

Working Group on Harvested Material and Unauthorized use of Propagating Material

WG-HRV/1/6

**First Meeting
Geneva, March 15, 2022****Original:** English
Date: May 13, 2022**REPORT**

adopted by the Working Group on Harvested Material and Unauthorized use of Propagating Material

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OPENING OF THE MEETING

1. The Working Group on Harvested Material and Unauthorized use of Propagating Material (WG-HRV) held its first meeting via electronic means on March 15, 2022, chaired by Mr. Peter Button, Vice Secretary-General of UPOV.
2. The meeting was opened by the Chair, who welcomed the participants.
3. The list of participants is reproduced in the Annex to this report.

ADOPTION OF THE AGENDA

4. The WG-HRV adopted the draft agenda as proposed in document WG-HRV/1/1.

INTRODUCTION TO THE REVISION OF THE EXPLANATORY NOTES ON PROPAGATING MATERIAL, ACTS IN RESPECT OF HARVESTED MATERIAL AND PROVISIONAL PROTECTION UNDER THE UPOV CONVENTION

5. The WG-HRV considered document WG-HRV/1/2.
6. The WG-HRV noted that the proposals received in reply to Circular E-21/228 had been introduced in boxes in documents WG-HRV/1/3 (proposals concerning UPOV/EXN/PPM/1), WG-HRV/1/4 (proposals concerning UPOV/EXN/HRV/1) and WG-HRV/1/5 (proposals concerning UPOV/EXN/PRP/2).

PROPOSALS CONCERNING THE EXPLANATORY NOTES ON PROPAGATING MATERIAL UNDER THE UPOV CONVENTION

7. The WG-HRV considered document WG-HRV/1/3.
8. The WG-HRV agreed the following possible new factor should be considered further:

“[...] (vii) when harvested material has the potential to be used as propagating material, it can be considered as propagating material; or [...]”

9. The WG-HRV agreed that further elaboration on the relationship of propagating material and harvested material, including the role of exhaustion, be prepared for consideration by WG-HRV at its next meeting to assist in its consideration of the above factor. It was agreed that illustrative examples could be included to

facilitate the discussions and that the Office of the Union would consult those members of the WG-HRV that made interventions at the meeting on that topic.

PROPOSALS CONCERNING THE EXPLANATORY NOTES ON ACTS IN RESPECT OF HARVESTED MATERIAL UNDER THE 1991 ACT OF THE UPOV CONVENTION

10. The WG-HRV considered document WG-HRV/1/4.

11. The WG-HRV agreed that the following matters should be considered in relation to a revision of the Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention:

General	to replace “his right” by “their right” in relevant parts of the document, unless it is a quote from Article 14(2) of the 1991 Act of the UPOV Convention.
Paragraph 1	To add footnote 1 after “breeder”, based on the following text <u>“For the purpose of this EXN the term ‘Breeder’ includes both the breeder according to Article 1 iv of the UPOV 1991 Act and the title holder, as the case may be.”</u> and in accordance with the wording used in UPOV guidance documents.
Paragraph 3	to change as follows: “The explanation that harvested material includes entire plants and parts of plants, which is material that can potentially be used for propagating purposes, means that at least some forms of harvested material have the potential to be used as propagating material. <u>When harvested material has the potential to be used as propagating material, it can be considered as propagating material.</u> ”

12. The WG-HRV considered the proposals and comments in relation to document WG-HRV/1/4, Annex, section “(c) Unauthorized use of propagating material” and agreed to discuss the following matters at its next meeting:

(a) the cascade principle under the “Scope of the Breeder’s Right”, in Article 14 of the 1991 Act, and its relationship with the provisions on the “Exhaustion of the Breeder’s right”, under Article 16 of the 1991 Act;

(b) the history of those provisions, including the notion of “unauthorized use”, under Article 14(2) and the notion of “consent” under Article 16; and

(c) clarifications on where the use had taken place and where the right can be exercised.

It was agreed that the Office of the Union would collate information that members of the WG-HRV wished to share on the above topics and would provide background information on the above provisions as the basis for the discussion at the second meeting of the WG-HRV.

13. The WG-HRV considered the proposals and comments in relation to document WG-HRV/1/4, Annex, section “(d) Reasonable opportunity to exercise his right” and agreed to consider that matter further at the second meeting of the WG-HRV. It was agreed that illustrative examples of how the provision of information could work in practice would facilitate the discussions.

PROPOSALS CONCERNING THE EXPLANATORY NOTES ON PROVISIONAL PROTECTION UNDER THE UPOV CONVENTION

14. The WG-HRV received a presentation on document WG-HRV/1/5 but did not have time to discuss the document.

DATE AND PROGRAM OF THE SECOND MEETING

15. The WG-HRV agreed to invite additional comments on documents WG-HRV/1/3, WG-HRV/1/4 and WG-HRV/1/5 within six weeks after its first meeting.

16. The WG-HRV agreed to request the Office of the Union to prepare information and proposals for the revision of the following explanatory notes, for consideration by the WG-HRV at its second meeting, on the basis of the discussions at the first meeting and any additional comments received (see paragraph 15, above):

- “Explanatory Notes on Propagating Material under the UPOV Convention” (document UPOV/EXN/PPM/1);
- “Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention” (document UPOV/EXN/HRV/1); and
- “Explanatory Notes on Provisional Protection under the UPOV Convention” (document UPOV/EXN/PRP/2).

17. The WG-HRV agreed that the second meeting of the WG-HRV be held via electronic means, on September 6, 2022.

18. The following program was agreed for the second meeting of the WG-HRV:

1. Opening of the meeting
2. Adoption of the agenda
3. Information concerning propagating material, acts in respect of harvested material and provisional protection under the UPOV Convention
4. Proposals concerning the Explanatory Notes on Propagating Material under the UPOV Convention
5. Proposals concerning the Explanatory Notes on Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention
6. Proposals concerning the Explanatory Notes on Provisional Protection under the UPOV Convention
7. Date and program of the third meeting

19. This report was adopted by correspondence.

[Annex follows]

ANNEXE / ANNEX / ANEXO

(dans l'ordre alphabétique des noms français des membres /
in the alphabetical order of the French names of the members /
por orden alfabético de los nombres en francés de los miembros)

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