COUNCIL DECISION

of 30 May 2005

approving the accession of the European Community to the International Convention for the Protection of New Varieties of Plants, as revised at Geneva on 19 March 1991

(2005/523/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308, in conjunction with Article 300(2), first subparagraph and Article 300(3), first subparagraph thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The International Convention for the Protection of New Varieties of Plants (hereinafter referred to as the UPOV Convention), adopted in Geneva on 19 March 1991, makes available to breeders of new plant varieties an exclusive property right, on the basis of a set of uniform and clearly defined principles.

(2) The competence of the Community to conclude or accede to international agreements or treaties does not derive only from explicit conferral by the Treaty but may also derive from other provisions of the Treaty and from acts adopted pursuant to those provisions by Community institutions.

(3) The subject matter of the UPOV Convention falls also within the scope of existing Community regulations in this field.

(4) It follows that the approval of the UPOV Convention is a matter for both the Community and its Member States.

(5) The UPOV Convention should be approved on behalf of the Community with regard to matters within its competence,

HAS DECIDED AS FOLLOWS:

Article 1

1. The revised text of the UPOV Convention is hereby approved on behalf of the Community with regard to matters within its competence.

2. The revised text of the UPOV Convention and a Declaration of the European Community are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person or persons empowered to deposit, on behalf of the Community, the instrument of accession with the Secretary-General of the Union for the Protection of New Varieties of Plants.

Article 3

The Community will pay, on a voluntary basis, a contribution for each budgetary period, with a number of contribution units and under conditions, which are specified in the declaration contained in the Annex, and within the limits set for this purpose within the general budget of the Community.

Done at Brussels, 30 May 2005.

For the Council

The President

F. BODEN

ACT OF 1991

INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

of 2 December 1961,

as revised at Geneva on 10 November 1972, 23 October 1978 and 19 March 1991

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CHAPTER I

DEFINITIONS

Article 1

Definitions

For the purposes of this Act:

(i) 'this Convention' means the present (1991) Act of the International Convention for the Protection of New Varieties of Plants;

(ii) 'Act of 1961/1972' means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of 10 November 1972;

(iii) 'Act of 1978' means the Act of 23 October 1978, of the International Convention for the Protection of New Varieties of Plants;

(iv) 'breeder' means:

— the person who bred, or discovered and developed, a variety,

— the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide,

or

— the successor in title of the first or second aforementioned person, as the case may be;

(v) 'breeder's right' means the right of the breeder provided for in this Convention;

(vi) 'variety' means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

— defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

— distinguished from any other plant grouping by the expression of at least one of the said characteristics,

and

— considered as a unit with regard to its suitability for being propagated unchanged;

(vii) 'Contracting Party' means a State or an intergovernmental organisation, Party to this Convention;

(viii) 'territory,' in relation to a Contracting Party, means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organisation, the territory in which the constituting treaty of that intergovernmental organisation applies;

(ix) 'authority' means the authority referred to in Article 30(1)(ii);

(x) 'Union' means the Union for the Protection of New Varieties of Plants founded by the Act of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in this Convention;

(xi) 'member of the Union' means a State party to the Act of 1961/1972 or the Act of 1978, or a Contracting Party.

CHAPTER II

GENERAL OBLIGATIONS OF THE CONTRACTING PARTIES

Article 2

Basic obligation of the Contracting Parties

Each Contracting Party shall grant and protect breeders' rights.

Article 3

Genera and species to be protected

1. (*States already members of the Union*) Each Contracting Party which is bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978,

and

(ii) at the latest by the expiration of a period of five years after the said date, to all plant genera and species.

2. (*New members of the Union*) Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species,

and

(ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.

Article 4

National treatment

1. (*Treatment*) Without prejudice to the rights specified in this Convention, nationals of a Contracting Party as well as natural persons resident and legal entities having their registered offices within the territory of a Contracting Party shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of each other Contracting Party the same treatment as is accorded or may hereafter be accorded by the laws of each such other Contracting Party to its own nationals, provided that the said nationals, natural persons or legal entities comply with the conditions and formalities imposed on the nationals of the said other Contracting Party.

2. (*Nationals*) For the purposes of the preceding paragraph, 'nationals' means, where the Contracting Party is a State, the nationals of that State and, where the Contracting Party is an intergovernmental organisation, the nationals of the States which are members of that organisation.

