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DEVELOPMENTS OF RELEVANCE TO UPOV IN OTHER INTERNATIONAL FORA

Document prepared by the Office of the Union

Disclaimer: this document does not represent UPOV policies or guidance

1. This document reports on developments of relevance to UPOV in other international fora since the ninetieth session of the Consultative Committee, held in Geneva on October 28, 2015, as follows:

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I. EAST ASIA PLANT VARIETY PROTECTION FORUM (EAPVP FORUM)

3. The background to the East Asia Plant Variety Protection Forum (EAPVP Forum) is provided in document CC/84/9 Rev. "Developments of Relevance to UPOV in Other International Fora", paragraphs 7 to 9.

4. At the eighth meeting of the EAPVP Forum, held in Seoul, Republic of Korea, on September 2, 2015, each of the EAPVP Forum countries submitted activity proposals and adopted the document "Priorities for Activities to be implemented under the East Asia Plant Variety Protection Forum Cooperation Network (2015-2016)" as a common basis for the proposals. The following priorities were identified in the document:

- Priority 1: In-country training activities (Training organized by host country)
- Priority 2: Harmonization of test guidelines and other tools for examination in the region
- Priority 3: Information sharing including through the Forum Website
- Priority 4: Awareness raising for key person in decision making (Seminars, Workshops)
- Priority 5: Support for PVP law development and other activity to assist accession to UPOV

5. The ninth meeting of the EAPVP Forum is planned to be held in Viet Nam in September, 2016. The Office of the Union plans to attend that meeting.

II. DEVELOPMENTS UNDER THE AUSPICES OF THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

6. Document CC/88/14 "Developments of Relevance to UPOV in Other International Fora", paragraphs 6 to 9, reported on the following developments concerning to studies related to synthetic biology.

7. On August 14, 2014, the Office of the Union received a CBD notification (No. 2014-090) with an invitation from the CBD to comment, until August 13, 2014, on two studies related to synthetic biology, prepared in response to CBD decision XI/11, which have been considered by the eighteenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 18), in the context of new and emerging issues relating to the conservation and sustainable use of biodiversity. The studies are available at: <http://www.cbd.int/emerging/> and the text of the CBD notification is also available at: <http://www.cbd.int/doc/notifications/2014/ntf-2014-090-new-emerging-issues-en.doc>

8. The Office of the Union was informed separately that UPOV had been unintentionally omitted from the original notification.

9. On August 21, 2014, after consultation with the President of the Council, the Office of the Union sent a reply to the CBD on one of the study titled "New and Emerging Issues Relating to the Conservation and Sustainable use of Biodiversity - Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and Other Relevant Agreements Related to Components, Organisms and Products Resulting from Synthetic Biology Techniques". On the same date, the reply was notified to the members of the Union with an indication that it would also be reported at the eighty-eighth session of the Consultative Committee (see UPOV Circular E-14/208). The reply of the Office of the Union is reproduced in Annex I of document CC/88/14 (in English only).

10. The Conference of the Parties (COP), at its twelfth meeting, held in Pyeoungchang, Republic of Korea, from October 6 to 17, 2014, considered document UNEP/CBD/COP/12/INF/12 "Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and other relevant Agreements related to Components, Organisms and Products resulting from Synthetic Biology Techniques" (consolidated text). Selected, relevant paragraphs of "New and Emerging Issues Relating to the Conservation and Sustainable use of Biodiversity - Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and Other Relevant Agreements Related to Components, Organisms and Products Resulting from Synthetic Biology Techniques", the comments of the Office of the Union and the final text of document UNEP/CBD/COP/12/INF/12 are reproduced in the Annex to this document (in English only).

11. The COP, at its twelfth meeting, adopted decision XII/24 "New and emerging issues: synthetic biology" which, in paragraph 4, decided, subject to the availability of the resources, to establish an Ad Hoc Technical Expert Group on Synthetic Biology (AHTEG). The content of document UNEP/CBD/COP/12/INF/12 was provided to AHTEG to support its work as a part of document CBD Technical Series (see <https://www.cbd.int/doc/publications/cbd-ts-82-en.pdf>).

