

Document prepared by the Office of the Union

Introduction

1. The purpose of this document is to provide background information to assist the Administrative and Legal Committee Advisory Group (CAJ-AG) in its consideration of the following draft Explanatory Notes at its seventh session to be held in Geneva on October 29 (p.m.) and October 30, 2012:

- (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)

Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention (document UPOV/EXN/BRD Draft 4)

2. The CAJ-AG, at its sixth session, held in Geneva on October 18, 2011, considered documents CAJ-AG/11/6/2 and UPOV/EXN/BRD Draft 4 and the comments of the European Coordination Via Campesina (ECVC) (available at the CAJ-AG/11/6 section of the UPOV website http://www.upov.int/meetings/en/details.jsp?meeting_id=24135) (see document CAJ-AG/11/6/7 "Report", paragraph 6).

3. The CAJ-AG agreed the following changes to document UPOV/EXN/BRD Draft 4 (see document CAJ-AG/11/6/7 "Report", paragraph 7):

Paragraph 4	to clarify the meaning of legal person. The Office of the Union would consult the legislation of members of the Union for that clarification.
Paragraph 6	to explain that anyone could be a breeder, by reference to a non-exhaustive list of examples of breeders, and to refer to document C(Extr.)/19/2 Rev. "The Notion of Breeder and Common Knowledge".
Paragraph 8	to replace the highlighted section with a reference to document C(Extr.)/19/2 Rev. "The Notion of Breeder and Common Knowledge" and to clarify that a person would not be entitled to protection of an existing <i>variety</i> that was discovered and propagated unchanged by that person.

4. The CAJ-AG agreed that the Office of the Union should prepare a revised version of the Explanatory Notes on the Definition of Breeder under the 1991 Act of the UPOV Convention (document UPOV/EXN/BRD Draft 5) for consideration by the CAJ-AG at its seventh session, to be held in October 2012 (see document CAJ-AG/11/6/7 "Report", paragraph 8).

5. *The CAJ-AG is invited to consider document UPOV/EXN/BRD Draft 5.*

Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention (document UPOV/EXN/HRV Draft 6)

6. The CAJ-AG, at its sixth session, considered documents CAJ-AG/11/6/2 and UPOV/EXN/HRV Draft 6, and received comments from ECVI and the Russian Federation (available at the CAJ-AG/11/6 section of the UPOV website http://www.upov.int/meetings/en/details.jsp?meeting_id=24135).

7. The CAJ-AG agreed the following concerning document UPOV/EXN/HRV Draft 6 (see document CAJ-AG/11/6/7 "Report", paragraph 10):

(e) Illustrative examples	The CAJ-AG noted that the illustrative examples could cause some confusion with regard to matters concerning unauthorized use of propagating material and matters concerning exhaustion. It agreed that the illustrative examples should be replaced by a general explanation of "unauthorized use of propagating material", on the basis of the cases provided in the illustrative Examples 1 to 8. The CAJ-AG noted that Example 9 did not make reference to unauthorized use of propagating material.
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8. The CAJ-AG further 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 (see document CAJ/66/2 "Development of Information Materials concerning the UPOV Convention" paragraph 12).

9. The Office of the Union received comments on document UPOV/EXN/HRV Draft 7 from the Russian Federation and the Netherlands, on August 17 and 23, 2012, respectively. Document UPOV/EXN/HRV Draft 7 and those comments are available at the CAJ-AG/11/7 section of the UPOV website http://www.upov.int/meetings/en/details.jsp?meeting_id=26466.

10. Document UPOV/EXN/HRV Draft 8 reflects the conclusions of the CAJ-AG at its sixth session on document UPOV/EXN/HRV Draft 6 and the comments received from the Russian Federation and the Netherlands on document UPOV/EXN/HRV Draft 7, which was circulated for comment by correspondence.

11. *The CAJ-AG is invited to consider document UPOV/EXN/BRD Draft 8.*

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