CHAPTER III

CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT

Article 5

Conditions of protection

1. (*Criteria to be satisfied*) The breeder's right shall be granted where the variety is

(i) new,

(ii) distinct,

(iii) uniform

and

(iv) stable.

2. (*Other conditions*) The grant of the breeder's right shall not be subject to any further or different conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 20, that the applicant complies with the formalities provided for by the law of the Contracting Party with whose authority the application has been filed and that he pays the required fees.

Article 6

Novelty

1. (*Criteria*) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety,

(i) in the territory of the Contracting Party in which the application has been filed earlier than one year before that date,

and

(ii) in a territory other than that of the Contracting Party in which the application has been filed earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

2. (*Varieties of recent creation*) Where a Contracting Party applies this Convention to a plant genus or species to which it did not previously apply this Convention or an earlier Act, it may consider a variety of recent creation existing at the date of such extension of protection to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place earlier than the time limits defined in that paragraph.

3. (*Territory in certain cases*) For the purposes of paragraph 1, all the Contracting Parties which are member States of one and the same intergovernmental organisation may act jointly, where the regulations of that organisation so require, to assimilate acts done on the territories of the States members of that organisation to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

Article 7

Distinctness

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Article 8

Uniformity

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 9

Stability

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

CHAPTER IV

APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT

Article 10

Filing of applications

1. (*Place of first application*) The breeder may choose the Contracting Party with whose authority he wishes to file his first application for a breeder's right.

2. (*Time of subsequent applications*) The breeder may apply to the authorities of other Contracting Parties for the grant of breeders' rights without waiting for the grant to him of a breeder's right by the authority of the Contracting Party with which the first application was filed.

3. (*Independence of protection*) No Contracting Party shall refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other State or intergovernmental organisation

Article 11

Right of priority

1. (*The right; its period*) Any breeder who has duly filed an application for the protection of a variety in one of the Contracting Parties (the first application) shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority of any other Contracting Party (the subsequent application), enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

2. (*Claiming the right*) In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The authority with which the subsequent application has been filed may require the breeder to furnish, within a period of not less than three months from the filing date of the subsequent application, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

3. (*Documents and material*) The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time after such rejection or withdrawal, in which to furnish, to the authority of the Contracting Party with which he has filed the subsequent application, any necessary information, document or material required for the purpose of the examination under Article 12, as required by the laws of that Contracting Party.

4. (*Events occurring during the period*) Events occurring within the period provided for in paragraph 1, such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application. Such events shall also not give rise to any third-party right.

Article 12

Examination of the application

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material.

Article 13

Provisional protection

Each Contracting Party shall provide measures designed to safeguard the interests of the breeder during the period between the filing or the publication of the application for the grant of a breeder's right and the grant of that right. Such measures shall have the effect that the holder of a breeder's right shall at least be entitled to equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 14. A Contracting Party may provide that the said measures shall only take effect in relation to persons whom the breeder has notified of the filing of the application.

CHAPTER V

THE RIGHTS OF THE BREEDER

Article 14

Scope of the breeder's right

1. (*Acts in respect of the propagating material*)

(a) Subject to Articles 15 and 16, the following acts in respect of the propagating material of the protected variety shall require the authorisation of the breeder:

(i) production or reproduction (multiplication);

(ii) conditioning for the purpose of propagation;

(iii) offering for sale;

(iv) selling or other marketing;

(v) exporting;

(vi) importing;

(vii) stocking for any of the purposes mentioned in (i) to (vi) above.

(b) The breeder may make his authorisation subject to conditions and limitations.

2. (*Acts in respect of the harvested material*) Subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

3. (*Acts in respect of certain products*) Each Contracting Party may provide that, subject to Articles 15 and 16, the acts referred to in items (i) to (vii) of paragraph (1)(a) in respect of products made directly from harvested material of the protected variety falling within the provisions of paragraph 2 through the unauthorised use of the said harvested material shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

4. (*Possible additional acts*) Each Contracting Party may provide that, subject to Articles 15 and 16, acts other than those referred to in items (i) to (vii) of paragraph (1)(a) shall also require the authorisation of the breeder.

5. (*Essentially derived and certain other varieties*)

(a) The provisions of paragraphs 1 to 4 shall also apply in relation to:

(i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

(ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety;

and

(iii) varieties whose production requires the repeated use of the protected variety.

