



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agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.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



0530  
IRC/VI/12

ORIGINAL: English

DATE: September 21, 1977

# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## COMMITTEE OF EXPERTS ON THE INTERPRETATION AND REVISION OF THE CONVENTION

Sixth Session

Geneva, September 20 to 23, 1977

ARTICLES 6 TO 12, 14 TO 20 AND 22

Memorandum prepared by the Office of the Union

It is the understanding of the Office of the Union that with respect to Articles 6 to 12, 14 to 20 and 22 the changes decided by the Committee are the following:

[Present Text]

## Article 6

[Conditions Required for Protection]

(1) The breeder of a new variety or his successor in title shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the new variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or a precise description in a publication.

A new variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise description and recognition.

(b) The fact that a variety has been entered in trials, or has been submitted for registration or entered in an official register, shall not prejudice the breeder of such variety or his successor in title.

At the time of the application for protection in a member State of the Union, the new variety must not have been offered for sale or marketed, with the agreement of the breeder or his successor in title, in the territory of that State, or for longer than four years in the territory of another State.

(c) The new variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

(d) The new variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(e) The new variety shall be given a denomination in accordance with the provisions of Article 13.

[Committee's Text]

## Article 6

Conditions Required for Protection

(1) The breeder of a variety or his successor in title shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion in a reference collection or a precise description in a publication. A variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise description and recognition.

(b) [See doc. IRC/VI/11]

(c) [No change, except omit the word "new."]

(d) [No change, except omit the word "new."]

(e) [No change, except omit the word "new."]

0532

[Article 6, continued]

[Present Text]

(2) Provided that the breeder or his successor in title shall have complied with the formalities provided for by the national law of each country, including the payment of fees, the grant of protection in respect of a new variety may not be made subject to conditions other than those set forth above.

[Committee's Text]

(2) [No change, except omit the words "in respect of a new variety"]

0533

[Present Text]

Article 7

[Official Examination of New Varieties;  
Provisional Protection]

- (1) Protection shall be granted only after examination of the new plant variety in the light of the criteria defined in Article 6. Such examination shall be adapted to each botanical genus or species having regard to its normal manner of reproduction or multiplication.
- (2) For the purposes of such examination, the competent authorities of each country may require the breeder or his successor in title to furnish all the necessary information, documents, propagating material or seeds.
- (3) During the period between the filing of the application for protection of a new plant variety and the decision thereon, any member State of the Union may take measures to protect the breeder or his successor in title against wrongful acts by third parties.

[Committee's Text]

Article 7

Official Examination of Varieties;  
Provisional Protection

- (1) [No change, except omit the words "new plant."]
- (2) [No change]
- (3) [No change, except omit the words "of a new plant variety"]

[Present Text]

Article 8

[Period of Protection]

(1) The right conferred on the breeder of a new plant variety or his successor in title shall be granted for a limited period. This period may not be less than fifteen years. For plants such as vines, fruit trees and their rootstocks, forest trees and ornamental trees, the minimum period shall be eighteen years.

(2) The period of protection in a member State of the Union shall run from the date of the issue of the title of protection.

(3) Each member State of the Union may adopt longer periods than those indicated above and may fix different periods for some classes of plants, in order to take account, in particular, of the requirements of regulations concerning the production and marketing of seeds and propagating material.

[Committee's Text]

Article 8

Period of Protection

The right conferred on the breeder or his successor in title shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees including their rootstocks, the minimum period shall be not less than eighteen years computed from the said date.

[Present Text]

## Article 9

[Restrictions in the Exercise  
of Rights Protected]

The free exercise of the exclusive right accorded to the breeder or his successor in title may not be restricted otherwise than for reasons of public interest.

When any such restriction is made in order to ensure the widespread distribution of new varieties, the member State of the Union concerned shall take all measures necessary to ensure that the breeder or his successor in title receives equitable remuneration.

[Committee's Text]

## Article 9

Restrictions in the Exercise  
of Rights Protected

(1) [No change, except that the paragraph should receive a number, namely "(1)."]

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder or his successor in title receives equitable remuneration.

[Present Text]

Article 10

[Nullity and Forfeiture  
of the Rights Protected]

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in subparagraphs (a) and (b) of paragraph (1) of Article 6 were not effectively complied with at the time when the title of protection was issued.

(2) The breeder or his successor in title shall forfeit his right when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the new variety with its morphological and physiological characteristics as defined when the right was granted.

(3) The right of the breeder or his successor in title may become forfeit if:

(a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the new variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or

(b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled and the right of the breeder or his successor in title may not become forfeit except on the grounds set out in this Article.

[Committee's Text]

Article 10

Nullity and Forfeiture  
of the Rights Protected

(1) [No change]

(2) [No change, except omit the word "new."]

(3) [No change, except omit the word "new."]

