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**UPOV**

IOM/5/6

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**ORIGINAL :** French

**DATE :** October 2, 1990

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

**GENEVA**

**FIFTH MEETING  
WITH INTERNATIONAL ORGANIZATIONS**

**Geneva, October 10 and 11, 1990**

**REVISION OF THE CONVENTION:**

**COMMENTS FROM COGECA AND COPA**

Document prepared by the Office of the Union

The annex to this document contains the comments from the General Committee for Agricultural Cooperation in the European Economic Community (COGECA) and the Committee of Agricultural Organizations in the European Economic Community (COPA) on the revision of the Convention. They were received by the Office of the Union on October 2, 1990.

[Annex follows]

## ANNEX

## COMMENTS FROM COGECA AND COPA ON THE REVISION OF THE CONVENTION

The position of COPA and COGECA concerning the legal protection of plant varieties is based on the following considerations:

1. There cannot be double protection for varieties.
2. The rights of the breeder should extend to any reproductive material, that is, plants, plant parts, cells and protoplasts.
3. The free access to the variety for experimental purposes with a view to creating a new variety must be guaranteed, including where the variety embodies an invention protected by a patent.
4. The well-established principle of the plant-breeding world whereby farmers may freely use reproductive material for sowing a new crop on their premises must be set out in the Convention.

COPA and COGECA propose the following definition for the farmer's privilege:

"The farmer's privilege covers acts of reproduction or multiplication of reproductive material in the soil and treatment made by the farmer himself using his own farming equipment, irrespective of whether these acts are undertaken by himself or under cost-free farmers' self-help arrangements involving mutual benefits, to sow or plant a new crop on his premises."

In view of the general nature of the definition, COPA and COGECA request that the details for its implementation be defined on a case-by-case basis for flowers, ornamental plants and potato.

5. The introduction of a derived right is acceptable provided that there is a perceivable sign of improvement of the variety (there should be no protection for plagiarism).

Consequently COPA and COGECA request that the following amendments be made in document IOM/5/2 entitled "Revision of the Convention: Draft Substantive Law Provisions":

1. Page 7, Article 1

COPA and COGECA request that a definition of reproductive or vegetative propagating material which would state that plants, parts of plants, cells and protoplasts are such material be included in the UPOV Convention.

The purpose of such inclusion would be to ensure that patent law does not apply to reproductive or vegetative propagating material.

2. Page 11, Article 2

COPA and COGECA reaffirm that there cannot be double protection for varieties.

Consequently there can only be one--exclusive--form of protection, namely the breeder's right.

COPA and COGECA therefore reject the proposed new text.

3. Page 45, Article 12

COPA and COGECA request that the final part of Article 12(4) appearing in square brackets ("provided that such use is limited to a quantity equal to the quantity of reproductive or vegetative propagating material of the variety originally purchased") be omitted from the text.

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