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

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

## Fourth Session

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CLOSER COOPERATION AMONG MEMBER STATES CONCERNING  
APPLICATIONS EFFECTIVE IN SEVERAL STATESDocument prepared by the Office of the UnionIntroduction

1. At its third session, the Administrative and Legal Committee asked the Office of the Union "to prepare a working paper containing a draft of a set of rules for a system of closer cooperation as described in document CAJ/III/2--with alternative proposals, where appropriate, and with a preliminary study of the financial implications--and incorporating a study of the harmonization of the legal provisions and procedural steps involved in plant variety protection" (CAJ/III/9, paragraph 16; emphasis added).
2. The Annex to the present document contains a draft set of rules for a system of closer cooperation in the form of a draft multilateral treaty. The proposed rules are summarized in a narrative form (as opposed to the treaty language of the Annex) in paragraphs 4 to 14 of this document; paragraphs 15 to 22 outline the expected financial implications. The harmonization question will form the subject matter of a separate document.
3. It is to be noted that neither the Council nor the Administrative and Legal Committee has so far dealt with the specific aspects of the proposed closer cooperation among those member States of UPOV which wish to establish such cooperation, so that the draft treaty, which hereinafter will be called either "the Draft" or, according to the terminology of Article 29 of the UPOV Convention, "the Special Agreement,"\* is to be considered more an inventory of the main questions which seem to need resolving than the reflection of a firm belief that they should be solved in the way proposed in the Draft. The form of a draft treaty was chosen because the use of treaty language requires a higher degree of precision than a mere statement of principles. It is hoped that the Draft will help crystallize thoughts on the matter and enable the Administrative and Legal Committee to formulate precise directives for the revision of the Draft by the Office of the Union after the Committee's next session.

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\* The title of the Special Agreement could say that it was a treaty on "International Procedure Concerning New Plant Varieties" or, in French, a treaty on "Procédure internationale concernant les obtentions végétales," which could be abbreviated to "PICOV."

Principles Underlying the Draft

4. The draft is based on the following main considerations and principles:

(a) The Special Agreement endeavors to simplify procedures and reduce costs for breeders wishing to obtain protection for new varieties in more than one State by reducing the work to be undertaken by them. As a first step, it offers breeders the possibility of filing one international application instead of several national applications. Under the system proposed the participating States would not be required to abandon their national procedures, so that any breeder could, at his own discretion, use or not use the new procedure offered him.

(b) The Special Agreement would also facilitate the work of the national authorities, since it would provide that

- (i) the checking and administrative examination of the application,
- (ii) the technical examination (testing) of the variety,
- (iii) the examination of the variety denomination and
- (iv) the grant of the title of protection

occurred once with effect in several States.<sup>\*</sup> It should be noted that whereas, under the Draft, step (i) would apply to all Contracting States, steps (ii), (iii) or (iv) would apply only to the Contracting States which chose to participate in those steps, and to the extent of participation chosen by them.

(c) The last three of the four steps have been made optional in the Draft, because it is realized that the degree of interest of each member State of the Union in participating in a system as described in the preceding subparagraphs would not necessarily be the same. Some of the present member States of UPOV, especially those which are part of economic Unions--like the Benelux States or the members of the European Communities--might be prepared to adopt a system under which a regional title could be granted, while others, at least for the time being, could not accept a system which did more than envisage the centralization of the filing of applications for protection in several member States and the centralization of the administrative examination of those applications.

(d) The Draft embodies a system which could be accepted by the member States of UPOV without their present systems having to be fundamentally changed.

(e) The Draft does not call for the setting up of any new institutions. All the envisaged functions could be exercised by authorities that already exist.

(f) A system permitting a number of options for the sake of flexibility is bound to be complicated. It is realized that the system, and especially the text of the Special Agreement, could be simplified if less flexibility were offered in some areas. If, for instance, all Contracting States party to the Special Agreement could be expected to apply the principle of national treatment without the restriction possible under Article 3(3) of the Revised Text of the UPOV Convention, the Special Agreement and its practical application could be considerably simplified.

(g) The Draft deliberately does not contain detailed proposals on certain incidental questions such as that of the applicant's representation by an agent. Incidental questions of this kind should be discussed once the basic questions have been clarified. The Draft is believed to be complete with respect to all the fundamental questions, however.

(h) For the same reasons, the Draft does not contain proposals for some of the administrative and final clauses, for example, all those on the Assembly of the Special Union and its procedure, on the ratification, acceptance or approval of or accession to the Special Agreement and its entry into force, on depositary functions, etc.

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\* It being understood that the testing of the variety could be performed by more than one authority.

Outline of the System Proposed in the Draft

5. The Draft provides for the establishment of a Special Union, the highest body of which would be the Assembly. The Assembly would consist of the members of the Council of UPOV representing the Contracting States of the Special Agreement. In matters provided for in the Special Agreement but accepted only by some of the Contracting States party to it, only the latter would have the right to vote in the Assembly. This applies to principles that are not yet embodied in the Draft which, as mentioned above, does not contain administrative clauses (with one exception).

6. Under the proposed system breeders could file what is called an international application. The international application would have to indicate the States in which the breeder wished to obtain the protection applied for. Such States would be called "designated" States. The international application would be processed in two stages.

(i) The first stage would consist in the "receiving" of the international application and the assignment of a filing date, that is, the date on which the international application was considered to have been filed. These functions would be performed by what is called the "Receiving Authority." That authority would normally be the national authority (Plant Breeders Rights Office, Patent Office or the like) of each Contracting State and the applicant would normally be expected to file his international application with that Receiving Authority which was geographically near him and worked in his own language. Each Contracting State could however declare that its national authority would not perform such functions but would entrust them to another entity. Such a possibility might interest States which did not possess the necessary infrastructure for the receipt of international applications but nevertheless wished to participate in a system that benefited their breeders.

(ii) The second stage would consist of what is called the "administrative examination," which would entail checking whether the application fulfilled certain requirements, for example whether the applicant was entitled to file an international application, whether he was entitled to obtain protection in each of the designated States in view of his nationality, domicile or headquarters, whether the variety belonged to a species to which the Convention was applied in the designated State and whether it was novel according to the national law of that State. Administrative examination would be entrusted to what would be called "International Administrative Authorities." The Draft leaves open the question whether International Administrative Authorities would be new bodies set up for that purpose by the Assembly or whether existing authorities would be entrusted by the Assembly with the task of administrative examination. There would be only one International Administrative Authority for each international application.

7. Whereas, as already stated, the Receiving Authority would assign an international filing date to the international application (if it considered the application to be properly filed), the International Administrative Authority would, if its examination resulted in a positive finding, send the international application to the competent testing station for the testing of the variety. By "testing" is meant the examination of the variety for distinctness, homogeneity and stability. However, no such testing would take place where a test report, established in accordance with the International Guidelines for Testing to be issued by the Assembly, was already available or would be available (i.e., requested and obtained by the International Administrative Authority from the authority which had prepared such test report) in due time.

8. Where testing still had to be performed, any member State would have a choice between two possibilities. Under the first possibility the member State could reserve certain species, or varieties of certain groups--for instance varieties bred in its own territory--for national testing; in that case, the international procedure would end with the administrative examination: the International Administrative Authority would then send the application and a report on the administrative examination to the national Authority of the designated State which would then test the variety and decide on the grant of protection with effect in that State. Under the second possibility, the variety would be submitted to international testing. International testing would be performed by the International Testing Authority appointed as such by the Assembly. Several International Testing Authorities would have to be appointed for political reasons and also because one would probably not be able to cover all species to which the system was applied. Two or more of them could be competent for the same species; the Contracting States would have to indicate which of the International Testing Authorities should proceed in any given case. In respect of each variety tested by it, the International Testing Authority would draw up one or several interim reports and a final report. The final testing report, together with any findings on the variety denomination (see next paragraph), would be the

basis for the establishing of a file by the International Administrative Authority, which would be sent to the national authority of each designated State, not doing the testing itself, for its decision on the grant of a title according to the national law of that State, except where the designated State had opted for the grant of an international plant breeder's certificate (see paragraph 10 below).

9. Parallel to the testing of the variety, which normally would take at least two years, an international examination of the proposed variety denomination would take place. Any Contracting State could exclude, as far as it was concerned, the international examination of the variety denomination from the international procedure, since it is realized that, in some States, owing for example to linguistic factors, such international examination of variety denominations would be of limited usefulness only. The international examination of the variety denomination would be performed by the International Variety Denomination Authority appointed by the Assembly. The International Variety Denomination Authority would establish an interim report on the admissibility of the proposed denomination for each designated State. The report would be sent to the national authority of each designated State for the formulation of objections (if the State so desired) and to the national authorities of all the other member States of UPOV for the making of any observations they might have. The objections of any designated State would be binding on the International Variety Denomination Authority as far as that designated State was concerned; observations from other States would be considered by that Authority but would not bind it in any way. The International Variety Denomination Authority would then make a final report, which would be included in the file of the International Administrative Authority, and, as already mentioned in the preceding paragraph, would be sent to the national authority of each designated State for a decision on the grant of protection according to the national law of that State, except where the State had opted for the grant of an international plant breeder's certificate (see paragraph 10 below) or for doing the examination work in its own office.

10. The Draft provides for the possibility of still one further step. Where, in respect of one or more designated States the international testing of the variety and the international examination of the variety denomination showed positive results, any Contracting State could authorize the International Administrative Authority to grant an international plant breeder's certificate with effect in that or those States. The effect of such a certificate would be the same as that of the national plant breeder's right. Cases of conflict in any Contracting State between nationally granted and internationally granted plant breeders' rights would be decided in the same way as conflict between two nationally granted plant breeders' rights.

