



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

UPOV

CAJ/XXIII/ 5

ORIGINAL: English

DATE: September 9, 1988

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Twenty-third Session
Geneva, October 11 to 14, 1988

REVISION OF THE CONVENTION

OBSERVATIONS AND PROPOSALS FROM THE DELEGATION OF DENMARK

Document prepared by the Office of the Union

1. The Annex to this document contains the observations and proposals prepared by a Consultative Committee on Issues Concerning Plant Breeders' Rights and communicated by telecopy, on September 8, 1988, by the Delegation of Denmark to the Office of the Union.
2. The observations and proposals are based on document CAJ/XXIII/2 only.

[Annex follows]

ANNEX

OBSERVATIONS AND PROPOSALS FROM THE DELEGATION OF DENMARK

The Danish Consultative Committee (hereinafter referred to as "the Consultative Committee") on issues concerning "plant breeders' rights" has recently discussed at a meeting the proposal for a revision of the UPOV Convention as appearing in the UPOV document CAJ/XXIII/2 of July 13, 1988.

From the Danish quarter, we wish to express our support to the recently started revision of the UPOV Convention as well as to the intentions and the purpose of this revision.

As known, a new law on plant breeders rights entered into force on January 1, 1988, in Denmark. This law is the result of a debate that has taken place among the interested circles on this subject.

Therefore, our attitude towards a revision of the UPOV Convention will definitely be influenced by our work on the revision of our own law on plant breeders' rights as this work has just recently been finalized.

As the Danish Delegation has stated at previous meetings in UPOV, the Danish producers, here especially the producers within horticulture and particularly those within the pot plant area, have expressed concern about the consequences of a plant breeders' rights system and its effect on the producers' conditions. Therefore, the producers attach great importance to ensure equal competition conditions, so that a producer in one member State in UPOV does not gain advantages in respect of production matters because of lack of harmonization among the individual member States' national legislations, not least the differences in the lists of species.

Consequently, the producers' organizations that represent the horticultural circles have urgently stressed that there is an essential need for a balance between the rights of the breeder and the producer's production conditions if it is to be acceptable for the producers' organizations to extend the rights of the breeder, even though the intentions in principle are acceptable.

The Consultative Committee can therefore only stress the importance of the aim of the revision of the UPOV Convention, i.e., an increase in the number of member States, a harmonization of the national legislations, including the species that are included in the individual member States' legislation, and, furthermore, a closer cooperation.

Therefore, the observations from the Consultative Committee on the proposed amendments to the UPOV Convention are to be considered as support for the ongoing work, but at the same time these observations should only be considered as valid under the assumption that the question of the balance between breeders and producers and the equal competition conditions concerning the matter in question will be ensured through the UPOV Convention or accordingly. Otherwise, it could be difficult for Denmark to ratify a revised Convention that increases the breeder's rights and the scope of protection to too great a degree.

Article 1

The explicit prohibition of "double protection" so that varieties within the same species only can be protected under one system should be maintained.

The inclusion of the necessary corresponding text in Article 37 (the present Article number) is therefore acceptable.

Article 2

The proposed text is an improvement and the proposed definition of a breeder is acceptable.

As regards the question in paragraph 9 under "Description of Proposals and Comments," it is believed, as mentioned before, that the definition of a breeder is satisfactorily drafted. However, the explanation made in paragraph 9 ought to be included in the explanatory comments on the final proposal for the revised text of the Convention.

Article 3

The proposed text is acceptable.

Article 4

The Consultative Committee can support the intentions of the proposals for a new text.

However, as stated in the beginning of this document, Danish support for the proposed text will depend on whether the revision of the UPOV Convention is expected to result in the fulfillment of certain conditions.

Article 5

The Consultative Committee is in favor of the intentions based on Article 5, including the principle of dependency mentioned in paragraph (5).

A protection covering the end product is still under consideration, but it shall be clearly understood that a royalty can be charged only once in the production system.

Though, as stated in Article 4, Danish support for the proposed Article 5 will depend on our expectation of the fulfillment of certain conditions as a result of the revision of the UPOV Convention.

Article 6

Referring to the proposed alternatives described in Article 6(1)(a), the texts in Alternative 1 and Alternative B, respectively, will be preferred.

The proposal concerning a compulsory one year "period of grace" cannot be accepted.

As regards the proposed deletion of the present paragraph (1)(e), we believe it to be important that the demand of a denomination for the identification of the protected variety should be maintained. Therefore, an approval of the deletion of the paragraph cannot be given immediately.

Referring to paragraph 2 under "Description of Proposals and Comments," we propose that the order of the paragraphs be changed additionally compared to the present text, so that the condition of "novelty" is listed as the first condition for the grant of the right and is followed by the conditions of "distinctness, uniformity and stability."

Article 7

As to Article 7, paragraph (4), the text is found unclear and the last sentence ought to be omitted.

Besides, the intentions found in Article 7 can be supported, including further cooperation and harmonization.

Article 8

No special observations to this Article.

However, the duration of the period of protection is expected to be a matter of discussion at the Diplomatic Conference.

Article 9

As regards paragraph (1), the use of the text proposed in the document CAJ/XXIII/2 is preferable.

The proposal for a new paragraph (2) can be accepted, but also the present text is acceptable.

Article 10

The proposed text is acceptable.

Article 11

The proposed text is acceptable.

Article 12

It is proposed to maintain the present period of priority of 12 months in paragraph (1).

The proposal of a period of two years in paragraph (3) as mentioned in Alternative 2 is preferred.

Article 13

On the basis of a perceived need for maintaining the requirement of a denomination as part of the granting procedure of plant breeders' rights (see Article 6, paragraph (1)(e)), and considering the new "UPOV Recommendations on

Variety Denominations" adopted recently by the Council of UPOV after consultation with the international non-governmental organizations, it is found necessary to maintain the requirement appearing in Article 13.

Therefore, support is given to a further debate about the "Second Proposal", and the proposal from the Dutch Delegation to maintain the present text of Article 13 is noted as well.

Article 14

The proposed deletion of the present text is acceptable.

[End of document]