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be essentially derived from another variety (the initial variety), when

(i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

(ii) it is clearly distinguishable from the initial variety,

and

(iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(c) Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Article 15

Exceptions to the breeder's right

1. (*Compulsory exceptions*) The breeder's right shall not extend to:

(i) acts done privately and for non-commercial purposes;

(ii) acts done for experimental purposes;

and

(iii) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(5) apply, acts referred to in Article 14(1) to (4) in respect of such other varieties.

2. (*Optional exception*) Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or (ii).

Article 16

Exhaustion of the breeder's right

1. (*Exhaustion of right*) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(5), which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Contracting Party concerned, or any material derived from the said material, unless such acts,

(i) involve further propagation of the variety in question,

or

(ii) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

2. (*Meaning of material*) For the purposes of paragraph (1), 'material' means, in relation to a variety,

(i) propagating material of any kind,

(ii) harvested material, including entire plants and parts of plants,

and

(iii) any product made directly from the harvested material.

3. (*Territory in certain cases*) For the purposes of paragraph 1, all the Contracting Parties which are member States of one and the same intergovernmental organisation may act jointly, where the regulations of that organisation so require, to assimilate acts done on the territories of the States members of that organisation to acts done on their own territories and, should they do so, shall notify the Secretary-General accordingly.

Article 17

Restrictions on the exercise of the breeder's right

1. (*Public interest*) Except where expressly provided in this Convention, no Contracting Party may restrict the free exercise of a breeder's right for reasons other than of public interest.

2. (*Equitable remuneration*) When any such restriction has the effect of authorising a third party to perform any act for which the breeder's authorisation is required, the Contracting Party concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

Article 18

Measures regulating commerce

The breeder's right shall be independent of any measure taken by a Contracting Party to regulate within its territory the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Convention.

Article 19

Duration of the breeder's right

1. (*Period of protection*) The breeder's right shall be granted for a fixed period.

2. (*Minimum period*) The said period shall not be shorter than 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall not be shorter than 25 years from the said date.

CHAPTER VI

VARIETY DENOMINATION

Article 20

Variety denomination

1. (*Designation of varieties by denominations; use of the denomination*)

(a) The variety shall be designated by a denomination which will be its generic designation.

(b) Each Contracting Party shall ensure that, subject to paragraph 4, no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

2. (*Characteristics of the denomination*) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species.

3. (*Registration of the denomination*) The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the authority at the same time as the breeder's right is granted.

4. (*Prior rights of third persons*) Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

5. (*Same denomination in all Contracting Parties*) A variety must be submitted to all Contracting Parties under the same denomination. The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.

6. (*Information among the authorities of Contracting Parties*) The authority of a Contracting Party shall ensure that the authorities of all the other Contracting Parties are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

7. (*Obligation to use the denomination*) Any person who, within the territory of one of the Contracting Parties, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph 4, prior rights prevent such use.

8. (*Indications used in association with denominations*) When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognisable.

CHAPTER VII

NULLITY AND CANCELLATION OF THE BREEDER'S RIGHT

Article 21

Nullity of the breeder's right

1. (*Reasons of nullity*) Each Contracting Party shall declare a breeder's right granted by it null and void when it is established,

(i) that the conditions laid down in Articles 6 or 7 were not complied with at the time of the grant of the breeder's right,

(ii) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 8 or 9 were not complied with at the time of the grant of the breeder's right,

or

(iii) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

2. (*Exclusion of other reasons*) No breeder's right shall be declared null and void for reasons other than those referred to in paragraph 1.

Article 22

Cancellation of the breeder's right

1. (*Reasons for cancellation*)

(a) Each Contracting Party may cancel a breeder's right granted by it if it is established that the conditions laid down in Articles 8 or 9 are no longer fulfilled.

(b) Furthermore, each Contracting Party may cancel a breeder's right granted by it if, after being requested to do so and within a prescribed period,

(i) the breeder does not provide the authority with the information, documents or material deemed necessary for verifying the maintenance of the variety,

(ii) the breeder fails to pay such fees as may be payable to keep his right in force,

or

(iii) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

2. (*Exclusion of other reasons*) No breeder's right shall be cancelled for reasons other than those referred to in paragraph 1.

CHAPTER VIII

THE UNION

Article 23

Members

The Contracting Parties shall be members of the Union.