11. According to the Draft, the granting of an international plant breeder's certificate would be possible only for varieties of species which were not reserved for national testing and where international examination of the variety denomination was not excluded. However, if it were considered desirable to provide the possibility of granting international plant breeders' certificates even in cases where a designated State had tested the variety or examined the variety denomination on a national basis, the Draft could be modified accordingly.

12. Finally, the Draft gives groups of Contracting States wishing to do so the possibility of constituting "regional" groups within which an international plant breeder's certificate would be granted as a regional plant breeder's right, whereupon the right would "have a unitary and autonomous character," in other words, it would be based not on national laws (except where express reference was made to them in the Special Agreement) but on special rules called the "Common Rules on the Protection of New Varieties of Plants," a draft of which appears in the Appendix to the Draft Special Agreement.

13. The provisions on regional plant breeders' rights are expected to interest mainly Contracting States which are already part of an economic or other international community. Other States may of course also be interested in abiding by the "Common Rules" in order to achieve greater harmony between themselves. For the latter there would be the possibility of undertaking to apply the Common Rules without entering any regional group. Such an undertaking could give them, individually, the possibility of recognizing decisions taken in another State that also applied the Common Rules.

14. Where the Receiving Authority or the International Administrative Authority could not make a favorable decision on the international application or--in view of the applicable national law--on the designation of a certain State, the international application or the designation concerned would be declared withdrawn by the Receiving Authority or the International Administrative Authority, as the case might be. However, the applicant could ask to have his application transmitted to the national authority or authorities of the designated State or States concerned, with the request that the authority or authorities decide whether the adverse decision was justified or not. Should a national authority be of the opinion that the said decision was not justified, it would treat the international application as if the error or the omission of the Receiving Authority or of the International Administrative Authority had not occurred and would process the application as if it had been a national application from the outset; nevertheless, the national authority in question could require that the variety be tested by the International Testing Authority which would have been competent had the application followed its normal course as an international application (since there might not be other testing facilities available to that national authority). One of the reasons for the proposed solution is that it would avoid the necessity of setting up an international court for reviewing any errors that might be committed by the Receiving Office or the International Administrative Authority. The applicant's right to appeal against certain decisions of a national authority to the courts of the country of that authority would naturally not be affected.

#### The Financing of the Proposed System

15. The costs of each Authority for the performance of its tasks under the Special Agreement should be covered from the fees paid by the applicant. The following paragraphs deal with each of the envisaged fees.

16. There would be an international application fee which would cover the cost of the operations undertaken by the Receiving Office (checking of the international application on receipt and assignment of the international filing date), the International Administrative Authority (administrative examination of the international application, establishment of a report on the administrative examination, establishment of the file on the international application on completion of the international testing of the variety and the international examination of the variety denomination) and the Office of the Union (levying and distributing the application fee, publications in the International Gazette, keeping a record of international applications). The proceeds of the application fee would be divided between the Receiving Authority, the International Administrative Authority and the Office of the Union. The International Administrative Authority and the Office of the Union would in most cases work in more than one language. The work to be performed at this stage would therefore be more complicated and expensive than the equivalent work to be performed by a national authority for a national application. The international application fee may be expected to be fixed at a level corresponding to double the amount of an average national application fee. This would mean a saving for the applicant where he designated more than two States in the international application.

17. There would be a designation fee which would have to be paid for each designation of a Contracting State; it would accrue to the national Office of the State concerned but would be collected by the International Administrative Authority. It would prevent applicants from designating States in which protection did not really interest them. The designation fee would be payable only on completion of the administrative examination. It would thus have the effect of enabling applicants to decide not to incur further costs and not to create further work for national and international authorities where the grant of protection was unlikely. The designation fee could be around 50 Swiss Francs per designated State. The amount could be used by the designated State to cover at least part of the expenses incurred by its national authority in the grant of a national title of protection, in the making of entries in the national Gazette, etc. (See also paragraph 20 below). Should the amount of the designation fee not be considered sufficient to cover the cost of those activities, the designated State would be free to levy an additional national grant fee (except of course where an international plant breeder's certificate effective in that state was granted rather than a national title of protection).

18. There would be a transmittal fee levied by the International Administrative Authority for the furnishing of a test report already existing--to compensate that Authority for the fee it had to pay to the authority having performed the testing and for the transmittal of that report. The fee should correspond to the average

cost of such action (i.e., the fee normally charged by the authority of a member State for making available to the authority of another member State a test report which it had prepared for another purpose, and the cost of transmitting that report). Where it was necessary to establish a translation of the test report, either a higher transmittal fee would be charged to cover the average cost of translating a test report, or the applicant would be requested to reimburse the full cost of the translation to the International Administrative Authority. A transmittal fee should be charged for each designated State which was to receive the test report.

19. There would be a testing fee accruing to the International Testing Authority for each year or each growing period of testing of the variety. Testing fees should be cost-covering. They should be levied by the International Testing Authority before the beginning of each year or growing period during which testing took place. The fees charged today for the testing of a variety of a certain species by one member State of the Union on behalf of another member State of the Union under a bilateral agreement between those States might give an indication as to the amount of the testing fees to be charged under the proposed system.

20. There would be a fee for the international examination of the variety denomination, to cover the cost of the examination of the variety denomination by the International Variety Denomination Authority. It should be fixed at a level sufficiently high to cover the expenses of that Authority, including the expenses incurred for the performance of the background work and for the maintenance of any computer or other equipment which might be necessary for the performance of the examination. The level would be at least the same as that of the international application fee. This does not seem unjustified, considering that the examination of the variety denomination would normally be done for the purpose of protection in several States, and that the registration of a reliable variety denomination offers valuable security to the holder of the plant breeder's right. Any expenses of national authorities of designated States for the examination of the variety denomination on the basis of the interim report established by the International Variety Denomination Authority would have to be covered by the designation fee. Expenses of other authorities which might make observations on proposed variety denominations would not be covered by any fee since it is believed that the authorities of States not designated would make their observations in the interests of their own nationals or residents, whose rights might be affected by the registration of a certain variety denomination abroad. The fee for the international examination of the variety denomination should be charged by the International Administrative Authority.

21. There would be a grant fee charged by the International Administrative Authority for the grant of an international plant breeder's certificate. The fee would cover the cost of the work associated with the grant and the expenses arising from publication in the International Gazette and any other information measures. Where the certificate granted had to be translated, the cost of translation would have to be paid by the applicant. Except for a small portion to be given to the Office of the Union for publication of the grant in the International Gazette, the fee would be kept by the International Administrative Authority.

22. Renewal fees would be charged by the competent International Administrative Authority where a group of States had agreed that a regional title of protection should be granted, and would be distributed among the members of that group. It would be up to the members of the group to decide on the level of the fees. Other Contracting States would charge national renewal fees even where international plant breeders' certificates had been granted since the certificates would have the effect of national plant breeders' rights in those States. As the proposed system would be cost-covering, renewal fees could be kept to a modest level. They would only have to cover the costs of supervising registered rights. It should be noted, however, that renewal fees would to a certain extent be levied for purposes other than the financing of the system, namely to ensure that breeders retained their breeders' rights only as long as they marketed the varieties.

SPECIAL AGREEMENT ON INTERNATIONAL PROCEDURE CONCERNING  
NEW VARIETIES OF PLANTS  
(PICOV)

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## INTRODUCTORY PROVISIONS

### Article 1

#### Establishment of a Union

(1) The member States of the International Union for the Protection of New Varieties of Plants party to this Special Agreement (hereinafter referred to as "the Contracting States") constitute the Union for International Procedure Concerning New Varieties of Plants.

(2) No provision of this Agreement shall be interpreted as diminishing the rights under the International Convention for the Protection of New Varieties of Plants of any person entitled to benefit from such rights under the said Convention.

### Article 2

#### Definitions

For the purposes of this Agreement, the Regulations and the Administrative Instructions, and unless the context requires otherwise:

- (i) "international application" means an application for the protection of a plant variety filed under this Agreement;
- (ii) "variety" means the plant variety whose protection is the subject matter of the international application;
- (iii) references to an "applicant" shall be construed also as references to two or more applicants;
- (iv) "national application" means an application for the protection of a plant variety filed under national legislation;
- (v) references to the "breeder" of a variety shall be construed also as references to the discoverer of a variety;
- (vi) "title of protection" means a special title or a patent for the protection of a variety;
- (vii) "national title of protection" means a title of protection granted by a national authority under national law;
- (viii) "international plant breeder's certificate" means a title of protection granted under Part 6 of Chapter I of this Agreement;
- (ix) "regional plant breeder's right" means a title of protection granted under Chapter II of this Agreement;
- (x) "designated State" means a Contracting State in respect of which protection is sought by means of an international application under this Agreement;
- (xi) "national Authority" means the authority of a member State of the Union as referred to in Article 30(1)(b) of the Convention;
- (xii) "designated Authority" means the national Authority of a designated State;
- (xiii) "Receiving Authority" means the Authority referred to in Article 10;
- (xiv) "International Administrative Authority" means the Authority referred to in Article 16;
- (xv) "International Testing Authority" means the Authority referred to in Article 28;

- (xvi) "International Variety Denomination Authority" means the Authority referred to in Article 35;
- (xvii) references to a "species" shall be construed also as references to any other taxonomic unit, including any part of a species to which a member State of the Union has limited the application of the Convention;
- (xviii) "Convention" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978;
- (xix) "Union" means the International Union for the Protection of New Varieties of Plants, established under Article 1(2) of the Convention;
- (xx) "Special Union" means the Union for International Procedure Concerning New Varieties of Plants, established under Article 1(1) of this Agreement;
- (xxi) "Assembly" means the Assembly of the Special Union;
- (xxii) "Secretary-General" means the Secretary-General of the Union and of the Special Union;
- (xxiii) "Office of the Union" means the Office of the Union and of the Special Union;
- (xxiv) "prescribed" means prescribed in the Regulations or in the Administrative Instructions under this Agreement or in both;
- (xxv) References to the "ratification of this Agreement" shall be construed also as references to the acceptance or approval of, and accession to, the said Agreement.