12. The COP invited Parties, other Governments, relevant organizations and stakeholders to submit information to the Executive Secretary relevant to the work of the AHTEG, as well as on measures

undertaken in accordance with paragraph 3 of decision XII/24, including the identification of needs for guidance (see <https://www.cbd.int/doc/decisions/cop-12/cop-12-dec-24-en.pdf>).

13. The first meeting of AHTEG was held in Montreal, Canada, from September 21 to 25, 2015. The meeting documents and the report are available at: <https://www.cbd.int/doc/?meeting=SYNBIOAHTEG-2015-01>.

14. On December 3, 2015, the Office of the Union received CBD notification No. 2015-139 "Peer review of the outcomes of the process in response to decision XII/24 on synthetic biology" with an invitation to comment on two reports related to synthetic biology: "Updated report and synthesis of views in response to paragraph 7 (b) of decision XII/24" and "Report of the meeting of the Ad Hoc Technical Expert Group on Synthetic Biology" (Reports)(see <https://bch.cbd.int/synbio/peer-review>). The reports did not contain any reference to plant variety protection or UPOV.

15. Document UNEP/CBD/SBSTTA/20/INF/11 "Updated Report and Synthesis of Views in Response to Paragraph 7(b) of Decision XII/24 on New and Emerging Issues: Synthetic Biology" and UNEP/CBD/SBSTTA/20/INF/12 "Report of the Ad Hoc Technical Expert Group on Synthetic Biology" have been made available for the twentieth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice, to be held in Montreal, Canada from April 25 to 29, 2016, at <https://www.cbd.int/doc/?meeting=SBSTTA-20>.

III. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

Technical Working Group on Varietal Identity and Purity of the OECD Seed Schemes (TWG)

16. The Technical Working Group on Varietal Identity and Purity of the OECD Seed Schemes (TWG), at its meeting in Cape Town, South Africa, on January 28 and 29, 2016, considered the following topics of relevance to UPOV:

Rules and regulations of the OECD Seed Schemes: Amendment to rules on acceptance of varieties

17. The TWG considered a draft proposal for amending the rules on acceptance of varieties. Varieties would be accepted into an OECD certification Schemes only when tested and described using internationally recognized guidelines, such as UPOV Test Guidelines and other internationally recognized guidelines (see document TAC/CA/S/RD(2013)1/REV4 "Revised draft proposal for amending the rules and regulations of the OECD Seed Schemes: Acceptance of varieties"). The TWG agreed that the draft proposal as amended in the meeting would be circulated for comments and submitted to the next TWG meeting in June 2016.

The role of biochemical and molecular techniques in describing / identifying varieties

18. The TWG considered document TAD/CA/S/RD(2016)6 "Draft procedure for updating the list of internationally validated biochemical and molecular methods". Annex 1 to document TAD/CA/S/RD(2016)6 presented a list of internationally validated molecular techniques (e.g. UPOV, ISTA) used in different crops by OECD Seed Schemes members. The TWG agreed the procedure for updating the list of internationally validated biochemical and molecular techniques with a questionnaire to be circulated annually.

Joint OECD/UPOV/ISTA/AOSA workshop on biochemical and molecular techniques

19. The Annual Meeting of the OECD Seed Schemes agreed to organize a OECD/UPOV/ISTA/AOSA joint workshop on the use of biochemical and molecular techniques back-to-back with the Annual Meeting in Paris, on June 7 or 8, 2016.

20. The TWG, at its meeting in January 2016, considered document TAD/CA/S/RD(2016)7 "Preliminary draft program of the joint OECD/UPOV/ISTA/AOSA workshop on biochemical and molecular techniques".

21. The TWG agreed that the United Kingdom would chair the joint workshop and agreed that additional comments on the draft program could be submitted to the OECD secretariat until February 29, 2016.

22. Further developments concerning the organization by the OECD of a OECD/UPOV/ISTA/AOSA joint workshop on the use of biochemical and molecular techniques will be reported to the Consultative Committee at its ninety-first session.

