



CHINA

**PLANT VARIETY PROTECTION  
AWARENESS RAISING SEMINAR  
增强植物品种保护意识**

**Introduction to UPOV '91  
《国际植物新品种保护公约》1991年文本介绍**

Yolanda Huerta | Legal Counsel and Director of Training and Assistance UPOV | 8 November 2021  
Yolanda Huerta | UPOV法律顾问兼培训与协助主任 | 2021年11月8日

[www.ipkey.eu](http://www.ipkey.eu)



Funded by the European Union  
受欧盟资助



# Preview 内容前瞻

1. Recent developments in UPOV 国际植物新品种保护联盟最新进展
2. Key provisions of the 1991 Act of the UPOV Convention 《国际植物新品种保护公约》1991年文本的重要条款
3. What are the challenges and opportunities in encouraging investment in plant breeding? 鼓励投资植物育种面临何种挑战和机遇?





## UPOV MISSION STATEMENT

### UPOV使命声明

**“To provide and promote an effective system of plant  
variety protection, with the aim of encouraging the  
development of new varieties of plants, for the benefit  
of society”**

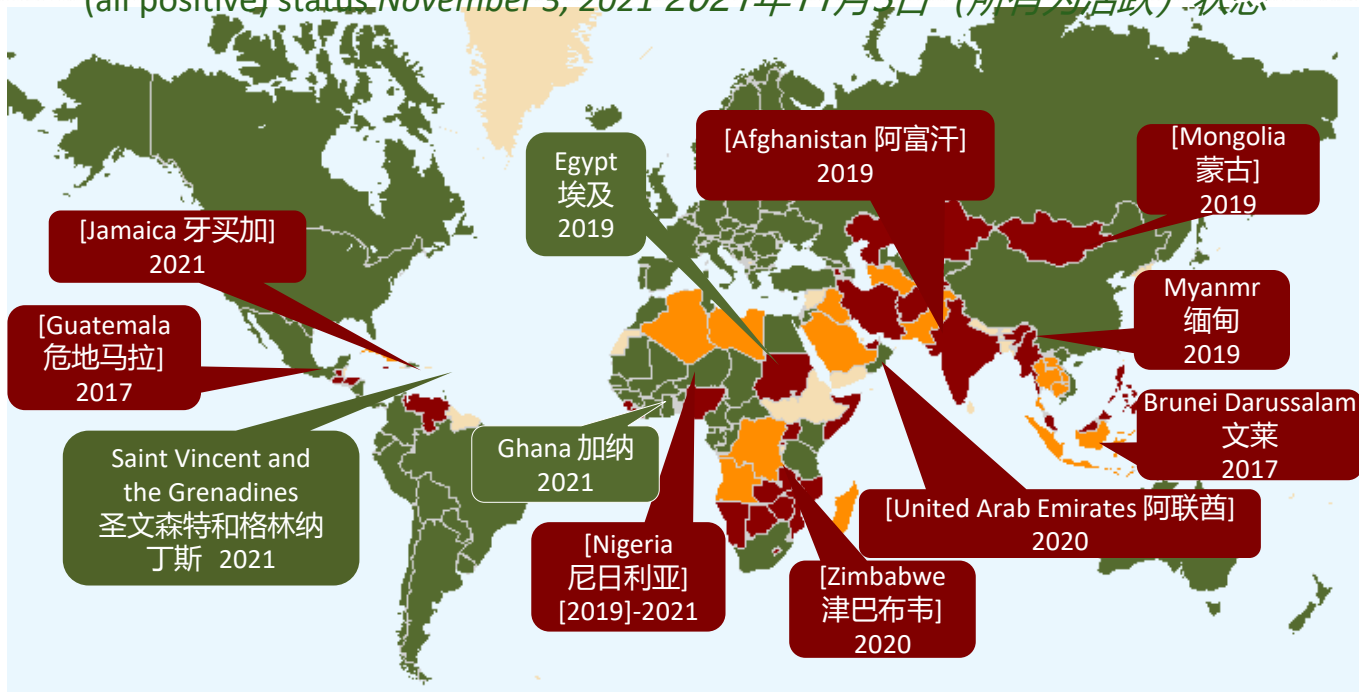
**“建立、建设有效植物品种保护体系，鼓励开发植物新品种，  
造福社会”**



## UPOV members and UPOV Council examination of [draft] Laws (2017-2021)

## UPOV成员和UPOV理事会对[草稿]法案的审核 (2017-2021)

(all positive) status November 3, 2021 2021年11月3日 (所有为活跃) 状态

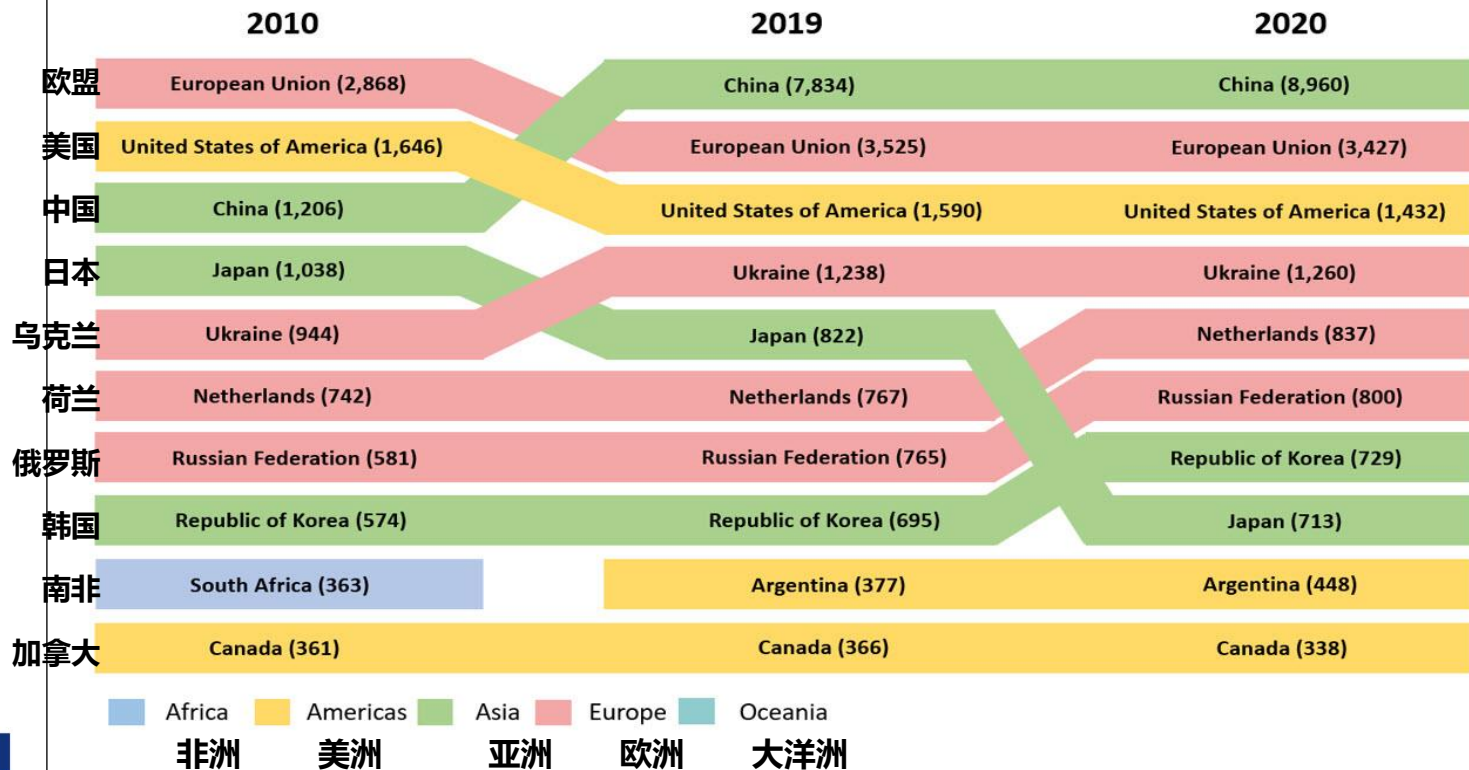


The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory

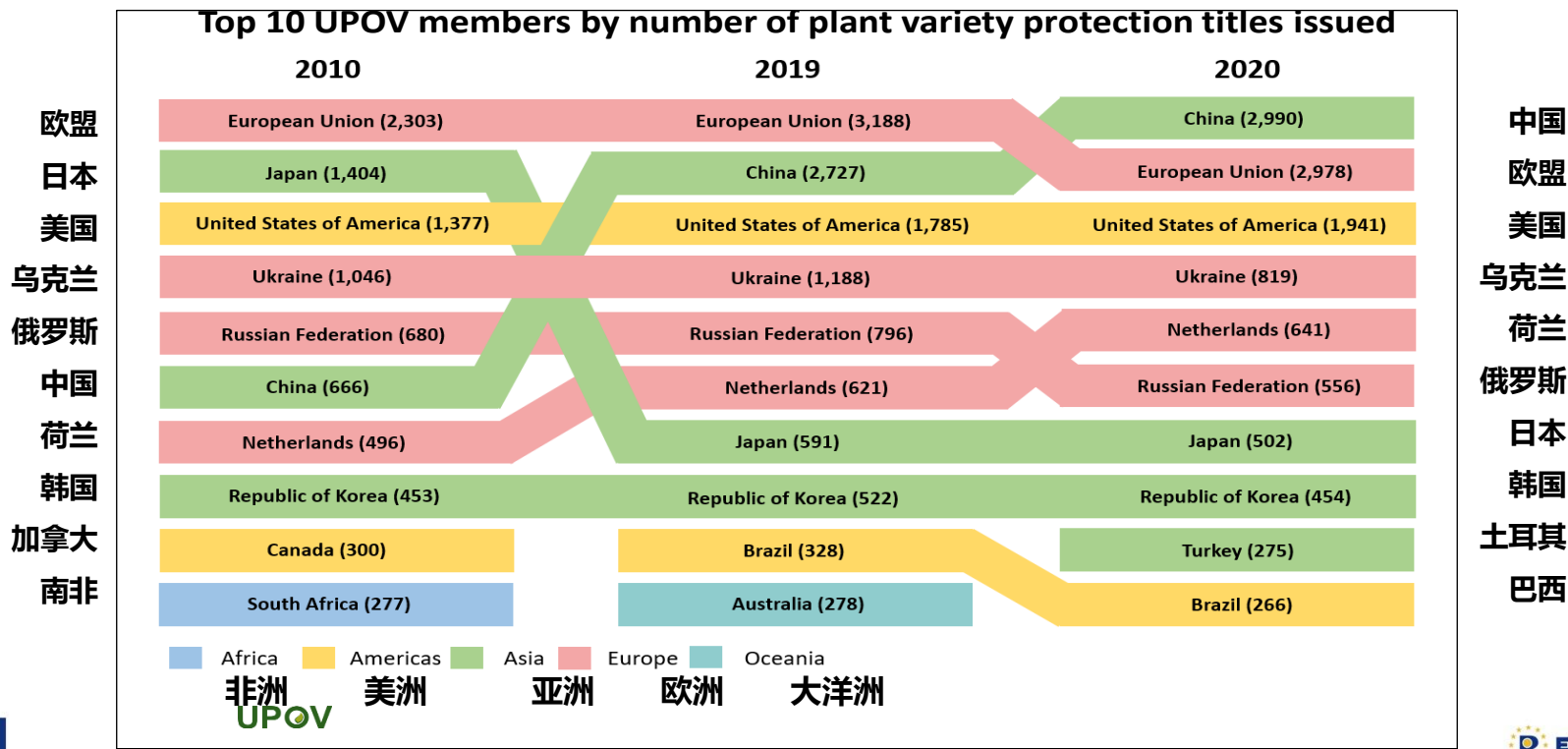
地图中的国界不代表UPOV对任何国家或疆域法律状态作出的任何意见表达

## 接收品种保护申请数量最多的10家UPOV成员

Top 10: UPOV members by number of plant variety protection applications received

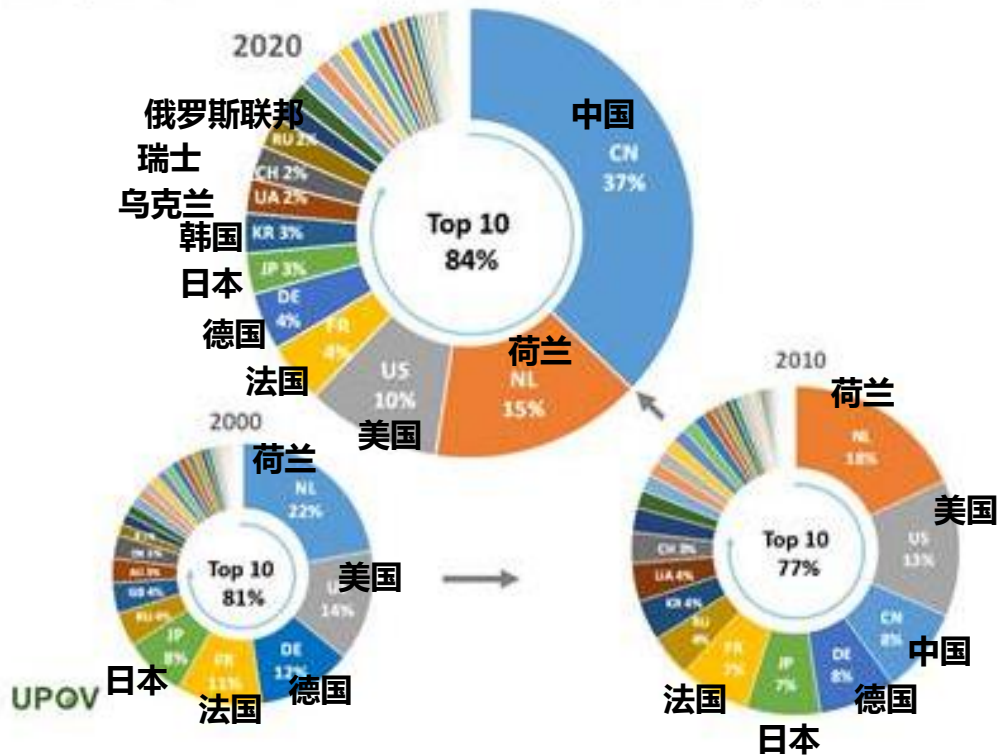


## UPOV植物品种授权保护数量前十名成员



## 申请人所在国：前10大国家所占比例

Country of residence of applicants: proportion by top 10 countries





# Program for the use of the Chinese language in UPOV

## UPOV中文使用计划

- The Council approved On October 29, 2021, the program for the use of the Chinese language in UPOV and proposed resourcing (see document C/55/16)
- 理事会于2021年10月29日批准关于在UPOV使用中文的提案并提出资源规划 (见文件 C/55/16)
- **Key elements of the program 计划的重点要素**
  - Interpretation in Chinese at UPOV sessions in Geneva 日内瓦UPOV会议提供中文口译
  - Translation of selected UPOV materials into Chinese 将部分UPOV资料翻译为中文
  - Chinese-speaking professional in the Office of the Union UPOV办公室招募讲中文的专业人士
  - Facilitating PBR applications – UPOV PRISMA 植物育种者权利申请便利化 – UPOV PRISMA PVP Training center in China 在中国设立植物品种权培训中心