## CHAPTER I

### INTERNATIONAL APPLICATION

#### Part 1

#### International Application and Procedure Before the Receiving Authority

#### Article 3

#### Possibility of Filing International Applications

The application for the protection of a variety in any of the Contracting States may be filed as an international application, subject to the conditions of this Special Agreement.

#### Article 4

#### Persons Entitled to File International Applications

(1) Any person entitled to file a national application for the protection of a variety in any Contracting State shall be entitled to file an international application for the protection of the variety designating that Contracting State.

(2) Any Contracting State may provide that international applications may also be filed for the protection in that State of varieties belonging to certain species, designated by it, to which otherwise it does not apply the Convention.

#### Article 5

##### Form and Contents of the International Application

- (1) The international application shall be made on the prescribed form.
- (2) The international application shall be in a prescribed language.
- (3) The international application shall include:
  - (i) a request that it be processed as an international application;
  - (ii) the designation of one or more Contracting States;
  - (iii) the name and address of the applicant;
  - (iv) where appropriate, the name and postal address of any agent or common representative or any address for service;
  - (v) the name and address of the breeder of the variety;
  - (vi) the name of the species to which the variety belongs;
  - (vii) a breeder's reference for the variety;
  - (viii) the indication of all States in or in respect of which an application for protection of the variety or for the inclusion of the variety in an official list of varieties has been filed;
  - (ix) the indication of all States in which the variety has been offered for sale or marketed with the agreement of the applicant or any of the applicants or any of their predecessors in title and, for each of those States, the date of the first offer for sale or act of marketing;
  - (x) an undertaking to provide, at the request of the competent International Testing Authority and within the prescribed period, such reproductive or vegetative propagating material of the variety or other material as may be requested for the testing of the variety.
- (4) The international application shall be subject to the payment to the Office of the Union of a fee called the "application fee."
- (5) The international application shall be accompanied by the following documents:
  - (i) a short description of the variety;\*
  - (ii) a request for the registration of a variety denomination, with a proposal for such variety denomination;\*\*
  - (iii) if an agent or a common representative has been appointed, the power or powers of attorney;
  - (iv) if the applicant or all or some of the applicants are the successors in title of the breeder of the variety, a document attesting the transfer of the rights in the variety;
  - (v) proof of payment of the application fee, as prescribed.

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\* See Article 8.

\* See Article 9.

(6) The international application shall be signed by the applicant. If there is more than one applicant, the international application need only be signed by one of them if, as prescribed, he is authorized by all the other applicants to file the international application for all of them, or if the other applicants countersign the international application within a period of one month from its filing.

## Article 6

### Priority

(1)(a) The international application may contain a declaration claiming the priority of an earlier national application filed in a member State of the Union or that of an earlier international application.

(b) A priority claim made under subparagraph (a) may only be made in respect of all designated States.

(c) Subject to the provisions of paragraph (2), the conditions for, and the effect of, a priority claim under subparagraph (a) shall be as provided in Article 12 of the Convention.

(2) If the priority of an earlier application filed in or for a State designated in the international application is claimed, the conditions for, and the effect of, the priority claim in respect of that State shall be governed by the national law of that State.

(3)(a) The international application may also contain a declaration claiming the priority of an earlier application filed in a State that is not a member of the Union.

(b) A priority claim under subparagraph (a) may be made in respect of one or more designated States.

(c) The conditions for, and the effect of a priority claim under subparagraph (a) shall be as provided in the legislation of each of the designated States in respect of which the claim is made.

(4) Notwithstanding paragraphs (2) and (3)(c), any priority claim that meets the formal requirements of Article 12 of the Convention shall be considered valid for the purposes of the administrative examination of the variety under this Special Agreement.

## Article 7

### Breeder

Where the variety has been bred or discovered in the course of professional activities by a person who is employed by another person, or who works for another person otherwise than for wages, the names and addresses of both persons shall be indicated, together with a specification of the nature of the work assigned to the first-mentioned person. Such statement shall in particular contain a statement on whether such work involves breeding activities concerning the species to which the variety belongs and shall in any case be sufficiently precise to allow the original breeder or discoverer of the variety to be identified in accordance with the national laws of the designated States.

## Article 8

### Short Description of the Variety

(1) The short description of the variety (Article 5(5)(i)) shall be made on the prescribed form.

(2) The short description shall include:

- (i) information on the origin, maintenance and reproduction of the variety;
  - (ii) a description of the main characteristics of the variety;
  - (iii) a list of other varieties which are similar to the variety and a description of the differences between any of those other varieties and the variety;
  - (iv) information on special conditions for the testing of the variety, and any other information considered important for testing by the applicant.
- (3) The description and the list referred to in paragraph (2)(ii) and (iii) shall be established by the applicant to the best of his knowledge.

#### Article 9

##### Request for the Registration of a Variety Denomination

- (1) The request for the registration of a variety denomination (Article 5(5)(ii)) shall be made on the prescribed form.
- (2) The request for the registration of a variety denomination shall include:
- (i) a list of the denominations already proposed, approved or registered for the variety in member States of the Union;
  - (ii) a list of the rights liable to hamper the free use of the proposed denomination, in particular trademarks owned by the applicant or by any of the applicants or by any of their predecessors in title.
- (3) Where the proposed variety denomination is the subject of a right of the kind referred to in paragraph (2)(ii) above, the request for the registration of a variety denomination shall be accompanied by a declaration signed by the owner or holder of the said right to the effect that he will, in accordance with the law of the designated State concerned,
- (i) abstain from using the said right in so far as it would limit the use of the variety denomination or
  - (ii) cancel, renounce or limit his right
- if, and from the time when, the said denomination is registered.

#### Article 10

##### Receiving Authority

- (1) The international application shall be filed with a Receiving Authority.
- (2)(a) Subject to subparagraph (b), the national Authority of each Contracting State shall act as a Receiving Authority.
- (b) Each Contracting State may however declare, by a notification to the Secretary-General made at the same time as the deposit of the instrument of ratification of this Agreement, that its Authority will not act as a Receiving Authority.
- (c) Any Contracting State which has made a declaration under subparagraph (b) may, at any time, notify the Secretary-General of the withdrawal of the said declaration.
- (3)(a) Any national authority acting as a Receiving Authority may, at any time, notify the Secretary-General of the cessation or interruption of its activity as a Receiving Authority.

(b) The said Authority may, at any time, notify the Secretary-General of the resumption of its activity as a Receiving Authority.

(4) The date of cessation, interruption or resumption of activity as a Receiving Authority shall be the date indicated in the notification. In the case of cessation or interruption, such date shall, however, be at least three months later than the date of the notification and the said Authority shall process all international applications received prior to the said date.

(5) The Assembly may also entrust an entity established or appointed by it for that purpose with the task of acting as a Receiving Authority. Such establishment or appointment shall be conditional on the conclusion of an agreement, subject to approval by the Assembly, between such entity and the Secretary-General.

#### Article 11

##### International Filing Date

(1) The Receiving Authority shall accord as the international filing date the date of the receipt of the international application provided it has found that, at the time of receipt thereof, the said application

(i) was in a prescribed language;

(ii) contained at least the following elements:

a request that it be processed as an international application;

the designation of at least one Contracting State;

the name and address of the applicant;

the name of the species to which the variety belongs;

a breeder's reference for the variety;

the undertaking referred to in Article 5(3)(x);

(iii) was accompanied by a short description of the variety;

(iv) was signed as provided in Article 5(6);

(v) was accompanied by proof of payment of the application fee (Article 5(5)(v)).

(2) If the Receiving Authority finds that the international application did not fulfill the requirements of paragraph (1), it shall invite the applicant to file the required additional material within six weeks from the date of such invitation. If the applicant complies with the invitation in time, the Receiving Authority shall accord as the international filing date the date of the receipt of the required additional material. If the applicant does not comply with the invitation in time, the international application shall be considered withdrawn and the Receiving Authority shall so declare.

#### Article 12

##### Effect of the International Application

Any international application accorded an international filing date shall have the effect of, and be equivalent to, a regular national application in each designated State as of the said filing date.



Article 13

Incomplete and Defective Applications

If the Receiving Authority finds that the international application that has been accorded an international filing date did not, at the time of receipt thereof, fulfill any one of the requirements set forth in Article 5 which were not a condition for an international filing date to be accorded (Article 11(1)), it shall invite the applicant to correct or complete the said application within a period of three months from the date of the notification of the defect, failing which the said application shall be considered withdrawn and the Receiving Authority shall so declare. If the international application is not corrected or completed in respect of a designated State, only the designation of that State shall be considered withdrawn and the Receiving Authority shall so declare.

Article 14

Transmittal of the International Application to the Applicant,  
to the International Administrative Authority,  
to the Office of the Union and to  
the Designated Authorities

(1) One copy of the international application that has been accorded an international filing date shall be kept by the Receiving Authority ("home copy") and one copy each shall be transmitted to the Office of the Union ("record copy")\*, to the applicant ("applicant's copy") and to the International Administrative Authority ("examination copy").

(2) Copies shall also be sent to the national Authority of any designated State in respect of which the international application contains an application for provisional protection to be decided upon by that Authority.