Revision of the strategic plan

23. The TWG considered document TAD/CA/S/SD(2016)9 “Revision of the 2009 strategic plan” and a list of proposed “methods” and “actions” to implement the “key areas for the future focus of the OECD Schemes”. References to UPOV were made under the following key areas: (2) “Effective communications” (e.g. joint workshops, variety denominations guidance and databases); (4) “Address institutional and technical developments” (e.g. capacity building and distance learning tools, World Seed Partnership); and (5) “Enlarge participation in the schemes” (e.g. World Seed Partnership, joint workshops). The TWG agreed that an Ad Hoc Working Group would further elaborate the strategic plan for consideration at the next TWG meeting in June 2016.

24. The Consultative Committee is invited to note the developments in the OECD Seed Schemes (TWG), as presented in paragraphs 16 to 23 of this document and in, particular, the:

(a) amendments to rules on acceptance of varieties;

(b) role of biochemical and molecular techniques in describing / identifying varieties; and

(c) plans for a joint OECD/UPOV/ISTA/AOSA workshop on biochemical and molecular techniques to take place in Paris, on June 7 or 8, 2016.

IV. DEVELOPMENTS UNDER THE AUSPICES OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

25. Matters concerning the ITPGRFA are considered under agenda item “Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)” (see document CC/91/6).

V. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

26. The background to the IGC is provided in document CC/84/9 Rev. “Developments of Relevance to UPOV in Other International Fora”, paragraphs 44 to 51.

27. The Assemblies of Member of States of WIPO, at its fifty-fifth session, held in Geneva, from October 5 to 14, 2015, decided the schedule of the IGC sessions to be held in 2016 and 2017 in Geneva as follows (see CC/90/15 Add. “Addendum to: Developments of Relevance to UPOV in Other International Fora”, Annex).

Session / Date	Subject
Twenty-Ninth Session (IGC/29) February/March 2016 (5 days)	Genetic Resources
Thirtieth Session (IGC/30) May/June 2016 (5 days)	Genetic Resources
Thirty-First Session (IGC/31) September 2016 (5 days)	Traditional Knowledge

Session / Date	Subject
Thirty-Second Session (IGC/32) November/December 2016 (5 days)	Traditional Knowledge
Thirty-Third Session (IGC/33) March/April 2017	Traditional Cultural Expressions
Thirty-Fourth Session (IGC/34) June/July 2017	Traditional Cultural Expressions
WIPO General Assembly September 2017	Consider the text, and decide whether to convene a diplomatic conference or continue negotiations.

28. The IGC, at its twenty-ninth session, held in Geneva, from February 15 to 19, 2016, considered document WIPO/GRTKF/IC/29/4 “Consolidated Document Relating to Intellectual Property and Genetic Resources” under the agenda item 7 “Genetic Resources” and developed an “Indicative List of Outstanding/Pending Issues to be Tackled/Solved at the Next Session”. The IGC agreed to consider both document WIPO/ GRTKF/IC/29/4 and the Indicative List of Outstanding/Pending Issues to be Tackled/Solved at the Next Session at its subsequent session. Document [WIPO/GRTKF/IC/29/REF/DECISIONS](http://www.wipo.int/meetings/en/details.jsp?meeting_id=38983) “Decisions of the Twenty-Ninth Session of the Committee” is available at: http://www.wipo.int/meetings/en/details.jsp?meeting_id=38983.

29. The dates of IGC/30, IGC/31 and IGC/32 are provided below.

Session / Date	Subject
Thirtieth Session (IGC/30) May 30 to June 3, 2016	Genetic Resources
Thirty-First Session (IGC/31) September 19 to 23, 2016	Traditional Knowledge
Thirty-Second Session (IGC/32) November 28 to December 2, 2016	Traditional Knowledge

VI. WORLD TRADE ORGANIZATION (WTO)

Council for TRIPS (Trade-Related Aspects of Intellectual Property Rights)

30. The background to this item is provided in documents CC/84/9 Rev. and CC/85/9 both entitled “Developments of relevance to UPOV in other international fora”, paragraphs 58 to 60 and paragraphs 30 and 31, respectively.

Meeting of the Council for TRIPS of March 1 and 2, 2016

31. The Council for TRIPS met on March 1 and 2, 2016.

32. The meeting was opened by Ambassador H.E. Mr. Al-Otaibi (Saudi Arabia), Chair of the Council for TRIPS. The minutes of the meeting will be contained in document IP/C/M/81. The statements made during the meeting will be provided in an addendum to document IP/C/M/81 (document IP/C/M/81/Add.), which will become available on the WTO website at: <http://docsonline.wto.org/?language=1>.