Article 24

Legal status and seat

1. (*Legal personality*) The Union has legal personality.

2. (*Legal capacity*) The Union enjoys, on the territory of each Contracting Party, in conformity with the laws applicable in the said territory, such legal capacity as may be necessary for the fulfilment of the objectives of the Union and for the exercise of its functions.

3. (*Seat*) The seat of the Union and its permanent organs are at Geneva.

4. (*Headquarters agreement*) The Union has a headquarters agreement with the Swiss Confederation.

Article 25

Organs

The permanent organs of the Union are the Council and the Office of the Union.

Article 26

The Council

1. (*Composition*) The Council shall consist of the representatives of the members of the Union. Each member of the Union shall appoint one representative to the Council and one alternate. Representatives or alternates may be accompanied by assistants or advisers.

2. (*Officers*) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate. The President shall hold office for three years.

3. (*Sessions*) The Council shall meet upon convocation by its President. An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one third of the members of the Union so request.

4. (*Observers*) States not mMmbers of the Union may be invited as observers to meetings of the Council. Other observers, as well as experts, may also be invited to such meetings.

5. (*Tasks*) The tasks of the Council shall be to:

(i) study appropriate measures to safeguard the interests and to encourage the development of the Union;

(ii) establish its rules of procedure;

(iii) appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;

(iv) examine an annual report on the activities of the Union and lay down the program for its future work;

(v) give to the Secretary-General all necessary directions for the accomplishment of the tasks of the Union;

(vi) establish the administrative and financial regulations of the Union;

(vii) examine and approve the budget of the Union and fix the contribution of each member of the Union;

(viii) examine and approve the accounts presented by the Secretary-General;

(ix) fix the date and place of the conferences referred to in Article 38 and take the measures necessary for their preparation;

and

(x) in general, take all necessary decisions to ensure the efficient functioning of the Union.

6. (*Votes*)

(a) Each member of the Union that is a State shall have one vote in the Council.

(b) Any Contracting Party that is an intergovernmental organisation may, in matters within its competence, exercise the rights to vote of its member States that are members of the Union. Such an intergovernmental organisation shall not exercise the rights to vote of its member States if its member States exercise their right to vote, and vice versa.

7. (*Majorities*) Any decision of the Council shall require a simple majority of the votes cast, provided that any decision of the Council under paragraphs (5)(ii), (vi) and (vii), and under Articles 28(3), 29(5)(b) and 38(1) shall require three quarters of the votes cast. Abstentions shall not be considered as votes.

Article 27

The Office of the Union

1. (*Tasks and direction of the Office*) The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

2. (*Duties of the Secretary-General*) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget of the Union for the approval of the Council and shall be responsible for its implementation. He shall make reports to the Council on his administration and the activities and financial position of the Union.

3. (*Staff*) Subject to the provisions of Article 26(5)(iii), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations.

Article 28

Languages

1. (*Languages of the Office*) The English, French, German and Spanish languages shall be used by the Office of the Union in carrying out its duties.

2. (*Languages in certain meetings*) Meetings of the Council and of revision conferences shall be held in the four languages.

3. (*Further languages*) The Council may decide that further languages shall be used.

Article 29

Finances

1. (*Income*) The expenses of the Union shall be met from

(i) the annual contributions of the States members of the Union,

(ii) payments received for services rendered,

(iii) miscellaneous receipts.

2. (*Contributions: units*)

(a) The share of each State member of the Union, in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the States members of the Union and to the number of contribution units applicable to it under paragraph 3. The said share shall be computed according to paragraph 4.

(b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that no fraction shall be smaller than one fifth.

3. (*Contributions: share of each member*)

(a) The number of contribution units applicable to any member of the Union which is party to the Act of 1961/1972 or the Act of 1978 on the date on which it becomes bound by this Convention shall be the same as the number applicable to it immediately before the said date.

(b) Any other State member of the Union shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.

(c) Any State member of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise, it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.

4. (*Contributions: computation of shares*)

(a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the States members of the Union by the total number of units applicable to those States members of the Union.

(b) The amount of the contribution of each State member of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State member of the Union.

5. (*Arrears in contributions*)

(a) State member of the Union which is in arrears in the payment of its contributions may not, subject to subparagraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding full year. The suspension of the right to vote shall not relieve such State member of the Union of its obligations under this Convention and shall not deprive it of any other rights thereunder.