# Preview 内容前瞻

1. Recent developments in UPOV 国际植物新品种保护联盟最新进展
2. Key provisions of the 1991 Act of the UPOV Convention 《国际植物新品种保护公约》1991年文本的重要条款
3. What are the challenges and opportunities in encouraging investment in plant breeding ? 鼓励投资植物育种面临何种挑战和机遇？



# 1. Genera and species 属种

## 2. Scope of breeders' rights 育种者权利的范围

- a) Acts covered 涵盖的行为
- b) Material covered 涵盖的材料
- c) Varieties covered 涵盖的品种

Essentially Derived  
Varieties 实质性衍  
生品种 (EDV)

## 3. Exceptions to the breeders' rights 育种者权利的例外

Farm-saved seed  
农场留种 (FSS)

# MINIMUM GENERA AND SPECIES TO BE PROTECTED 保护的最少属种

of 77 UPOV members, 72 apply the UPOV convention to all plant genera and species

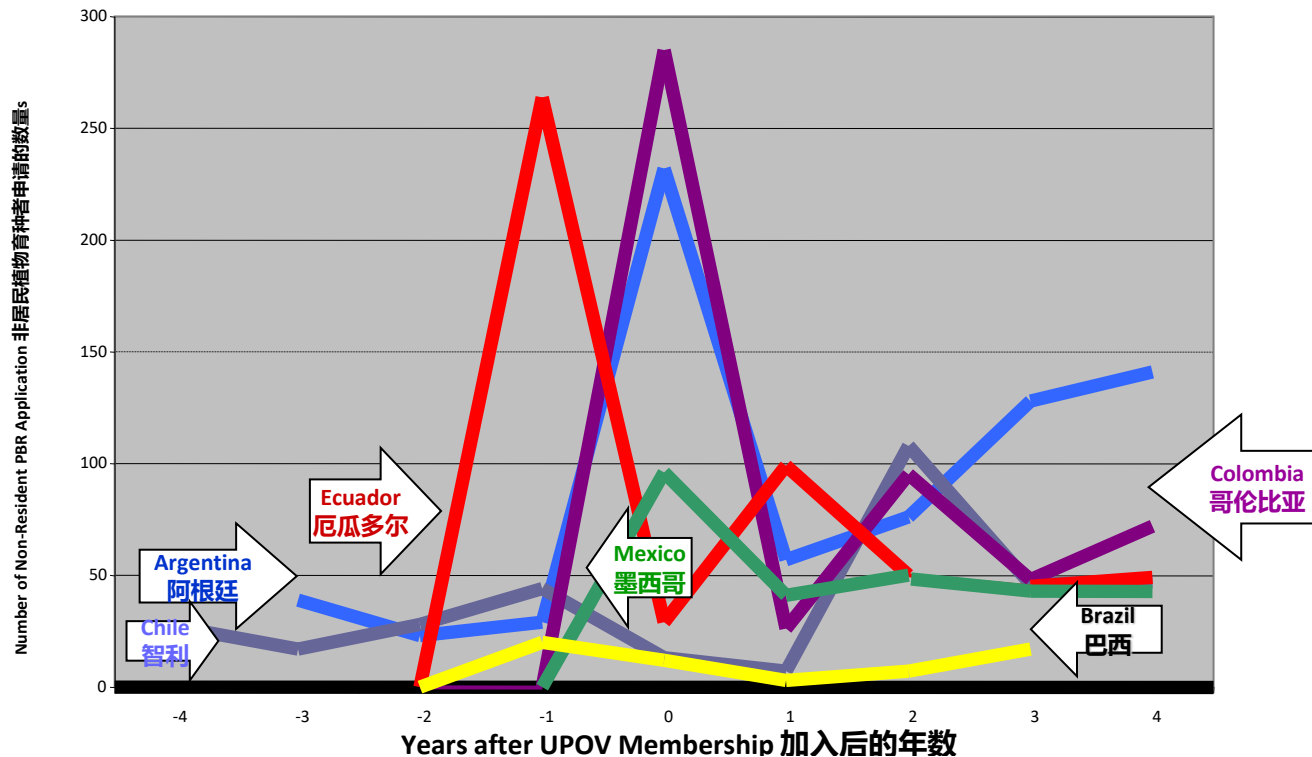
only 5 (BR, CN, EG, TT, ZA) apply the Convention to a list of genera and species

在77个UPOV成员中，72个将《国际植物新品种保护公约》适用于所有植物属种，只有5家（英国、中国、埃及、特立尼达和多巴哥、南非）将公约适用于部分属种

	1978 Act 1978年文本	1991 Act 1991年文本
On joining UPOV 加入联盟时	5 genera or species 5个属或种	15 genera or species 15个属或种
Thereafter 其后	24 genera or species (within 8 years) 24个属或种（8年内）	ALL genera and species within: 所有属和种： • 10 years (new members) 10年（新成员） • 5 years (existing members) 5年（现有成员）