33. The Council for TRIPS dealt with the agenda items “Review of the Provisions of Article 27.3(b)”, “Relationship between the TRIPS Agreement and the Convention on Biological Diversity” and “Protection of Traditional Knowledge and Folklore” simultaneously. The Council for TRIPS did not receive any new submissions in relation to these agenda items.

34. Regarding the proposal that the WTO Secretariat be requested to update the factual notes that summarized the points that delegations had made in the Council’s for TRIPS past discussions under those agenda items and the proposal that the CBD Secretariat be invited to brief the Council for TRIPS on the Nagoya Protocol, the Chair of the Council for TRIPS noted that there was no consensus on those proposals and encouraged delegations to continue consultations amongst themselves.

35. The Council for TRIPS took note of the statements made and agreed to revert to them at its next meeting.

Future meetings

36. The next meeting of the Council for TRIPS, which the Office of the Union plans to attend, is scheduled to take place on June 7 and 8, 2016.

VII. UNITED NATIONS

37. The Perception Change Project (PCP) of the United Nations Office in Geneva (UNOG) invited the Office of the Union to contribute to a survey mapping the contributions being made by more than 80 organizations to the United Nations Sustainable Development Goals (SDGs) (see <http://icts-surveys.unog.ch/index.php/132491?newtest=Y>).

38. The 17 United Nations Sustainable Development Goals (SDGs), which are reproduced below, are an integrated part of the 2030 Agenda for Sustainable Development adopted at the United Nations Sustainable Development Summit on 25 September, 2015. Further information on the SDGs can be found at <https://sustainabledevelopment.un.org/sdgs>.

1. End poverty in all its forms everywhere
2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
3. Ensure healthy lives and promote well-being for all at all ages
4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
5. Achieve gender equality and empower all women and girls
6. Ensure availability and sustainable management of water and sanitation for all
7. Ensure access to affordable, reliable, sustainable and modern energy for all
8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
10. Reduce inequality within and among countries
11. Make cities and human settlements inclusive, safe, resilient and sustainable
12. Ensure sustainable consumption and production patterns
13. Take urgent action to combat climate change and its impacts*
14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
17. Strengthen the means of implementation and revitalize the global partnership for sustainable development

39. The Office of the Union explained to UNOG that it was not in a position, at that time, to provide a mapping of UPOV's work to the United Nations Sustainable Development Goals (SDGs). In order for UPOV to be able to respond to similar requests in the future, the Consultative Committee may wish to consider this matter, for example through the development of an FAQ.

40. *The Consultative Committee is invited to:*

(a) note the developments of relevance to UPOV in other international fora reported in this document; and

(b) request the Office of the Union to prepare a draft FAQ on the relevance of the UPOV system of plant variety protection for the United Nations Sustainable Development Goals (SDGs), as set out in paragraph 39.

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ANNEX

(in English only)

TEXT OF DRAFT DOCUMENT UNEP/CBD/COP/12/INF/12, COMMENTS OF THE OFFICE OF THE UNION AND FINAL TEXT OF DOCUMENT UNEP/CBD/COP/12/INF/12