(b) The Council may allow the said State member of the Union to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

6. (*Auditing of the accounts*) The auditing of the accounts of the Union shall be effected by a State member of the Union as provided in the administrative and financial regulations. Such State Member of the Union shall be designated, with its agreement, by the Council.

7. (*Contributions of intergovernmental organisations*) Any Contracting Party which is an intergovernmental organisation shall not be obliged to pay contributions. If, nevertheless, it chooses to pay contributions, the provisions of paragraphs (1) to (4) shall be applied accordingly.

CHAPTER IX

IMPLEMENTATION OF THE CONVENTION; OTHER AGREEMENTS

Article 30

Implementation of the Convention

1. (*Measures of implementation*) Each Contracting Party shall adopt all measures necessary for the implementation of this Convention; in particular, it shall:

(i) provide for appropriate legal remedies for the effective enforcement of breeders' rights;

(ii) maintain an authority entrusted with the task of granting breeders' rights or entrust the said task to an authority maintained by another Contracting Party;

(iii) ensure that the public is informed through the regular publication of information concerning

— applications for and grants of breeders' rights,

and

— proposed and approved denominations.

2. (*Conformity of laws*) It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organisation must be in a position, under its laws, to give effect to the provisions of this Convention.

Article 31

Relations between Contracting Parties and States bound by earlier acts

1. (*Relations between States bound by this Convention*) Between States members of the Union which are bound both by this Convention and any earlier Act of the Convention, only this Convention shall apply.

2. (*Possible relations with States not bound by this Convention*) Any State member of the Union not bound by this Convention may declare, in a notification addressed to the Secretary-General, that, in its relations with each member of the Union bound only by this Convention, it will apply the latest Act by which it is bound. As from the expiration of one month after the date of such notification and until the State member of the Union making the declaration becomes bound by this Convention, the said member of the Union shall apply the latest Act by which it is bound in its relations with each of the members of the Union bound only by this Convention, whereas the latter shall apply this Convention in respect of the former.

Article 32

Special agreements

Members of the Union reserve the right to conclude among themselves special agreements for the protection of varieties, insofar as such agreements do not contravene the provisions of this Convention.

CHAPTER X

FINAL PROVISIONS

Article 33

Signature

This Convention shall be open for signature by any State which is a member of the Union at the date of its adoption. It shall remain open for signature until 31 March 1992.

Article 34

Ratification, acceptance or approval; accession

1. (*States and certain intergovernmental organisations*)

(a) Any State may, as provided in this Article, become party to this Convention.

(b) Any intergovernmental organisation may, as provided in this Article, become party to this Convention if it

(i) has competence in respect of matters governed by this Convention,

(ii) has its own legislation providing for the grant and protection of breeders' rights binding on all its member States,

and

(iii) has been duly authorised, in accordance with its internal procedures, to accede to this Convention.

2. (*Instrument of adherence*) Any State which has signed this Convention shall become party to this Convention by depositing an instrument of ratification, acceptance or approval of this Convention. Any State which has not signed this Convention and any intergovernmental organization shall become party to this Convention by depositing an instrument of accession to this Convention. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

3. (*Advice of the Council*) Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.

Article 35

Reservations

1. (*Principle*) Subject to paragraph 2, no reservations to this Convention are permitted.

2. (*Possible exception*)

(a) Notwithstanding the provisions of Article 3(1), any State which, at the time of becoming party to this Convention, is a party to the Act of 1978 and which, as far as varieties reproduced asexually are concerned, provides for protection by an industrial property title other than a breeder's right shall have the right to continue to do so without applying this Convention to those varieties.

(b) Any State making use of the said right shall, at the time of depositing its instrument of ratification, acceptance, approval or accession, as the case may be, notify the Secretary-General accordingly. The same State may, at any time, withdraw the said notification.

Article 36

Communications concerning legislation and the genera and species protected; information to be published

1. (*Initial notification*) When depositing its instrument of ratification, acceptance or approval of or accession to this Convention, as the case may be, any State or intergovernmental organisation shall notify the Secretary-General of

(i) its legislation governing breeder's rights,

and

(ii) the list of plant genera and species to which, on the date on which it will become bound by this Convention, it will apply the provisions of this Convention.