# NON-RESIDENT PBR APPLICATIONS 非居民植物育种者权利申请 (Selected Countries in Latin America) 拉丁美洲部分国家



Argentina, Chile, Colombia, Ecuador and Mexico provide protection for all genera and species of the plant kingdom. 阿根廷、智利、哥伦比亚、厄瓜多尔和墨西哥为植物界所有属和种提供保护。

## 2. Scope of breeders' rights 育种者权利的范围

- a) Acts covered 涵盖的行为
- b) Material covered 涵盖的材料
- c) Varieties covered 涵盖的品种

Essentially  
Derived Varieties  
实质性衍生品种  
(EDV)

Farm-saved seed  
农场留种(FSS)

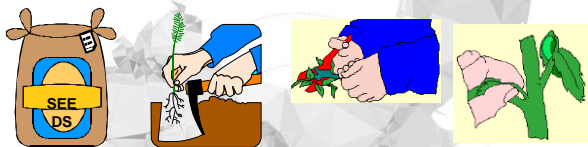
## 3. Exceptions to the breeders' rights 育种者权利的例外

**PBR: authorization of breeder required for acts in respect of the  
propagating material of protected variety**  
**植物育种者权利：使用保护品种繁殖材料、需要育种者授权的行为**

- Production or reproduction (multiplication) **生产或繁殖（扩繁）**
- Conditioning for the purpose of propagation **为繁殖而作种子处理**
- Offering for sale **许诺销售**
- Selling or marketing **销售或上市**
- Exporting **出口**
- Importing **进口**
- Stocking for any of the above purposes **为上述目的而存储**

## PBR: MATERIAL COVERED 植物育种者权利：涵盖的材料

- All propagating material 所有繁殖材料



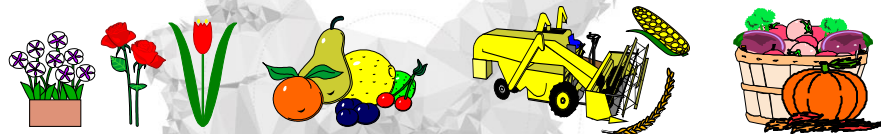
- Harvested material under certain conditions 特定条件下的收获材料
- Certain products (optional) 特定产品（可选）





## PBR: MATERIAL COVERED 植物育种者权利：涵盖的材料

- All propagating material 所有繁殖材料
- Harvested material 收获材料



if obtained through **unauthorized use** of propagating material **unless**,  
reasonable **opportunity** for breeder to **exercise his right**

由**未经授权使用**受保护品种的繁殖材料而获得的收获材料，应得到育种者授权，**但**育种者对繁殖材料已有合理**机会行使其权力**的情况例外

- **Certain products (optional) 特定产品（可选）**

## HARVESTED MATERIAL 收获材料

seminar to exchange information on matters concerning  
harvested material and unauthorized use of propagating material  
收获材料和未经授权使用繁殖材料相关问题网络研讨会

held by

electronic means on May 27, 2021

2021年5月27日举行

[https://www.upov.int/meetings/en/details.jsp?meeting\\_id=63048](https://www.upov.int/meetings/en/details.jsp?meeting_id=63048)

UPOV has established in September 2021 a Working Group on Harvested Material and  
Unauthorized Use of Propagating Material (WG-HRV)

UPOV于2021年9月设立收获材料和未经授权使用繁殖材料工作组 (WG-HRV)



# Harvested Material 收获材料

- The CAJ agreed to **initiate a revision** of the 管理和法律委员会同意启动下列文件的修订：
  - **UPOV/EXN/HRV/1:** “Explanatory Notes on Acts in Respect of Harvested Material under 1991 Act of the UPOV Convention” “关于《国际植物新品种保护公约》1991年文本中收获材料的解释性说明”
  - **UPOV/EXN/PPM/1:** “Explanatory Notes on Propagating Material under the UPOV Convention” “关于《国际植物新品种保护公约》中繁殖材料的解释性说明”
  - **UPOV/EXN/PRP/2:** “Explanatory Notes on Provisional Protection under the UPOV Convention” “关于《国际植物新品种保护公约》中临时保护的解释性说明”
- The CAJ agreed to **establish a working group** on harvested material and unauthorized use of propagating material (WG-HRV) [by correspondence]. 管理和法律委员会同意就收获材料和未经授权使用繁殖材料**设立工作组** (WG-HRV) 【以通信方式】
- The CAJ **approved the composition** of the WG-HRV 管理和法律委员会**批准WG-HRV工作组的构成**。
- The CAJ approved the date of **March 15, 2022**, for the first meeting of the WG-HRV, to be held **by electronic means**. 管理和法律委员会**批准WG-HRV工作组的首次会议于2022年3月15日以非线下方式举行**。

# Harvested Material 收获材料

- The CAJ approved the following composition of the WG-HRV 管理和法律委员会批准WG-HRV工作组由下列成员构成:

Argentina, Australia, Brazil, Chile, **China**, Czech Republic, European Union, France, Japan, Netherlands, New Zealand, Norway, Republic of Korea, Spain, United Kingdom, United Republic of Tanzania, United States of America, Association for Plant Breeding for the Benefit of Society (APBREBES), CropLife International, Euroseeds, International Association of Horticultural Producers (AIPH), International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), International Seed Federation (ISF) and the Seed Association of the Americas (SAA)

阿根廷、澳大利亚、巴西、智利、**中国**、捷克共和国、欧盟、法国、日本、荷兰、新西兰、挪威、韩国、西班牙、英国、坦桑尼亚、美国、造福社会植物育种协会（APBREBES）、国际作物生命协会、欧洲种子组织、国际园艺生产者协会、国际无性繁殖园艺植物育种家协会、国际种子联合会、美洲种子协会



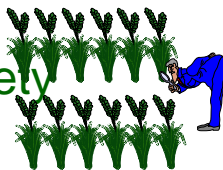
# PBR: VARIETIES COVERED (1991 Act)

## 植物育种者权利：涵盖的品种（1991年文本）

In addition to the protected variety itself 除受保护品种本身，

**VARIETIES 还涵盖：**

- **not clearly distinguishable** from the protected variety
- 与受保护品种**无明显区别**的品种
- whose production **requires the repeated use** of the protected variety  
*e.g. hybrids produced using a protected variety (1978 Act)*
- **需要反复利用**受保护品种进行生产的品种，例如，利用受保护品种生产的杂交种（1978年文本）
- which are **essentially derived** from the protected variety 哪些品种**实质上**是从受保护品种**衍生**而来？



## Development of Soft Law on Essentially Derived Varieties (EDV)

### 过程：关于实质性衍生品种“软性”法律的发展

#### 1. Seminar on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy 2019 2019年关于实质性衍生品种政策对育种策略影响的研讨会



#### 2. Working Group on Essentially Derived Varieties (WG-EDV)

##### 实质性衍生品种工作组 (WG-EDV)

to draft a revision of the Explanatory Notes on  
Essentially Derived Varieties for consideration by the  
起草“实质性衍生品种解释性说明”修订稿，供管理和法律委员会考虑

Administrative and Legal Committee (CAJ)

- Evolution of breeding techniques has created new opportunities/incentives for predominately deriving varieties from initial varieties, more rapidly and at a lower cost
- 育种技术的发展创造了新机遇、新激励，主要促进以更快速度、更低成本从初始品种衍生新品种



# UPOV/EXN/EDV/3 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”

## 关于《国际植物新品种保护公约》1991年文本中收获材料的解释性说明

- The CAJ agreed that the WG-EDV had successfully concluded its work
- 管理和法律委员会认为WG-EDV工作组的工作已成功完成
- The CAJ approved the proposed revision of document UPOV/EXN/EDV/3 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”, on the basis of document UPOV/EXN/EDV/3 Draft 2
- 管理和法律委员会依据文件UPOV/EXN/EDV/3 Draft 2, 批准对文件UPOV/EXN/EDV/3 “关于《国际植物新品种保护公约》1991年文本中收获材料的解释性说明” 的修订提案。
- In accordance with the recommendation by the CAJ at its seventy-ninth session, the Council on October 29, 2021, agreed that a draft of document UPOV/EXN/EDV/3, as approved by the CAJ, be circulated for approval by the Consultative Committee and adoption by the Council by correspondence
- 根据管理和委员会在七十九届会议上的建议, 理事会于2021年10月29日同意分发获批的UPOV/EXN/EDV/3草稿文件, 由咨询委员会和理事会分别以通信方式予以批准和采纳



## 3. EXCEPTIONS TO THE BREEDER'S RIGHT (1991 Act) 育种者权利的例外（1991年文本）

### Compulsory 强制性

Acts done 行为:

- privately and for non-commercial purposes 非商业目的私人行为
- for experimental purposes 实验目的行为
- breeding other varieties (breeder's exemption") 为培育其他品种而开展的行为（育种者豁免）

### Optional 非强制性

Farm-saved seed 农场留种

# EXCEPTIONS TO THE BREEDER'S RIGHT

## 育种者权利的例外

- Compulsory 强制性

(i) Acts done privately **and** for non-commercial purposes 非商业目的私人行为

- propagation of a variety by a **farmer exclusively** for the production of a **food crop to be consumed entirely by that farmer and the dependents of the farmer** living on that holding

**therefore**

“**subsistence farming**” where these constitute acts done privately and for non-commercial purposes, may be considered by a UPOV member to be excluded from the scope of the breeder's right