Text of draft “New and Emerging Issues Relating to the Conservation and Sustainable use of Biodiversity - Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and Other Relevant Agreements Related to Components, Organisms and Products Resulting from Synthetic Biology Techniques” (Draft text)	Comments made by the Office of the Union on the Draft text	Text of UNEP/CBD/COP/12/INF/12 “Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and other relevant Agreements related to Components, Organisms and Products resulting from Synthetic Biology Techniques”
<p>16. The results of current synthetic biology research that is focused on modifying existing “natural” genomes could qualify as “essentially derived varieties” and therefore be protected by the “breeder’s right” (a sui generis form of protection for intellectual property rights on plant varieties) under the UPOV Convention. For essentially derived varieties, both the breeder of the initial variety, from which the essentially derived variety is derived, and the breeder of the essentially derived variety would enjoy a breeder’s right. As far as synthetic biology research may someday result in the production of entirely novel genomes, it may be able to produce new plant varieties which could be protected by the breeder’s right. Where a breeding process draws upon a protected variety and results in a new plant variety, the breeder of the new variety, on an exceptional basis, would not require the authorization of the breeder of the initial variety.</p>	<p>It is not apparent why it has been concluded that the results of synthetic biology could only “qualify as essentially derived varieties and therefore be protected by the breeder’s right”, rather than being protected as initial varieties. For example, paragraph 232 alludes to the possibility to obtain a breeder’s right without mention of EDV. It should also be noted that provisions for essentially derived varieties are only included in the 1991 Act of the UPOV Convention.</p>	<p>15. The results of current synthetic biology research that is focused on modifying existing “natural” genomes could qualify for the “breeder’s right” (a sui generis form of protection for intellectual property rights on plant varieties) under the UPOV Convention. As far as synthetic biology research may in the future result in the production of entirely novel genomes, it may be able to produce new plant varieties which could be protected by breeder’s rights, including varieties that are deemed essentially derived from a protected variety.</p>
<p>228. The International Union for the Protection of New Varieties of Plants (UPOV) was established by the International Convention for the Protection of New Varieties of Plants (UPOV Convention). The UPOV Convention came into force on 1968 and has</p>	<p>Please amend to read “[...] The UPOV Convention came into force on 1968 and was revised in 1972, 1978, and 1991, in order to reflect technological developments in plant breeding and experience acquired with the application of the Convention. It</p>	<p>230. The International Union for the Protection of New Varieties of Plants (UPOV) was established by the International Convention for the Protection of New Varieties of Plants (UPOV Convention). The UPOV Convention came into force in 1968 and was revised in</p>

<p>Text of draft “New and Emerging Issues Relating to the Conservation and Sustainable use of Biodiversity - Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and Other Relevant Agreements Related to Components, Organisms and Products Resulting from Synthetic Biology Techniques” (Draft text)</p>	<p>Comments made by the Office of the Union on the Draft text</p>	<p>Text of UNEP/CBD/COP/12/INF/12 “Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and other relevant Agreements related to Components, Organisms and Products resulting from Synthetic Biology Techniques”</p>
<p>been revised in 1972, 1978, and 1991, in order to reflect technological developments in plant breeding and experience acquired with the application of the convention. It has 71 Parties. The main objective of UPOV is to provide and promote an effective system of plant variety protection with the aim of encouraging the development of new varieties of plants, for the benefit of society.</p>	<p>has 72 members [...]. (see http://www.upov.int/export/sites/upov/members/en/pdf/pub423.pdf).</p> <p>It would be useful to clarify in the text that, unless otherwise stated, reference to the UPOV Convention refers to the 1991 Act of the UPOV Convention, if that is the intention.</p>	<p>1972, 1978, and 1991, in order to reflect technological developments in plant breeding and experience acquired with the application of the Convention.⁵² UPOV has 72 members. The main objective of UPOV is to provide and promote an effective system of plant variety protection with the aim of encouraging the development of new varieties of plants, for the benefit of society.</p>
<p>229. The UPOV Convention sets forth standards, including national treatment, for the granting of “breeders’ rights” as a sui generis form of protection for plant varieties. A plant variety in accordance with Article 1, paragraph (vi) of the convention is defined as a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be</p> <ul style="list-style-type: none"> • defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, • distinguished from any other plant grouping by the expression of at least one of the said characteristics and • considered as a unit with regard to its suitability for being propagated unchanged. 	<p>Please amend to read “The UPOV Convention sets forth standards, including national treatment, for the granting of “breeders’ rights” as a sui generis form of protection for new plant varieties. A plant variety in accordance with Article 1, paragraph (vi) of the Convention [...]”</p>	<p>231. The UPOV Convention sets forth standards, including national treatment, for the granting of “breeders’ rights” as a sui generis form of protection for new plant varieties. A plant variety in accordance with Article 1, paragraph (vi) of the Convention is defined as a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be</p> <ul style="list-style-type: none"> <input type="checkbox"/> defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, <input type="checkbox"/> distinguished from any other plant grouping by the expression of at least one of the said characteristics and <input type="checkbox"/> considered as a unit with regard to its suitability for being propagated unchanged.
<p>230. Explanatory materials to the UPOV convention suggest that, as a “variety” is defined as a plant grouping, it does not to refer to smaller units, such</p>	<p>The current wording has been modified from the explanation given in the quoted reference “UPOV 2010, 4-5” (Explanatory notes on the definition of</p>	<p>232. The Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention (document UPOV/EXN/VAR/1) states as follows:</p>