(4) [No change]



[Present Text]

## Article 11

[Free Choice of the Member State in Which the  
First Application is Filed; Application in  
Other Member States; Independence of  
Protection in Different Member States]

(1) The breeder or his successor in title may choose the member State of the Union in which he wishes to make his first application for protection of his right in respect of a new variety.

(2) The breeder or his successor in title may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he made his first application.

(3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same new variety in other States whether or not such States are members of the Union.

[Committee's Text]

## Article 11

Free Choice of the Member State in Which the  
First Application is Filed; Application in  
Other Member States; Independence of  
Protection in Different Member States

(1) [No change, except omit the word "new."]

(2) [No change]

(3) [No change, except omit the word "new."]

[Present Text]

Article 12

[Right of Priority]

(1) Any breeder or his successor in title who has duly filed an application for protection of a new variety in one of the member States of the Union shall, for the purposes of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall run from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of the preceding paragraph, the further filing must include an application for protection of the new variety, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.

(3) The breeder or his successor in title shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

[Committee's Text]

Article 12

Right of Priority

(1) [No change, except omit the words "of a new variety"]

(2) [No change, except omit the words "of the new variety"]

(3) The breeder or his successor in title shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished, within an adequate period in the case where the application whose priority is claimed is rejected or withdrawn.

(4) [No change]

[Article 13 not yet discussed]  
=====

[Present Text]

## Article 14

[Protection Independent of Measures Regulating  
Production, Certification and Marketing]

(1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.

(2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

[Committee's Text]

## Article 14

Protection Independent of Measures Regulating  
Production, Certification and Marketing

(1) [No change]

(2) [No change]

[Present Text]

Article 15

[Organs of the Union]

The permanent organs of the Union shall be:

(a) the Council;

(b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants. That Office shall be under the high authority of the Swiss Confederation.

[Committee's Text]

Article 15

Organs of the Union

The permanent organs of the Union shall be:

(a) the Council and

(b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

0541

[Present Text]

Article 16

[Composition of the Council; Votes]

- (1) The Council shall consist of representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and an alternate.
- (2) Representatives or alternates may be accompanied by assistants or advisers.
- (3) Each member State of the Union shall have one vote in the Council.

[Committee's Text]

Article 16

Composition of the Council; Votes

- (1) [No change]
- (2) [No change]
- (3) [No change]

[Present Text]

Article 17

[Observers in Meetings of the Council]

(1) States which have signed but not yet ratified this Convention shall be invited as observers to meetings of the Council. Their representatives shall be entitled to speak in a consultative capacity.

(2) Other observers or experts may also be invited to such meetings.

[Committee's Text]

Article 17

Observers in Meetings of the Council

(1) States not members of the Union which have signed but not yet ratified this Act shall be invited as observers to meetings of the Council.

(2) [No change]

0547

[Present Text]

Article 18

[Officers of the Council]

(1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.

(2) The President shall hold office for three years.

[Committee's Text]

Article 18

Officers of the Council

(1) [No change]

(2) [No change]

[Present Text]

Article 19

[Meetings of the Council]

(1) Meetings of the Council shall be convened by its President.

(2) A regular session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if a third of the member States of the Union so request.

[Committee's Text]

Article 19

Meetings of the Council

(1) [No change]

(2) [No change]



[Present Text]

## Article 20

[Rules of Procedure of the Council;  
Administrative and Financial Regu-  
lations of the Union]

- (1) The Council shall lay down its rules of procedure.
- (2) The Council shall adopt the administrative and financial regulations of the Union, after having consulted the Government of the Swiss Confederation. The Government of the Swiss Confederation shall be responsible for ensuring that the regulations are carried out.
- (3) A majority of three-quarters of the member States of the Union shall be required for the adoption of such rules and regulations and any amendments to them.

[Committee's Text]

## Article 20

Rules of Procedure of the Council;  
Administrative and Financial Regu-  
lations of the Union

The Council shall adopt its rules of procedure and the administrative and financial regulations of the Union.

[There would be no provision in the new text corresponding to paragraph (3) in the present text.]

[Article 21 still to be discussed]

=====

[Present Text]

Article 22  
as amended by Article I of the  
Additional Act of 1972

[Majorities Required for Decisions  
of the Council]

Decisions of the Council shall be taken by a simple majority of the members present, except in the cases provided for in Articles 20, 27, 28 and 32, for the vote on the budget, for the fixing of the contributions of each member State of the Union, for the faculty provided for in paragraph (5) of Article 26 concerning payment of one-half of the contribution corresponding to Class V and for any decision regarding voting rights under paragraph (6) of Article 26. In these last four cases, the majority required shall be three-quarters of the members present.

[Committee's Text]

Article 22

Majorities Required for Decisions  
of the Council

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4(4), 20(1) and (2), 21(d), 25, 26(5) and (6), 27(2) and 28(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

[End of document]