

UPOV CAJ-AG on 25 October 2013

APBREBES Intervention on Explanatory Notes on Propagation and Propagation Material

APBREBES supports the view that there is no need for the development of explanatory notes on propagation and propagating material.

The letter to the CAJ-AG by CIOPORA dated 4 September 2013 shows well the underlying thought of such explanatory notes when they conclude [I quote]:

"CIOPORA suggest that UPOV develops a standard definition or propagating material, which the UPOV members shall implement into their national PBR laws." [End of quote]. We hopefully all agree that this intention could and should never be fulfilled by an explanatory note. Explanatory notes are **not** a standard definition which shall be included into national laws. This is also well established in the standard Preamble of the UPOV explanatory notes which says: *"The only binding obligations on members of the Union are those contained in the text of the UPOV Convention itself, and these Explanatory Notes must not be interpreted in a way that is inconsistent with the relevant Act for the member of the Union concerned."*

Taking into account that the current interpretation of *propagation* and *propagation material* of member countries differs substantially, a definition is highly problematic. Any specific definition could be in contradiction with the Preamble mentioned above as it will be inconsistent with relevant acts of at least some members of the union. On the same grounds we believe that not even a non-exhaustive list of factors should be mentioned in an explanatory note as such a list already indicates which factors might be considered for the decision and gives herewith a clear indication for a basis of the decision

Nevertheless it is interesting that the draft document prepared by the office of the union refers to Article 5.1 of UPOV 78. Does this mean that the 1978 Act should be used as a basis for the interpretation of the 1991 Act?

If the members of the Union decide to go on with the development of an explanatory notes on propagation and propagation material, it seems necessary, as a first step, to have a survey which includes the current definition of **all** members of the Union. This would give us a more complete basis of information for the discussion.

For the UPOV document Explanatory Notes on Propagation and Propagation Material (UPOV EXN PPM Draft 1) see

http://www.upov.int/edocs/mdocs/upov/en/caj_ag_13_8/upov_exn_ppm_draft_1.pdf

For the CIOPORA letter of 4 September 2013 see

http://www.upov.int/edocs/mdocs/upov/en/caj_ag_13_8/caj_ag_13_8_www_250068.pdf