<p>Text of draft “New and Emerging Issues Relating to the Conservation and Sustainable use of Biodiversity - Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and Other Relevant Agreements Related to Components, Organisms and Products Resulting from Synthetic Biology Techniques” (Draft text)</p>	<p>Comments made by the Office of the Union on the Draft text</p>	<p>Text of UNEP/CBD/COP/12/INF/12 “Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and other relevant Agreements related to Components, Organisms and Products resulting from Synthetic Biology Techniques”</p>
<p>as a singular plant or a trait such as disease resistance, a chemical or other substance such as DNA, or a plant breeding technology such as tissue culture. Traits, genotypes, and technologies can, however, be used to identify a plant variety. In addition, there is no limitation on the means by which a variety can be propagated unchanged under the UPOV Convention. Therefore, the cycle of propagation of synthetic varieties may, for example, involve plants other than those of the variety (UPOV 2010, 4-5).</p>	<p>variety under the 1991 Act of the UPOV Convention).</p> <p>The Explanatory Notes on the Definition of Variety under the 1991 Act of the UPOV Convention (document UPOV/EXN/VAR/1) states as follows:</p> <p>“4. The definition of “variety” under the 1991 Act of the UPOV Convention starts by stating that it is “a plant grouping within a single botanical taxon of the lowest known rank, ... ” thereby confirming that a variety may not, for example, consist of plants of more than one species.</p> <p>“5. The definition that a variety means a “plant grouping” clarifies that the following, for example, do not correspond to the definition of a variety:</p> <ul style="list-style-type: none"> - a single plant; (however, an existing variety may be represented by a single plant or part(s) of a plant, provided that such a plant or part(s) of the plant could be used to propagate the variety) - a trait (e.g. disease resistance, flower color) - a chemical or other substance (e.g. oil, DNA) <p>- a plant breeding technology (e.g. tissue culture).”</p>	<p>“4. The definition of “variety” under the 1991 Act of the UPOV Convention starts by stating that it is “a plant grouping within a single botanical taxon of the lowest known rank, ... ” thereby confirming that a variety may not, for example, consist of plants of more than one species.</p> <p>“5. The definition that a variety means a “plant grouping” clarifies that the following, for example, do not correspond to the definition of a variety:</p> <ul style="list-style-type: none"> -a single plant; (however, an existing variety may be represented by a single plant or part(s) of a plant, provided that such a plant or part(s) of the plant could be used to propagate the variety) -a trait (e.g. disease resistance, flower color) -a chemical or other substance (e.g. oil, DNA) -a plant breeding technology (e.g. tissue culture).”
<p>231. In order to be eligible for protection, a plant variety must meet the following requirements (Article</p>	<p>The text appears to have been based on the articles of the 1991 Act of the UPOV Convention, but with some discrepancies. If the intention is to</p>	<p>233. In order to be eligible for protection, a plant variety must meet the following requirements (Article 5 UPOV</p>

