

NEW ZEALAND

Contribution received in reply to UPOV Circular E-22/058, of April 12, 2022

Revision of the Explanatory Notes for Harvested and Propagating material

A New Zealand view

Any explanatory note comes from the Convention itself and for this reason any subsequent revision of the note should have consideration as to the time the Convention was agreed and the time of the revision. Over the last five to ten years advances in biotechnology has enabled new processes and new opportunities. Not so very long ago, tissue culture propagation was a relatively unusual for most species, but now it is standard propagation practice for many species. In the past New Zealand had special provisions for plant material from *in vitro* propagation used for DUS testing purposes, but now use is frequent, the technology is reliable and consistent and particular provision is no longer necessary.

The availability and use of propagation technology have changed the understanding of what is propagating material. The technology allows the potential for any plant material to be considered propagating material. The conclusion that in general all plant material is propagating material does alter the underlying basis of the current Explanatory Note.

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

The above draft text does not have the basis that all plant material is propagating material. The text begins with harvested material which may also be propagation material. The proposed basis that all plant material is capable of propagation leads to the question of when the material can be considered harvested material and in effect this turns the Explanatory Note into guidance regarding the circumstances when propagating material can be considered harvested material.

In document WG-HRV_1_06_Prov_Draft_Report the following is proposed

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> ”
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The highlighted section is an addition however if the proposed basis begins with all plant material is propagating material, then such a sentence may become unnecessary.

To adopt the starting point that all plant material is propagating material, unless demonstrated otherwise, and reorientate the revision towards guidance regarding when material becomes harvested material is something of a change in approach but not entirely in substance. Such an approach is consistent with Article 14 (2) and 16 (2), were both refer to harvested material to include entire plants and parts of plants. To take the revision in this direction may pose difficulties for member states with definition of propagating and/or harvested material in individual national law that may not be able to accommodate such an approach in the Explanatory Note.

The Convention was drafted at a time when there was a much clearer distinction between harvested and propagating material. Thirty years on that is no longer the situation and explanatory notes must not only reflect the Convention but also current practice and commerce.