(3) The record copy shall be considered the true copy of the international application.

Article 15

Information if the International Application is Considered  
Withdrawn by the Receiving Authority

(1) If the Receiving Authority has declared that the international application is considered withdrawn, it shall transmit a copy of its declaration to the applicant, advising him of his right to request transmittal of the international application to the national Authorities of all designated States (Article 22).

(2) If the Receiving Authority has declared that the designation of one or more designated States is considered withdrawn, it shall transmit a copy of its declaration to the applicant, advising him of his right to request transmittal of the international application to the Authority or the Authorities of that or those designated States (Article 22).

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\* The Office of the Union will, under the Agreement:

- (i) keep a record of international applications;
- (ii) collect the application fee from the applicant and redistribute it among the various Authorities (Receiving Authority, International Administrative Authority, Office of the Union);
- (iii) publish the International [Plant Variety Protection] Gazette.

Part 2Administrative Examination of the International ApplicationArticle 16International Administrative Authority

(1) Each international application that has been accorded an international filing date shall be the subject of an international administrative examination carried out by the International Administrative Authority as provided hereinafter.\*

(2)(a) International Administrative Authorities shall be appointed by the Assembly. Any existing national Authority and any other entity satisfying the requirements as to manpower and expertise necessary for carrying out the administrative examination of the international application may be appointed as an International Administrative Authority.

(b) Such appointment shall be conditional on the conclusion of an agreement, subject to approval by the Assembly, between such Authority or other entity and the Secretary-General and on the maintenance of the necessary manpower and expertise.

(3)(a) Any International Administrative Authority shall discontinue its activity as such:

- (i) under the terms of the agreement referred to in paragraph (2)(b) above;
- (ii) at its request, subject to the consent of the Assembly;
- (iii) on a decision of the Assembly if the requirements referred to in paragraph (2)(a) above are no longer fulfilled.

(b) The date of cessation of activity as an International Administrative Authority shall be agreed upon, unless specified in the agreement referred to in paragraph (2)(b) above, between the said Authority and the Assembly or, if no agreement is reached within six months from the date of commencement of the negotiations, shall be fixed by the Assembly.

(c) Unless otherwise agreed between the International Administrative Authority discontinuing its activity and the Assembly, the international applications pending before the said Authority shall be referred to another Authority qualified to act as an International Administrative Authority under this Article.

Article 17Designation of Competent International Administrative Authority  
Where There Is More Than One

If there is more than one International Administrative Authority, the Assembly shall determine the international applications for which each International Administrative Authority shall be competent.

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For the testing of the variety, see Part 3 of this Chapter; for the examination of the variety denomination, see Part 4 of this Chapter.

Article 18

Scope of the Administrative Examination of the  
International Application

(1) The International Administrative Authority shall examine, on the basis of the information contained in the international application, whether the following conditions are satisfied for each designated State:

- (i) the variety belongs to a species to which the Convention is applied;
- (ii) the applicant is entitled to protection as being the breeder of the variety or his successor in title;
- (iii) the applicant is entitled to protection by virtue of the provisions of the national law of that State based on Article 3 of the Convention;
- (iv) the provisions of national legislation based on Article 6(1)(b) and 38 of the Convention are complied with.

(2) Where the international application contains a priority claim as provided in Article 6, the International Administrative Authority shall also examine whether the formal conditions for the said claim are met.

(3) The International Administrative Authority may require the applicant to produce additional information.

Article 19

Assistance of Designated Authorities in the  
Administrative Examination of the  
International Application

(1) The International Administrative Authority may call upon the national Authority of any designated State to assist it in the examination of any of the items referred to in Article 18(1) in respect of the said designated State.

(2) The designated Authority called upon in accordance with the foregoing paragraph shall give advice on the point submitted to it. If no advice is given within three months from the date on which the point was submitted to the designated Authority, it shall be considered that advice on the point has been given in favor of the applicant.

(3) At the request of the applicant, the International Administrative Authority shall ask the national Authority of any designated State in which the applicant is not entitled to protection by virtue of the provisions of national law based on Article 3 of the Convention whether such entitlement is granted in view of the importance of the variety for the economy of that State. The reply given by the designated Authority shall be final and binding.

Article 20

Non-Fulfillment of Certain Conditions

(1) If the International Administrative Authority finds that for a designated State the requirements of Article 18(1) are not fulfilled, it shall consider the designation of that State withdrawn and shall so declare.

(2) If the International Administrative Authority finds that the formal requirements of a priority claim are not fulfilled, it shall so declare and the priority claim shall be disregarded in the further processing of the international application.

(3) Article 15 shall apply mutatis mutandis.

Article 21Possible Loss of Effect of International Application  
in Designated States

(1) Subject, in the case of (ii) below, to the provisions of Article 22(2), the effect of the international application provided for in Article 12 shall cease in any designated State with the same consequences as the withdrawal of any national application in that State:

- (i) if the applicant withdraws the international application or the designation of that State;
- (ii) if the international application or the designation of that State is considered withdrawn under any provision of this Agreement.

(2) Notwithstanding the provisions of paragraph (1), any designated Authority may maintain the effect provided for in Article 12 even where, by virtue of Article 22(2), the maintenance of that effect is not required.

Article 22Review by Designated Authorities

(1)(a) Where the Receiving Authority has refused to accord an international filing date or has declared that the international application or the designation of a Contracting State is considered withdrawn, it shall, at the request of the applicant, promptly send to the national Authority of any designated State named on the request copies of any document in the file that may be relevant to that State.

(b) Where the International Administrative Authority has declared that the international application or the designation of a Contracting State is considered withdrawn, it shall, at the request of the applicant, promptly send to the national Authority of any designated State named on the request copies of any document in the file that may be relevant to that State.

(c) Requests under subparagraphs (a) and (b) shall be filed within the prescribed time limit.

(2) The national Authority of each designated State shall, provided that the national fee, if any, has been paid and any prescribed translation has been furnished within the prescribed time limit, decide whether the declaration referred to in paragraph (1) was justified according to the provisions of this Agreement and the Regulations and, if it finds that the refusal or declaration was the result of an error or omission on the part of the Receiving Authority or of the International Administrative Authority it shall, as far as the effect in that designated State is concerned, treat the international application as if such error or omission had not occurred. The national Authority of that designated State shall be entitled to request the testing of the variety by the International Testing Authority which would have been competent for the testing of the variety if the international application had been further processed for the designated State concerned.

Article 23Report on the Administrative Examination of the  
International Application

If the International Administrative Authority finds that the requirements of Article 18(1) are fulfilled for all or certain designated States, it shall so declare and shall specify the grounds in a report on the administrative examination of the international application. In this report, it shall also specify which date is to be regarded as the date on which the testing of the variety is to be based, due account being taken of any priority which the International Administrative Authority considers duly claimed.

Part 3

International Testing of the Variety

Article 24

Varieties Tested by an International  
Testing Authority; Exceptions

(1) The variety shall be tested by an International Testing Authority except where paragraph (2) or (3) applies.

(2) The variety shall not be tested by an International Testing Authority (subject to Article 26(2)) if a test report on that variety, established in conformity with the International Guidelines for Testing issued by the Assembly, is already available or can be made available within the prescribed period.

(3) Where the variety belongs to a species or group of varieties\* which a Contracting State has, by notification to the Secretary-General, reserved for national testing, such variety shall not be tested for that designated State by an International Testing Authority.

(4) The Secretary-General shall periodically publish in the International Gazette a list of the species or groups of varieties in respect of which a Contracting State has informed him that it reserves varieties thereof for national testing.

Article 25

Designation Fees; Transmittal Fees

The International Administrative Authority shall invite the applicant to pay to it, within the prescribed time limit, the designation fee for each designated State and, in the case of Article 24(2), also the transmittal fee. If the applicant does not comply with that invitation in respect of any designated State, the designation of that State shall be considered withdrawn and the International Administrative Authority shall so declare.

Article 26

Test Report Available

(1) Where Article 24(2) applies and Part 6 of this Chapter does not apply, the International Administrative Authority shall transmit the international application and a copy of the report on the administrative examination of the application, as well as a copy of the test report already available, to the national Authorities of each designated State for which it has received the designation fee and the transmittal fee in time.

(2) Each designated Authority to which Article 24(3) does not apply may, after having received the test report, return the international application to the International Administrative Authority if it does not consider the test report to be a sufficient basis for a decision on the grant of a title of protection. In that case, the International Administrative Authority shall reimburse the transmittal fee to the applicant and shall treat the international application as if no test report had been available.

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\* for instance: all varieties for which applications are filed with the national Authority of that State; all varieties bred in that State.

Article 27Reservation for National Testing;  
Information on Measures Taken

(1) In the case of Article 24(3), the International Administrative Authority shall, after having received the designation fee, send a copy each of the international application and of the report on the administrative examination of the application to the national Authority of the State to which Article 24(3) refers unless it has already done so under Article 26(1).

(2) The International Administrative Authority shall inform the Receiving Authority, the Office of the Union and the applicant of the measures taken under Article 26(1) and (2), second sentence, and under paragraph (1) of this Article.

(3) The further procedure, as far as that designated State is concerned, shall be governed by the national law of that State except for the procedure envisaged under Part 4 of this Chapter.

Article 28International Testing Authorities

(1)(a) International Testing Authorities shall be appointed for each species by the Assembly. Any national Authority and any other entity satisfying the requirements as to manpower, expertise and equipment necessary for carrying out the international testing of the varieties of the species concerned may be appointed as an International Testing Authority.