<p>Text of draft “New and Emerging Issues Relating to the Conservation and Sustainable use of Biodiversity - Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and Other Relevant Agreements Related to Components, Organisms and Products Resulting from Synthetic Biology Techniques” (Draft text)</p>	<p>Comments made by the Office of the Union on the Draft text</p>	<p>Text of UNEP/CBD/COP/12/INF/12 “Possible Gaps and Overlaps with the Applicable Provisions of the Convention, its Protocols and other relevant Agreements related to Components, Organisms and Products resulting from Synthetic Biology Techniques”</p>
<p>5 UPOV Convention):</p> <ul style="list-style-type: none"> • Novelty - propagating or harvested material of the variety must not have been offered for sale or marketed with the consent of the breeder in the State where the applicant seeks protection for more than one year, nor for more than four years in any other State and six years in the case of grapevines and trees (Article 6 UPOV Convention). • Distinctness - the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge (Article 7 UPOV Convention). • Uniformity - subject to the variation that may be expected from the particular features of its mode of propagation, the variety must be sufficiently uniform in its relevant characteristics (Article 8 UPOV Convention). • Stability - subject to the variation that may be expected from the particular features of its mode of propagation, the variety must be stable in its essential characteristics. This is the case if the latter remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle (Article 9 UPOV Convention). • Denomination - the variety must be given a denomination enabling it to be identified; the denomination must not be liable to mislead or to cause confusion as to the characteristics, value 	<p>relate to the 1991 Act of the UPOV Convention, the following wording could be used:</p> <ul style="list-style-type: none"> • “Novelty - propagating or harvested material of the variety must not have been sold or otherwise disposed of to others, by or with the consent of the breeder in the territory of the UPOV member where the applicant seeks protection for more than one year, nor for more than four years in any other territory and six years in the case of vines and trees (Article 6). • “Distinctness - the variety must be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application (Article 7). • “Uniformity - subject to the variation that may be expected from the particular features of its propagation, the variety must be sufficiently uniform in its relevant characteristics (Article 8). <p>“Stability - the variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle (Article 9 UPOV Convention). [...]”</p>	<p>Convention):</p> <ul style="list-style-type: none"> <input type="checkbox"/> “Novelty -propagating or harvested material of the variety must not have been sold or otherwise disposed of to others, by or with the consent of the breeder in the territory of the UPOV member where the applicant seeks protection for more than one year, nor for more than four years in any other territory and six years in the case of vines and trees (Article 6). <input type="checkbox"/> “Distinctness -the variety must be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application (Article 7). <input type="checkbox"/> “Uniformity -subject to the variation that may be expected from the particular features of its propagation, the variety must be sufficiently uniform in its relevant characteristics (Article 8). <p>234. “Stability -the variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle (Article 9 UPOV Convention). [...]” [...]</p>

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or identity of the new variety or the identity of the breeder (Article 5, paragraph 2 in conjunction with Article 20, paragraph 2).		
232. Where plant varieties resulting from synthetic biology techniques fulfil these criteria, the breeder enjoys the breeder’s right, which includes that (i) production or reproduction (multiplication); (ii) conditioning for the purpose of propagation; (iii) offering for sale; (iv) selling or other marketing; (v) exporting; (vi) importing, and (vii) stocking for any of these purposes, requires the authorization of the breeder (Article 14 UPOV Convention). The breeder’s right is granted by an individual UPOV member.	To amend to read “Where plant varieties resulting from synthetic biology techniques fulfil these criteria, the breeder has the possibility to obtain a breeder’s right, [...]”	234. [...] Where plant varieties resulting from synthetic biology techniques fulfil these criteria, the breeder has the possibility to obtain a breeder’s right, which includes that (i) production or reproduction (multiplication); (ii) conditioning for the purpose of propagation; (iii) offering for sale; (iv) selling or other marketing; (v) exporting; (vi) importing, and (vii) stocking for any of these purposes, requires the authorization of the breeder (Article 14 UPOV Convention). The breeder’s right is granted by an individual UPOV member.
233. In addition, the breeder’s right can be obtained for varieties which are essentially derived from an already protected variety, a variety that requires the repeated use of the protected initial variety, or a variety which was not clearly distinguishable from the initial protected variety (Article 14, paragraph 5(a)(i)). This is particularly relevant for synthetic biology as the UPOV Convention states that essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering (Article 14, paragraph 5 c)).	To amend to read “In addition, the breeder’s right can be obtained for varieties which are essentially derived from the protected variety, a variety that requires the repeated use of the protected variety, or a variety which was not clearly distinguishable from the protected variety (Article 14, paragraph 5(a)) [...]”.	235. In addition, the breeder’s right can be obtained for varieties which are essentially derived from the protected variety, a variety that requires the repeated use of the protected variety, or a variety which was not clearly distinguishable from the protected variety (Article 14, paragraph 5(a)). This may be relevant for synthetic biology as the UPOV Convention states that essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering (Article 14, paragraph 5 c)).
234. To qualify for the breeder’s right, essentially derived varieties need to (i) retain the expression of the essential characteristics that result from the	To amend to read “To qualify for the breeder’s right, essentially derived varieties need to (i) be predominantly derived from the initial variety, or	236. To qualify for the breeder’s right, essentially derived varieties need to (i) be predominantly derived from the