农民专门为生产完全供自己及其扶养对象食用而繁殖某品种；

因此，UPOV成员可以从育种者权利保护范围中排除“**自给农业**”（非商业目的私人行为）

Acts Possibly falling within the scope of the exception 可能属于例外的行为



# Smallholder farmers in relation to private and non-commercial use 与小农有关的非商业目的私人行为

- The Council noted that, at its ninety-eighth session, the Consultative Committee had decided to **establish a Working Group** to **develop guidance** concerning smallholder farmers in relation to private and non-commercial use, to include drafting a **revision of the “Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention”** and drafting a revision of the FAQs on exceptions to the breeder's right.
- 理事会在第九十八次会议上提到，咨询委员会已决定**设立工作组**，制定关于小农的非商业目的私人行为**指南**，包括起草“《国际植物新品种保护公约》1991年文本中育种者权利例外的解释性说明”的修订稿，起草对育种者权利例外常见问题及其回答的修订稿。

# EXCEPTIONS TO THE BREEDER'S RIGHT(1991 Act)

## 育种者权利的例外 (1991年文本)

### Compulsory 强制性

#### Acts done 行为:

- privately and for non-commercial purposes 非商业目的私人行为
- for experimental purposes 实验目的行为
- breeding other varieties (breeder's exemption") 为培育其他品种而开展的行为 (育种者豁免)

### Optional 非强制性

#### Farm-saved seed 农场留种

# OPTIONAL EXCEPTION TO THE BREEDER'S RIGHT

## 育种者权利的非强制性例外 (Farm-saved seed) (农场留种)

A Contracting Party may restrict the breeder's rights in order to permit farmers to use

- for propagating purposes on their own holdings
- the product of the harvest
- obtained on their own holdings from the protected variety
- within reasonable limits
- subject to safeguarding legitimate interests of the breeder

缔约方可以限制育种者的权利，以便允许农民在合理限制内，为了在其土地上繁殖品种，利用在其土地上从受保护品种得到的产品，但需保障育种者的合法权益

# OPTIONAL EXCEPTION TO THE BREEDER'S RIGHT

## 育种者权利的非强制性例外

Product of the harvest 收获产品

Product of the harvest may = propagating material 收获产品=繁殖材料

**small grain cereals 小粒谷物**



Product of the harvest ≠ propagating material 收获产品≠繁殖材料

**fruit, ornamentals and vegetables 水果、观赏作物和蔬菜**







# Preview 内容前瞻

1. Recent developments in UPOV 国际植物新品种保护联盟最新进展
2. Key provisions of the 1991 Act of the UPOV Convention 《国际植物新品种保护公约》1991年文本的重要条款
3. What are the challenges and opportunities in encouraging investment in plant breeding? 鼓励投资植物育种面临何种挑战和机遇？