(b) Appointment shall be conditional on the conclusion of an agreement, subject to approval by the Assembly, between such Authority or other entity and the Secretary-General, and on the maintenance of the necessary manpower, expertise and equipment.

(c) Appointment shall also be conditional on the ability of the said Authority or other entity to carry out the international testing under suitable ecological conditions.

(2)(a) Any International Testing Authority shall discontinue its activity as such:

- (i) under the terms of the agreement referred to in paragraph (1)(b) above;
- (ii) at its request, subject to the consent of the Assembly;
- (iii) on a decision of the Assembly if the requirements referred to in paragraph (1)(a) above are no longer fulfilled.

(b) The date of cessation of the activity as an International Testing Authority shall be agreed upon, unless specified in the agreement referred to in paragraph (1)(b) above, between the said Authority and the Assembly, or if no agreement is reached within six months from the date of commencement on the negotiations, shall be fixed by the Assembly.

(c) Whatever date is fixed for the cessation of activity as an International Testing Authority, any international testing of varieties that is still in progress shall be completed and the final reports on the international testing of those varieties shall be established and transmitted to the International Administrative Authority.

(d) Any International Testing Authority discontinuing its activity as such shall give all necessary assistance in the creation of another International Testing Authority to replace it.

Article 29

Designation of the Competent International  
Testing Authority

Each Contracting State shall notify to the Secretary-General the International Testing Authority which, if that State is designated, shall be competent for the international testing of varieties of each species to which that State applies the Convention and which it has not reserved for national testing under Article 24(2). The notification and any amendment to it shall become effective two months after having been received by the Secretary-General. No such notification may be made without the approval of the Authority to act as an International Testing Authority.

Article 30

Request for the International Testing  
of the Variety

Where international testing is to take place, the International Administrative Authority shall transmit the short description of the variety (Article 8) in the prescribed language to the International Testing Authority or Authorities competent for the designated States for which international testing is to be carried out and shall request international testing according to this Agreement, indicating the date on which the testing is to be based.

Article 31

Transmittal of Material of the Variety;  
Payment of the Testing Fees

(1) Each International Testing Authority shall invite the applicant to deliver the reproductive or vegetative propagating material of the variety, and any other material necessary for the testing, in the prescribed quantity, within the prescribed period and at a place fixed by it.

(2) Each International Testing Authority shall also invite the applicant to pay the international testing fee for the testing to be performed during the first growing period (first testing fee), within the prescribed period.

(3) If the applicant does not, within the prescribed period, submit the requested material at the proper place or if he does not pay the first testing fee within that period, without presenting valid excuses, the International Testing Authority shall state this fact and shall report to the International Administrative Authority that it is not in a position to perform the requested international testing. The International Administrative Authority shall consider withdrawn the designation of the States for which no international testing can be performed and shall so declare.

Article 32

Scope of the International Testing of the Variety

(1) The International Testing Authority shall, in accordance with the International Guidelines on Testing established by the Assembly and on the basis of material submitted by the applicant, test whether the variety is:

(a) distinct from any other variety, in accordance with the provisions of Article 6(1)(a) of the Convention;

(b) homogeneous, in accordance with the provisions of Article 6(1)(c) of the Convention;

(c) stable, in accordance with the provisions of Article 6(1)(d) of the Convention.

(2)(a) The International Testing Authority may require the applicant to submit additional information or material within a period fixed by it.

(b) For each further growing period, the International Testing Authority may ask for the payment of further testing fees.

(c) The provisions of Article 31(3) shall apply mutatis mutandis to the submission of additional information or material.

### Article 33

#### International Report on the Testing of the Variety

(1)(a) At the end of each growing period not corresponding to the end of the normal testing period, the International Testing Authority shall establish an interim report on the international testing of the variety.

(b) The interim report on the international testing of the variety shall state without prejudice to the final report on the international testing of the variety, whether the testing of the said variety allows the conclusion that it meets the requirements set out in Article 32(1) above.

(2)(a) At the end of the growing period corresponding to the end of the normal testing period, the International Testing Authority shall establish the final report on the international testing of the variety.

(b) The final report on the international testing of the variety shall state whether the examination of the said variety allows the conclusion that it meets the requirements set out in Article 32(1) above.

### Article 34

#### Transmittal of the Reports on the International Testing of the Variety to the Applicant, to the Receiving Authority, to the International Administrative Authority and to the Office of the Union

(1) The International Testing Authority shall transmit any report, whether interim or final, on the international testing of the variety to the International Administrative Authority.

(2) The International Administrative Authority shall transmit a copy of the said report whether interim or final,

- (i) to the applicant,
- (ii) to the Receiving Authority,
- (iii) to the Office of the Union.\*

(3) The copy transmitted to the Office of the Union shall be considered the true copy of the said report.

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\* Transmittal to designated States will be made pursuant to the provisions of Article 43(3) or 48(2) (or 56 in special cases).



Part 4

International Examination of the Variety Denomination\*

Article 35

International Variety Denomination Authority

(1) Any proposed variety denomination shall be the subject of an international examination by the International Variety Denomination Authority as provided hereinafter.

(2)(a) The International Variety Denomination Authority shall be appointed by the Assembly. Any national Authority and any other entity satisfying the requirements as to manpower, expertise and equipment necessary for carrying out the international examination of variety denominations may be appointed as an International Variety Denomination Authority.

(b) Appointment shall be conditional on the conclusion of an agreement, subject to approval by the Assembly, between such Authority or other entity and the Secretary-General and on the maintenance of the necessary manpower, expertise and equipment.

(3)(a) The International Variety Denomination Authority shall cease to act as such:

- (i) under the terms of the agreement referred to in paragraph (2)(b) above;
- (ii) at its request, subject to the consent of the Assembly;
- (iii) on a decision of the Assembly if the requirements referred to in paragraph (2)(a) above are no longer fulfilled.

(b) The date of cessation of activity as an International Variety Denomination Authority shall be agreed upon, unless specified in the agreement referred to in paragraph (2)(b) above, between the said Authority and the Assembly or, if no agreement is reached within six months from the date of commencement of negotiations, shall be fixed by the Assembly.

(c) Whatever date is fixed for the cessation of activity as an International Variety Denomination Authority, any variety denominations still under examination shall be examined and the international reports on the examination of the said variety denominations shall be established and transmitted to the International Administrative Authority.

(d) Any International Variety Denomination Authority discontinuing its activity as such shall give all necessary assistance in the creation of another International Variety Denomination Authority to replace it.

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\* Pursuant to Article X of this Agreement (appearing after Article 69), any Contracting State could exclude, as far as it was concerned, the application of this Part. Any designated State that makes use of this possibility will have to examine the variety denomination itself.

Article 36Initiation of the Procedure for the Examination  
of the Variety Denomination

(1) The International Administrative Authority shall transmit a copy of the request for the registration of a variety denomination to any designated State to which this Part is not applicable.

(2) The International Administrative Authority shall invite the applicant to pay the prescribed fee for the international examination of the variety denomination within the prescribed period for each designated State to which this Part is applicable. If the applicant does not comply with that invitation within the prescribed period in respect of any designated State, the designation of that State shall be considered withdrawn and the International Administrative Authority shall so declare.

(3) After having received the fee for the international examination of the variety denomination, the International Administrative Authority shall transmit a copy of the request to the International Variety Denomination Authority.

Article 37Scope of the International Examination of the  
Variety Denomination

(1) The International Variety Denomination Authority shall examine whether the variety denomination proposed in accordance with the provisions of Article 9 is suitable for registration in each of the designated States to which this Part is applicable, and in particular whether:

- (i) it conforms with the requirements as to the constitution of variety denominations;
- (ii) it enables the variety to be identified;
- (iii) it does not mislead or cause confusion concerning the characteristics, the value or the identity of the variety or the identity of the breeder;
- (iv) it is different from any denomination designating another variety of the same botanical or a closely related species;
- (v) it does not affect any known prior right of third parties;
- (vi) it is not the subject of a right as referred to in Article 9(2) (ii) which is not the subject of a declaration under Article 9(3).

(2)(a) Where the denomination proposed in accordance with the provisions of Article 9 is not suitable for registration in a designated State, the applicant shall propose another denomination within a period of three months from the transmittal of the request that he do so.

(b) The examination shall continue until it is established that, for each designated State, there is a variety denomination suitable for registration.

Article 38Interim Report on the Examination of the  
Proposed Variety Denomination

(1) The International Variety Denomination Authority shall establish an interim report on the international examination of the proposed variety denomination.

(2) The said interim report shall state, without prejudice, to the final report on the international examination of the proposed variety denomination, and in respect of each designated State to which this Part is applicable,

(a) any denomination, proposed or approved by the applicant, which has been examined;

(b) the suitability of each of the denominations referred to in subparagraph (a) above for registration in the designated States;

(c) where relevant, the grounds of the unsuitability of any denomination referred to in subparagraph (a) above for registration in all or in some of the designated States.

#### Article 39

##### Transmittal of the Interim Report on the International Examination of the Variety Denomination to the Applicant, to the Receiving Authority, to the International Administrative Authority, to the Office of the Union and to National Authorities

(1) The International Variety Denomination Authority shall transmit the interim report on the international examination of the variety denomination to the International Administrative Authority in the prescribed language.

(2) The International Administrative Authority shall transmit a copy of the said interim report:

- (i) to the applicant;
- (ii) to the Office of the Union;
- (iii) to the national Authority of each member State of the Union.

(3) The copy transmitted to the Office of the Union shall be considered the true copy of the said interim report.

#### Article 40

##### Objections and Observations Relating to Proposed Variety Denominations

(1)(a) The Authority of any designated State to which this Part is applicable may file an objection with the International Variety Denomination Authority against any intention by the latter to declare a proposed variety denomination suitable or unsuitable for registration in the said designated State. The objection shall be in the prescribed language.