2. (*Notification of changes*) Each Contracting Party shall promptly notify the Secretary-General of

(i) any changes in its legislation governing breeders' rights,

and

(ii) any extension of the application of this Convention to additional plant genera and species.

3. (*Publication of the information*) The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

(i) the legislation governing breeders' rights and any changes in that legislation,

and

(ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

Article 37

Entry into force; closing of earlier acts

1. (*Initial entry into force*) This Convention shall enter into force one month after five States have deposited their instruments of ratification, acceptance, approval or accession, as the case may be, provided that at least three of the said instruments have been deposited by States party to the Act of 1961/1972 or the Act of 1978.

2. (*Subsequent entry into force*) Any State not covered by paragraph 1, or any intergovernmental organization shall become bound by this Convention one month after the date on which it has deposited its instrument of ratification, acceptance, approval or accession, as the case may be.

3. (*Closing of the 1978 Act*) No instrument of accession to the Act of 1978 may be deposited after the entry into force of this Convention according to paragraph (1), except that any State that, in conformity with the established practice of the General Assembly of the United Nations, is regarded as a developing country may deposit such an instrument until 31 December 1995, and that any other State may deposit such an instrument until 31 December 1993, even if this Convention enters into force before that date.

Article 38

Revision of the Convention

1. (*Conference*) This Convention may be revised by a conference of the members of the Union. The convocation of such conference shall be decided by the Council.

2. (*Quorum and majority*) The proceedings of a conference shall be effective only if at least half of the States members of the Union are represented at it. A majority of three quarters of the States members of the Union present and voting at the conference shall be required for the adoption of any revision.

Article 39

Denunciation

1. (*Notifications*) Any Contracting Party may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all members of the Union of the receipt of that notification.

2. (*Earlier Acts*) Notification of the denunciation of this Convention shall be deemed also to constitute notification of the denunciation of any earlier Act by which the Contracting Party denouncing this Convention is bound.

3. (*Effective date*) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

4. (*Acquired rights*) The denunciation shall not affect any rights acquired in a variety by reason of this Convention or any earlier Act prior to the date on which the denunciation becomes effective.

Article 40

Preservation of existing rights

This Convention shall not limit existing breeders' rights under the laws of Contracting Parties or by reason of any earlier Act or any agreement other than this Convention concluded between members of the Union.

Article 41

Original and official texts of the Convention

1. (*Original*) This Convention shall be signed in a single original in the English, French and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

2. (*Official texts*) The Secretary-General shall, after consultation with the interested Governments, establish official texts of this Convention in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

Article 42

Depositary functions

1. (*Transmittal of copies*) The Secretary-General shall transmit certified copies of this Convention to all States and intergovernmental organizations which were represented in the Diplomatic Conference that adopted this Convention and, on request, to any other State or intergovernmental organisation.

2. (*Registration*) The Secretary-General shall register this Convention with the Secretariat of the United Nations.

Resolution on Article 14(5)

The Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants held from 4 to 19 March 1991, requests the Secretary-General of UPOV to start work immediately after the Conference on the establishment of draft standard guidelines, for adoption by the Council of UPOV, on essentially derived varieties.

Recommendation relating to Article 15(2)

The Diplomatic Conference recommends that the provisions laid down in Article 15(2) of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, should not be read so as to be intended to open the possibility of extending the practice commonly called 'farmer's privilege' to sectors of agricultural or horticultural production in which such a privilege is not a common practice on the territory of the Contracting Party concerned.

Common statement relating to Article 34

The Diplomatic Conference noted and accepted a declaration by the Delegation of Denmark and a declaration by the Delegation of the Netherlands according to which the Convention adopted by the Diplomatic Conference will not, upon its ratification, acceptance, approval or accession by Denmark or the Netherlands, be automatically applicable, in the case of Denmark, in Greenland and the Faroe Islands and, in the case of the Netherlands, in Aruba and the Netherlands Antilles. The said Convention will only apply in the said territories if and when Denmark or the Netherlands, as the case may be, expressly so notifies the Secretary-General.

Declaration of the European Community

The following declaration shall be attached to the instrument of accession deposited with the Secretary-General of UPOV:

'With reference to Article 29(7) of the UPOV Convention the Community will pay, on a voluntary basis, five contribution units to the UPOV budget in accordance with Article 29(3)(b), with effect from the budgetary period 2005'.