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<p>genotype or combination of genotypes of the initial variety; (ii) be clearly distinguishable from the initial variety; and (iii) conform to the initial variety in essential characteristics. Where both the essentially derived variety and the initial variety are protected by a breeder’s right, the activities listed in Article 14, paragraph 1 with regard to the essentially derived variety require the authorization of both breeders (UPOV 2009a).</p>	<p>from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; (ii) be clearly distinguishable from the initial variety; and (iii) except for the differences which result from the act of derivation ,conform to the initial variety in essential characteristics that result from the genotype or combination of genotypes of the initial variety. Where both the essentially derived variety and the initial variety are protected by breeders’ rights, the activities listed in Article 14, paragraph 1 with regard to the essentially derived variety require the authorization of both breeders (UPOV 2009a).”</p>	<p>initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; (ii) be clearly distinguishable from the initial variety; and (iii) except for the differences which result from the act of derivation ,conform to the initial variety in essential characteristics that result from the genotype or combination of genotypes of the initial variety. Where both the essentially derived variety and the initial variety are protected by breeders’ rights, the activities listed in Article 14, paragraph 1 with regard to the essentially derived variety require the authorization of both breeders (UPOV 2009a).</p>
<p>236. Article 15 to the UPOV Convention provides for certain exceptions to the breeders’ right. According to paragraph 1, compulsory exemptions address (i) acts which are of both a private nature and for non-commercial purposes; (ii) the use of a protected variety for experimental purposes; and (iii) the use of protected varieties for the purpose of breeding new plant varieties. The commercialization of a new variety would not require the authorization of the breeder of the initial variety, except where the new variety is an essentially derived variety, a variety that requires the repeated use of the protected initial variety or was a variety which was not clearly distinguishable from the initial protected variety in accordance with Article 14, paragraph 5 of the UPOV Convention. UPOV members may, under an</p>	<p>To amend to read “Article 15 to the UPOV Convention provides for certain exceptions to the breeder’s right. According to paragraph 1, compulsory exemptions address (i) acts which are of both private and for non-commercial purposes; (ii) the use of a protected variety for experimental purposes; and (iii) the use of protected varieties for the purpose of breeding new plant varieties. The commercialization of a new variety would not require the authorization of the breeder of the protected variety, except where the new variety is an essentially derived variety, a variety that requires the repeated use of the protected variety or was a variety which was not clearly distinguishable from the protected variety in accordance with Article 14, paragraph 5 of the</p>	<p>237. Article 15 to the UPOV Convention provides for certain exceptions tothe breeder’s right. According to paragraph 1, compulsory exemptions address (i) acts which are both private and for non-commercial purposes; (ii) the use of a protected variety for experimental purposes; and (iii) the use of protected varieties for the purpose of breeding new plant varieties. The commercialization of a new variety would not require the authorization of the breeder of the protected variety, except where the new variety is an essentially derived variety, a variety that requires the repeateduse of the protected variety or was a variety which was not clearly distinguishable from the protected variety in accordance with Article 14, paragraph 5 of the UPOV Convention. UPOV members may, under an optional exception in Article 15, paragraph 2 of the UPOV Convention, allow</p>

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<p>optional exception in Article 15, paragraph 2 of the UPOV Convention, to allow farmers to save harvested material for further propagation under certain circumstances (UPOV 2009b). The UPOV Convention does not provide an exception to the breeder’s right on the grounds of protecting human, animal or plant life or health or avoiding serious prejudice to the environment, such as the TRIPS agreement. It only allows its members to restrict the free exercise of a breeder’s right for reasons of public interest, which have not been further defined under the convention.</p>	<p>UPOV Convention. UPOV members may, under an optional exception in Article 15, paragraph 2 of the UPOV Convention, allow farmers to save harvested material for further propagation under certain circumstances (UPOV 2009b). [...]”</p>	<p>farmers to save harvested material for further propagation under certain circumstances (UPOV 2009b). While the TRIPS agreement leaves open the option of excluding from the scope of patentability inventions whose commercial exploitation needs to be prohibited to address these concerns, Article 17 of the UPOV Convention allows its members to restrict the free exercise of a breeder’s right for reasons of public interest.</p>

[End of Annex and of document]