(b) Where any such objection is made, the International Variety Denomination Authority shall proceed according to the objection.

(2)(a) Any national Authority\*, of a member State of the Union other than the Authorities referred to in paragraph (1)(a) above, may file an observation with the International Variety Denomination Authority on any proposed variety denomination declared suitable for registration by the International Variety Denomination Authority according to the interim report referred to in Article 39.

(b) Any such observation shall be filed in writing within three months from the transmittal of the interim report in accordance with the provisions of Article 39(2)(iii).

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\* See definition in Article 2(xi).

(3) The International Variety Denomination Authority may decide to refer any such observation to the national Authority of any designated State which the said observation appears to concern.

(4) The provisions of Article 39(2) and (3) shall apply mutatis mutandis to the transmittal of objections, observations and decisions on observations.

#### Article 41

##### Final Report on the International Examination of the Variety Denomination

The International Variety Denomination Authority shall establish a final report on the international examination of the variety denomination after completion of the procedure referred to in Article 40. The said final report shall conclude with an indication, for each designated State, of the variety denomination that may be registered.

#### Article 42

##### Transmittal of the Final Report on the International Examination of the Variety Denomination to the Applicant, to the International Administrative Authority, to the Office of the Union and to National Authorities

(1) In the case referred to in Article 24(3), the International Administrative Authority shall transmit the final report on the international examination of the variety denomination to the National Authority of each of the designated States referred to in that Article.

(2) In all other cases, the International Administrative Authority shall transmit the said final report to the persons and entities referred to in Article 39(2). Article 39(3) shall apply mutatis mutandis.

#### Part 5

##### Preparation of the Decision on the Grant of Protection by Each of the Designated Authorities

#### Article 43

##### Constitution and Transmittal of the File on the International Application to Certain Designated Authorities

(1) Except in cases where Article 42(1) applies, the International Administrative Authority shall constitute a file on the international application in the prescribed language.

(2) The file shall contain all documents relevant to the international application.

(3) The International Administrative Authority shall transmit to the national Authority of each designated State to which Part 6 of this Chapter is not applicable, after completion of the procedures referred to in Parts 1 to 4 of this Chapter, such parts of the file as are relevant to the said State and have not already been transmitted to the said Authority at an earlier date, together with a list of all documents relating to the international application, for the decision on the grant of a title of protection.

Part 6

Granting of the International Plant  
Breeder's Certificate

Article 44

Authorization to Grant International Plant  
Breeder's Certificates

(1) Any Contracting State which has not excluded the application of Part 4 of this Chapter\* may authorize the International Administrative Authority to grant international plant breeders' certificates with effect in that State on the basis of an international application in which that State is designated.

(2) The authorization may be given for all species eligible for protection in a Contracting State or for a selected number of those species, except for those species or groups of varieties which that State has reserved for national testing (Article 24(3)).

(3) The authorization shall be made by means of a notification to the Secretary-General in which the species covered by the authorization shall be named.

(4) Any Contracting State may declare in the notification mentioned in paragraph (3) that any international plant breeder's certificate which is not granted in its language must be accompanied by a translation in its language or a certain other language, certified as an official translation by the International Administrative Authority.

(5) Any authorization given under paragraph (1) may be withdrawn for any species at any time by means of a notification addressed to the Secretary-General. It shall become effective for all international applications filed three months after the notification has been received by the Secretary-General.

Article 45

Invitation to Pay the Grant Fee

Where the International Administrative Authority is authorized to grant an international plant breeder's certificate in respect of one or more designated States, and provided that:

- (i) the final report on the international testing of the variety concludes that the variety is distinct, homogeneous and stable, and
- (ii) the final report on the international examination of the variety denomination concludes that a variety denomination proposed or approved by the applicant may be registered as the variety denomination in respect of each of those designated States,

it shall invite the applicant to pay, within the prescribed period, the prescribed fee for the grant of international plant breeders' certificates ("grant fee") and, where applicable, the prescribed translation fee for each designated State.

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\* If it is wished that States having excluded the examination of the variety denomination (Part 4 of this Chapter) may also be able to authorize the International Administrative Authority to grant international plant breeders' certificates for them, provisions will have to be added according to which such States transmit their decisions concerning the variety denomination acceptable for them to the International Administrative Authority.

Article 46Decision on the Granting of International Plant  
Breeder's Certificates

(1) The International Administrative Authority shall on receipt within the prescribed period of the grant fee, and where applicable of the translation fee, grant an international plant breeder's certificate in respect of each designated State for which it is so authorized.

(2) Where, in respect of any designated State, the conditions mentioned in Article 45(i) and (ii) are not fulfilled or the fees referred to in Article 45 are not paid, the designation of that State shall be considered withdrawn and the International Administrative Authority shall so declare. Article 15(2) shall be applicable mutatis mutandis.

Article 47Form and Effects of International Plant  
Breeder's Certificates

(1) The international plant breeder's certificate shall indicate the States for which it is granted. It shall be accompanied by a description of the protected variety. Where the testing was carried out by more than one International Testing Authority for different designated States, the International Administrative Authority may issue different descriptions of the protected variety in certificates established for the different designated States. Where necessary in view of the conclusions contained in the final report on the international examination of the variety denomination, the certificate may specify different variety denominations for the different designated States.

(2) The international plant breeder's certificate shall, in each designated State in respect of which it is granted, have the effect of a national plant breeder's right granted in that State, issued on the same date.

Article 48Information on the Decision on the  
International Application

(1) The International Administrative Authority shall inform the following of its decision on the international application:

- (i) the applicant;
- (ii) the Receiving Authority;
- (iii) the Office of the Union;
- (iv) the national Authority of each designated State to which Article 44(1) refers.

(2) The notification under subparagraph (iv) of the preceding paragraph, shall be accompanied by such parts of the file as appear to be relevant to the said State and have not been already transmitted to the said Authority at an earlier date, together with a list of all documents relating to the international application.

Part 7

Common Provisions

Article 49

Correction of Errors of Form in a Pending  
International Application

- (1) The applicant may request the correction of formal errors discovered in the international application or in documents submitted therewith while the said application is still pending.
- (2) Such correction shall be submitted in writing to the Receiving Authority.
- (3) An international application may not be corrected in such a way that its scope differs from the original scope.

Article 50

Correction of Errors of Form Discovered by the  
International Administrative Authority

- (1) If, in the course of the administrative examination of the international application, the International Administrative Authority discovers, or is informed of, an error of form in the said application which does not affect the validity of the said application, the said Authority shall inform the applicant and shall request that the defect be corrected in accordance with the provisions of Article 49(2) and (3) within a period of three months from the notification of the request.
- (2) If the International Administrative Authority is able to correct the said error, it shall correct it ex officio.

Article 51

Amendment of Data in an International Application

The applicant shall inform the Receiving Authority without delay of any amendment of the data included in the international application.

Article 52

Transfer, Assignment or Passing of the  
International Application

- (1) The international application may be transferred or assigned, or may pass from the applicant to another person in any other way in respect of all or some of the designated States and, in respect of each designated State, in toto or in parte.
- (2) The transfer or assignment of the international application, or its passing from the applicant to another person in any other way, shall be governed by national legislation of the designated State in respect of which such act takes place.
- (3) The transfer or assignment of the international application, or its passing from the applicant to another person in any other way, shall be notified without delay by the applicant to the Receiving Authority. The notification shall be made on the prescribed form and shall be accompanied by documentary evidence.

Article 53Withdrawal of the International Application  
or of a Designation

The international application or the designation of a State in such application may be withdrawn by the applicant. Such withdrawal shall be notified in writing to the Receiving Authority. In the case of such withdrawal the effect provided for in Article 12 shall cease in any designated State to which the withdrawal applies with the same consequences as the withdrawal of a national application in that State.

Article 54Notification of Corrections, Amendments, Transfers, Assignments,  
Passing and Withdrawals

(1) The Receiving Authority shall notify the International Administrative Authority of any correction under Article 49 or 50(1), of any amendment of data under Article 51, of any transfer, assignment or passing under Article 52 and of any withdrawal under Article 53.

(2) The International Administrative Authority shall notify any such facts and any correction under Article 50(2) to any international authority under this Special Agreement which such fact may concern, and to any national authority which such fact may concern.

Article 55Availability of Copies of the International Application  
and of Related Documents to Designated Authorities  
and to the Applicant

(1) Any designated Authority may ask the International Administrative Authority to transmit to it a copy of the international application or of any document relating to the said application prior to the transmittal provided for in this Agreement.

(2)(a) The applicant may, at any time, transmit a copy of the international application or of any document relating to the said application to any designated Authority.

(b) The applicant may, at any time, ask the International Administrative Authority to transmit to him a copy of the international application or of any document relating to the said application.

(3) The International Administrative Authority shall transmit as soon as possible the copy of the international application or of the document relating to the said application whose transmittal has been requested pursuant to the provisions of paragraph (1) or (2).

Article 56Transmittal of Documents by the Applicant to a  
Designated Authority and Vice Versa

(1) Subject to the provisions of paragraph (2), any document to be transmitted by the applicant to a designated Authority for the purposes of a procedure before the said Authority, or vice versa, shall be transmitted through the Receiving Authority.

(2)(a) The applicant may, at any time, inform the Receiving Authority that he will directly transmit to and receive from the designated Authority the documents referred to in paragraph (1).



(b) Such information shall be given by the Receiving Authority to the International Administrative Authority, to the Office of the Union and to the designated Authority concerned.

(c) Such notification shall take effect three months after its receipt by the Receiving Authority.

#### Article 57

##### Non-observance of Time Limits

(1) Unless otherwise provided, non-observance by the applicant of a time limit set for a proceeding under this Chapter shall result in the international application being considered withdrawn and the International Administrative Authority so declaring.

(2) If the non-observance of the time limit relates to a proceeding that concerns only some of the designated States, the designation of those States shall be considered withdrawn and the International Administrative Authority shall so declare.

#### Article 58

##### International Plant Variety Protection Gazette

(1) The Office of the Union shall publish an International Plant Variety Protection Gazette (International Gazette).

(2) The matters to be published in the International Gazette shall be as prescribed.

### CHAPTER II

#### REGIONAL PLANT BREEDERS' RIGHTS

#### Article 59

##### Introduction of Regional Plant Breeders' Rights

(1) A group of Contracting States having authorized an International Administrative Authority to grant international plant breeders' certificates may declare, in a notification to the Secretary-General, that the international plant breeder's certificate is granted as a regional plant breeder's right according to this Chapter in the territories of the States members of the group.

(2) Any group of Contracting States having made such declaration

- (i) shall establish a list of species for which international applications may be filed with a view of obtaining regional plant breeders' rights for the group;
- (ii) shall specify the International Administrative Authority which shall be competent for international applications in which those States are designated,;
- (iii) shall specify the same International Testing Authority for each species in the list mentioned under subparagraph (i);
- (iv) shall appoint, in a special protocol, a court which shall be competent to rule on the cases provided for in Article 63(5);

- (v) may provide that the designation of the States members of the group shall be effected jointly and that the designation of one or some of the members shall be deemed to constitute the designation of all of them.

(3) Any State member of the group shall apply in its legislation the Common Rules on the Protection of New Varieties of Plants, attached to this Agreement ("Common Rules"), unless otherwise agreed by the States members of the group.

#### Article 60

##### Nature of Regional Plant Breeders' Rights

Regional plant breeders' rights shall have unitary and autonomous character. The national rules on the validity and duration of plant breeders' rights shall be applicable only to the extent provided for in this Chapter and in the Common Rules, unless otherwise agreed by the States members of the group.

#### Article 61

##### Entry into Force of the Notification

(1) This Chapter shall apply to international applications which have been filed three months after the last notification by a member State of the group has been received by the Secretary-General.

(2) In case of accession of new members of the group or of cessation of membership, the Secretary-General shall be notified, in a joint declaration by the members of the group, of the time at which those acts become effective.

(3) The Secretary-General shall publish the dates mentioned in the preceding paragraphs in the International Gazette.

#### Article 62

##### Novelty of Regional Plant Breeders' Rights

A regional plant breeder's right may only be granted if, according to the indications given in the international application, the variety has not been offered for sale or marketed in any of the States members of the group for longer than one year before the international filing date with the agreement of the breeder. Where a variety has been so offered for sale or marketed for a longer period in one of those States, the International Administrative Authority shall, if the conditions for granting an international plant breeder's certificate according to Part 6 of Chapter I are fulfilled, grant an international plant breeder's right which does not have the effect of a regional plant breeder's right.

#### Article 63

##### Renewal Fees

(1) For each regional plant breeder's right a renewal fee shall be paid for each year of protection. The first year for the payment of the renewal fee is the calendar year which follows the year during which the right was granted.

(2) The amounts of the renewal fees payable for the years of protection shall be fixed by a restricted circle of the Assembly in which only the States members of the group are represented.

(3) The renewal fees shall be paid to the International Administrative Authority which shall distribute them to the States members of the group according to rules established by the limited circle of the Assembly mentioned in the preceding paragraph.

(4) Where a renewal fee due has not been paid, or has not been paid in full to the International Administrative Authority, that Authority shall request the applicant to make the payment within two months after the date of the request. If the renewal fee is not received during that period, the International Administrative Authority shall declare the regional plant breeder's right terminated.

(5) The applicant may, in the case of termination of the regional plant breeder's right, appeal to the court mentioned in Article 59(2)(iv). The appeal may be based only on the allegation that the renewal fee has not been paid, or has not been paid in full. Where the court holds that the renewal fee has been duly paid, it shall decide that the regional plant breeder's right was not terminated.

#### Article 64

##### Termination for Reasons Other than Non-Payment of Renewal Fees; Nullity and Forfeiture

(1) The term of the regional plant breeder's right shall be as provided in the Common Rules. The provisions of the national laws of Contracting States for which regional plant breeders' rights have been granted on the waiving or the nullity or forfeiture of national plant breeders' rights\*, including national rules on competence to take decisions on such questions, shall be applied to regional plant breeders' rights as if they were national plant breeder's rights.

(2) If the regional plant breeder's right is, by a final decision, terminated, declared null and void or forfeit in any State member of the group, it shall have the effect of an international plant breeder's certificate (Article 47(2)) in the other States members of the group, and that fact shall be published in the national Plant Breeders' Rights Gazettes of each of those States.

(3) Any final decision according to the preceding paragraph shall immediately be notified by the Contracting State in which it was rendered to the Secretary-General which shall notify all States members of the group.

(4) The States members of a group may conclude special agreements on the termination, nullity and forfeiture of regional plant breeders' rights, including the establishment of an international court for that purpose.

#### Article 65

##### Transfer and Passing of Regional Plant Breeders' Rights

(1) The provisions of the national laws of States members of a group concerning the transfer of plant breeders' rights by agreement or succession, and concerning transfer by judicial action where such right has been granted to a person who is not entitled to it, shall be applied to regional plant breeders' rights as if they were national plant breeders' rights.

(2) The passing of the regional plant breeder's right as a result of any measure taken under paragraph (1) shall have effect only in that Contracting State whose national law is applied, subject to any extension of such effect by virtue of provisions of the international private law of any State. Where several persons are holders of the regional plant breeder's right as a result of the measures taken under paragraph (1), they shall be considered joint holders.

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\* In view of the explicit provisions in Article 10 of the Convention and their mandatory character, the provisions of the national laws should be essentially the same.

Article 66Scope of Protection of Regional Plant Breeders' Rights

Notwithstanding their regional character, regional plant breeders' rights shall, in each State member of the group, have the same scope of protection as that of national plant breeders' rights granted by that State according to its national legislation.\*

Article 67Licenses, Licenses of Right, Compulsory Licenses

The provisions of the national legislations of the States members of a group concerning licenses, licenses of right and compulsory licenses shall be applied to regional plant breeders' rights as if they were national plant breeders' rights. Licenses of right may only be granted after the grant of regional plant breeders' rights. Licenses under regional plant breeders' rights may be agreed upon for the whole or for part of the territories in which the regional plant breeders' rights are effective. The effect of compulsory licenses and licenses of right shall be restricted to the territory of the State in which those licenses were granted.

Article 68Application of National Law to Infringements

The provisions of the national law of States members of a group concerning the infringement of national plant breeders' rights shall be applied in cases of infringement of regional plant breeders' rights as if those rights were national plant breeders' rights.

## CHAPTER III

## HARMONIZATION OF NATIONAL RIGHTS

Article 69Application of the Common Rules by States Not  
Members of a Regional Group

(1) Contracting States not members of a group within the meaning of Article 59(1) may undertake to apply the Common Rules attached to this Agreement in their national legislation. They may exclude some of the Common Rules from such application.\*\*

(2) Any such undertaking shall be notified to the Secretary-General who shall publish it in the International Gazette.

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\* According to Article 59(3) provisions on the scope of protection must be in conformity with the Common Rules.

\*\* Such undertakings might constitute a basis for the mutual recognition of grants between two or more member States.

Article X

Reservations Concerning Part 4 [International Examination of the  
Variety Denomination] of Chapter I [International Application]  
and Declarations Made in Respect of Certain Provisions;  
Notification and Publication

(1)(a) Any State may declare that it is not bound by the provisions of Part 4 of Chapter I.

(b) Such declaration may only be made in respect of all species to which the Convention is applied by the State concerned.

(2) Any declaration made by a Contracting State according to paragraph (1), and any declaration by a Contracting State that certain species or groups of varieties are reserved for national testing, that an International Administrative Authority is authorized to grant international plant breeders' certificates, that that State will be a member of a regional group or that it undertakes to apply the Common Rules shall be made by notification to the Secretary-General, who shall publish such notification in the International Gazette.

[Appendix follows]

## APPENDIX TO ANNEX

PROTOCOL ON COMMON RULES ON THE PROTECTION OF  
NEW VARIETIES OF PLANTS ("COMMON RULES")Rule 1Application of the Common Rules

(1) The following Common Rules on the Protection of New Varieties of Plants ("Common Rules") shall be applied

- (i) by Contracting States having declared, according to Article 59 of the Agreement, that they form a group, in so far as the members of the group have not notified the Secretary-General that they have agreed on the application of rules which differ from the Common Rules;
- (ii) by any Contracting States having undertaken, according to Article 69 of the Agreement, to apply the Common Rules with the exception of the Rules which that State has, in a notification addressed to the Secretary-General, excluded from such application;
- (iii) by Authorities acting for the Contracting States mentioned under (i) or (ii) above in the case of the designation of such States in an international application, in the course of their functions under the Agreement.

(2) Any Contracting State mentioned under (i) may restrict the application of the Common Rules to cases where it is designated in an international application.

(3) Provisions of the Common Rules expressly referring to international applications or regional plant breeders' rights shall not be applicable to national applications or national plant breeders' rights.

Rule 2Entitlement to File International Applications

International applications in which a Contracting State applying these Common Rules is designated may be filed by any person, irrespective of his nationality, domicile or registered office.

Rule 3Entitlement to Protection

(1) Entitlement to the protection of a variety shall belong to the breeder of that variety or to his successor in title.

(2) Where the variety has been bred jointly by two or more breeders, entitlement to protection shall belong to the said breeders jointly.

(3) Where the variety has been bred independently by two or more breeders, entitlement to protection shall belong to the breeder who, in the case of an international application, has filed the application bearing the earliest international filing date, or, in the case of a national application, has filed the application bearing the earliest filing date that can be invoked in the State in question, due account being taken of any priority validly claimed.

(4)(a) Where the variety has been bred by a person ("the employee") who is employed by another person ("the employer") or who works for the employer otherwise than for wages, and where the breeding of plant varieties is included in the business activity of the employer, entitlement to protection shall belong, subject to the provisions of paragraph (d), to:

- (i) the employer if the tasks assigned to the employee consist of or include that of carrying out research on the species to which the variety belongs, or that of breeding or maintaining varieties of the said species;
  - (ii) the employee in all other cases.
- (b) The employee shall inform the employer of all varieties bred by him to which subparagraph (a)(i) might apply.
- (c) Where the employer is entitled to protection under subparagraph (a)(i), he may be requested by the employee to file, within three months from the date of the request, an application in or with effect in any Contracting State in which the variety is eligible for protection. In so far as the request is not complied with, the employee shall be entitled to protection.
- (d) The party not entitled to protection shall benefit from a right of preemption during a period of three months from the date of the notification of any proposed transfer. In the absence of an agreement on the price, the latter shall be fixed by the courts; the party entitled to protection may take back his offer to transfer at any time.
- (e) The employer and the employee may derogate from the provisions of subparagraph (a)(i) in the employment contract. In such a case, the said contract must be in writing. Derogations from the provisions of subparagraphs (c) and (d) shall be null and void unless they are more favorable to the employee.
- (5) Pending proof to the contrary, the applicant shall be considered entitled to protection under this Rule.

#### Rule 4

##### Designation of Species

- (1) In any official announcements concerning plant breeders' rights species shall be designated by their Latin names, due account being taken of any guidelines or recommendations issued by the Council of the Union or the Assembly of the Special Union on the designation of species.
- (2) The common name of the species, if any, in the language in which the announcement is made or in a working language of the Union, may be added for the purposes of information, the Latin name being the only authentic designation.
- (3) To indicate the limits of protection under Article 2(2) of the Convention, the following expressions shall where appropriate be used:
- (i) only (except) vegetatively propagated varieties;
  - (ii) only (except) sexually propagated varieties;
  - (iii) only (except) apomictic varieties;
  - (iv) only (except) self-pollinated varieties;
  - (v) only (except) cross-pollinated varieties;
  - (vi) only (except) hybrid varieties;
  - (vii) only (except) ornamental varieties;
  - (viii) only (except) forest trees;
  - (ix) only (except) fruit varieties, including rootstocks;
  - (x) only (except) greenhouse varieties;

- (xi) only (except) open-air varieties;
- (xii) only varieties for human consumption;
- (xiii) only varieties for animal feeding;
- (xiv) only varieties for industrial use.

#### Rule 5

##### Species to Which the Convention Should Be Applied

Contracting States applying the Common Rules shall endeavor to apply the Convention at least to the following species:

- (i) species to which the Convention is applied by a member State of the Union, provided that an International Testing Authority is prepared to carry out the testing for the Contracting State in question;
- (ii) species in respect of which the Contracting State, or another Contracting State which is a member of the same regional group within the meaning of Chapter II of the Agreement, has taken measures to regulate the production, certification or marketing of seeds and propagating material;
- (iii) all species of major importance to the economy of the Contracting State or another Contracting State which is a member of the same regional group within the meaning of Chapter II of the Agreement.

#### Rule 6

##### Assessment of Novelty

(1) The novelty of a variety in the territory of any Contracting State or, where Chapter II of the Agreement is applied, in the territories of all Contracting States members of the group, shall be assessed on the basis of Article 6(1)(b) of the Convention and the following paragraph.

(2) It shall not be considered detrimental to novelty:

- (i) to offer for sale or sell a stock of material of a variety in connection with the offer for sale or sale, in toto or in parte, of entitlement to the protection of that variety;
- (ii) to offer for sale or sell propagating material of the variety to a person who then sells it to the applicant or to one of his predecessors in title under an arrangement under which the other person uses the said material under the control of the applicant or of the predecessor in title for the purpose of increasing the stock of propagating material or carrying out trials of the variety, provided that the propagating material produced, directly or indirectly, and any unused propagating material becomes or remains the property, or otherwise remains at the sole disposal, of the applicant or of the predecessor in title;
- (iii) to offer for sale or sell material produced in the course of the breeding of the variety, for the purpose of increasing the stock of propagating material or carrying out trials of the variety, provided that the material is not offered for sale or sold as propagating material, is not offered for sale or sold to the public and is not identified as being distinct from material of varieties of common knowledge.



Rule 7

Transitional Limitation of the Requirement  
of Novelty

Article 38 of the Convention shall be so applied that any variety shall also be considered to fulfill the novelty requirement if:

- (i) the application for protection is filed within one year from the date on which, in the Contracting State or regional group of Contracting States for which protection is sought, the Convention is applicable to the species to which the variety belongs, or, if the said date precedes by less than one year the date on which the said State or regional group of States applies the Common Rules, within one year from the last-mentioned date; and
- (ii) the variety has not been offered for sale or sold by, or with the approval of, the applicant or his predecessor or predecessors in title in the territory of the State concerned or, where Chapter II of the Agreement is applied, in the territories of any State member of the same group, for more than four years prior to the date of application.

Rule 8

Provisional Protection

(1) Compensation reasonable in the circumstances may be claimed from a third party who, during the period between the date of the filing of the application and the date of the publication of the grant of the title of protection, has made use of the variety in a manner which, after that period, would be prohibited for an unauthorized person by virtue of the said title.

(2) The decision on the compensation referred to in the preceding paragraph shall lie with the courts which would be competent to decide in cases of infringements of plant breeders' rights committed under comparable circumstances.

Rule 9

Scope of Protection

(1) A title of protection to which the Common Rules apply shall, in the territory or territories for which it is granted, confer on its holder the right to prevent all third parties not authorized by him to do so from producing, offering for sale, marketing, importing or exporting, or stocking for any of those purposes:

- (i) propagating material of the protected variety;
- (ii) propagating material of another variety for the commercial production of which the repeated use of the protected variety is necessary.

(2) In the case of a variety of an ornamental plant, the right shall extend to plants or elements of plants, not being propagating material, of the protected variety or the other variety referred to in subparagraph (1)(ii) of this Rule.

Rule 10

Limitation of the Scope of Protection

The right conferred by a title of protection to which the Common Rules apply shall not extend to:

- (i) acts performed privately and for non-commercial purposes;
- (ii) acts performed for research purposes;
- (iii) acts performed in the course of the creation of another variety, except where Rule 9(1)(ii) applies.

Rule 11

Exhaustion of Rights

(1) The right conferred by a title of protection to which the Common Rules apply shall not extend to:

- (i) the resale of propagating material and, in the case of a variety of an ornamental plant, of plants or elements of plants not being propagating material, put on the market by the holder of the title of protection or with his express consent;
- (ii) the use of seeds put on the market by the holder of the title of protection or with his express consent in the production of further generations of seed if such further generations are grown on the producer's own premises for the production of a crop.

(2) Notwithstanding the provisions of paragraph (1)(i), the holder of the title of protection may forbid resales to wholesale or retail dealers who do not offer sufficient guarantees for the proper handling of the propagating material, or the export of such material to countries where the variety is not eligible for protection.

Rule 12

Duration of Protection

(1) Protection shall be granted for a period expiring at the end of the twentieth year following the year in which the title of protection was issued.

(2) In the case of varieties used only as parental lines in the production of a hybrid, protection shall be granted for a period expiring at the end of the thirtieth year following the year in which the title of protection was issued.

Rule 13

Annulment

(1) The annulment of a breeder's right to which the Common Rules apply, on the basis of Article 10(1) of the Convention, shall have retroactive effect as provided in the following paragraph.

(2) Subject to the national provisions relating either to claims for compensation for damage caused by negligence or lack of good faith on the part of the proprietor of the title of protection, or to unjust enrichment, the retroactive effect of the annulment shall not affect:

(i) any decision on infringements which has become res judicata and been enforced prior to the decision on annulment;

(ii) any contract concluded prior to the decision on annulment, in so far as was performed before that decision, provided that repayment, to the extent justified by the circumstances, of sums paid under the said contract may be claimed on grounds of equity.

Rule 14

Variety Denominations

(1) Varieties shall be given denominations which, in addition to the requirements provided for under Article 13 of the Convention, fulfill the following requirements.

(2) Where the use of variety denominations consisting solely of figures is permitted, such figures shall

- (i) not comprise more than four numerals,
- (ii) be easily recognizable by a special meaning known to the users, such as references to certain facts or situations or to characteristics of the variety.

(3) Where denominations consisting of letter/figure combinations are used, such combinations shall

- (i) preferably start with the letter part;
  - (ii) not consist of more than four letters and four numerals;
  - (iii) not consist of mixtures of letters and figures;
  - (iv) not comprise figures other than Arabic numerals, in particular Roman numerals;
  - (v) not comprise letters other than Latin letters except for States where such other letters are in common use.
- (4) Variety denominations shall not consist of
- (i) geographical terms unless the terms have a special significance in relation to the variety and are not misleading;
  - (ii) botanical terms that might be misleading;
  - (iii) names that might imply quality judgements.

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