# 农民对新型/改良植物品种的需求和期望

## FARMERS' NEEDS AND EXPECTATIONS ON NEW IMPROVED PLANT VARIETIES

*Highlights from the WFO consultation  
and technical workshop*

**世界粮农组织调研与技术研讨会重点**

THE BIGGEST INDEPENDENT  
GLOBAL FARMERS' VOICE

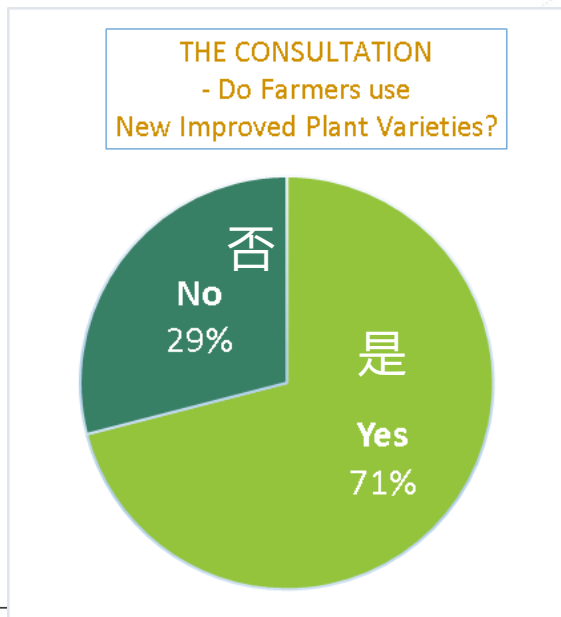


Funded by the European Union  
受欧盟资助



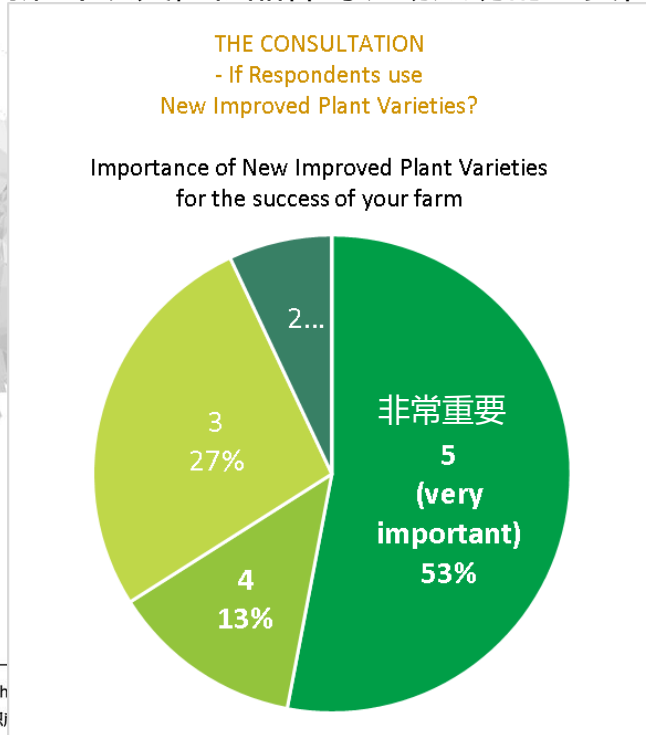
## 调研

— 农民是否使用新型/改良植物品种？

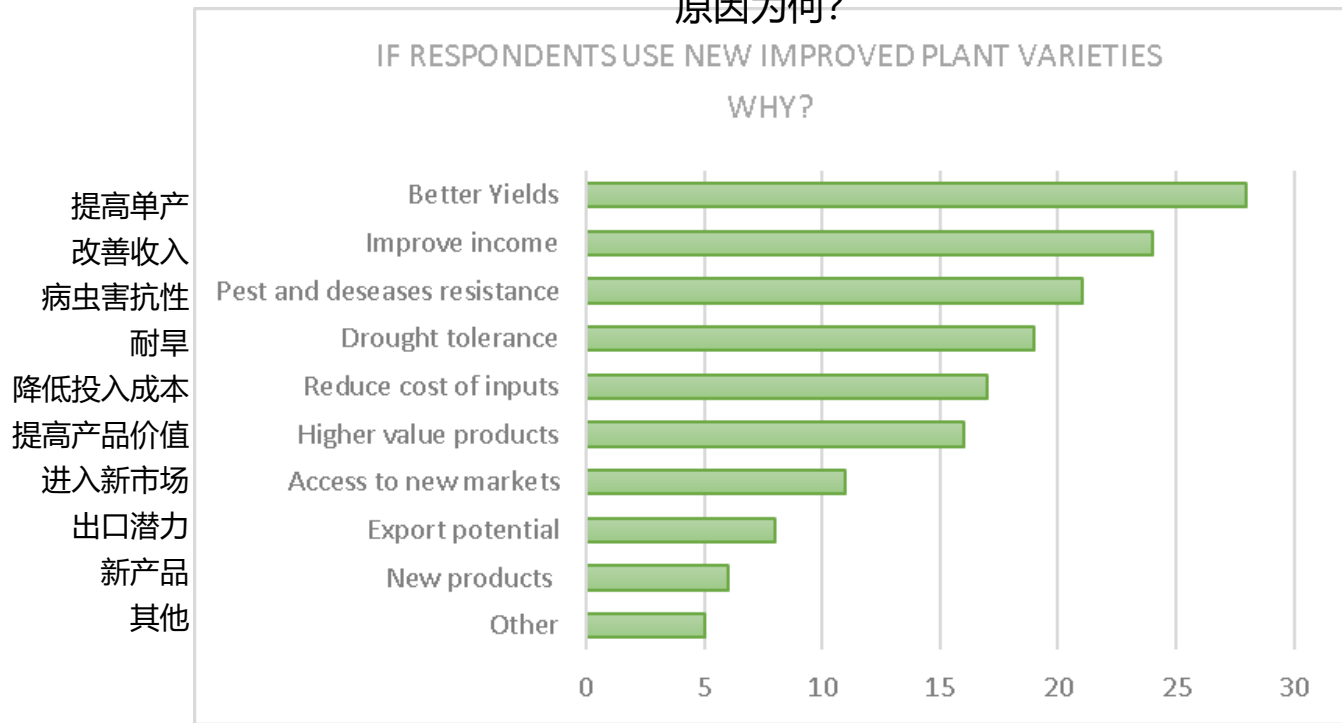


## 调研

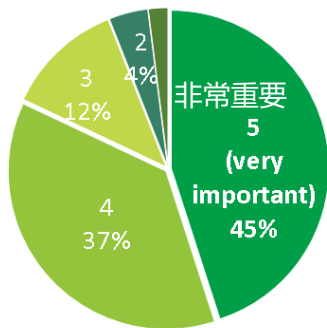
— 如果受访者使用新型/改良植物品种  
新型/改良植物品种对农场成功的重要性



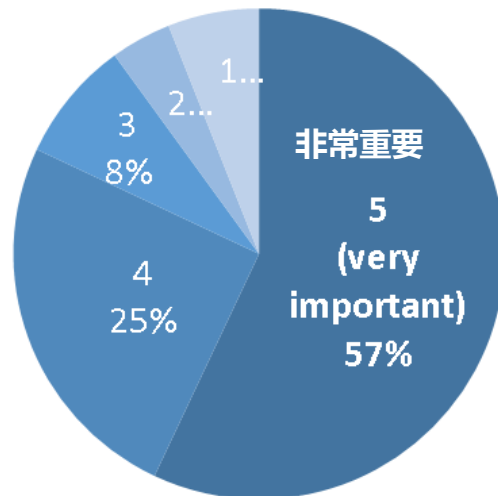
## 如果受访者使用新型/改良植物品种 原因为何？



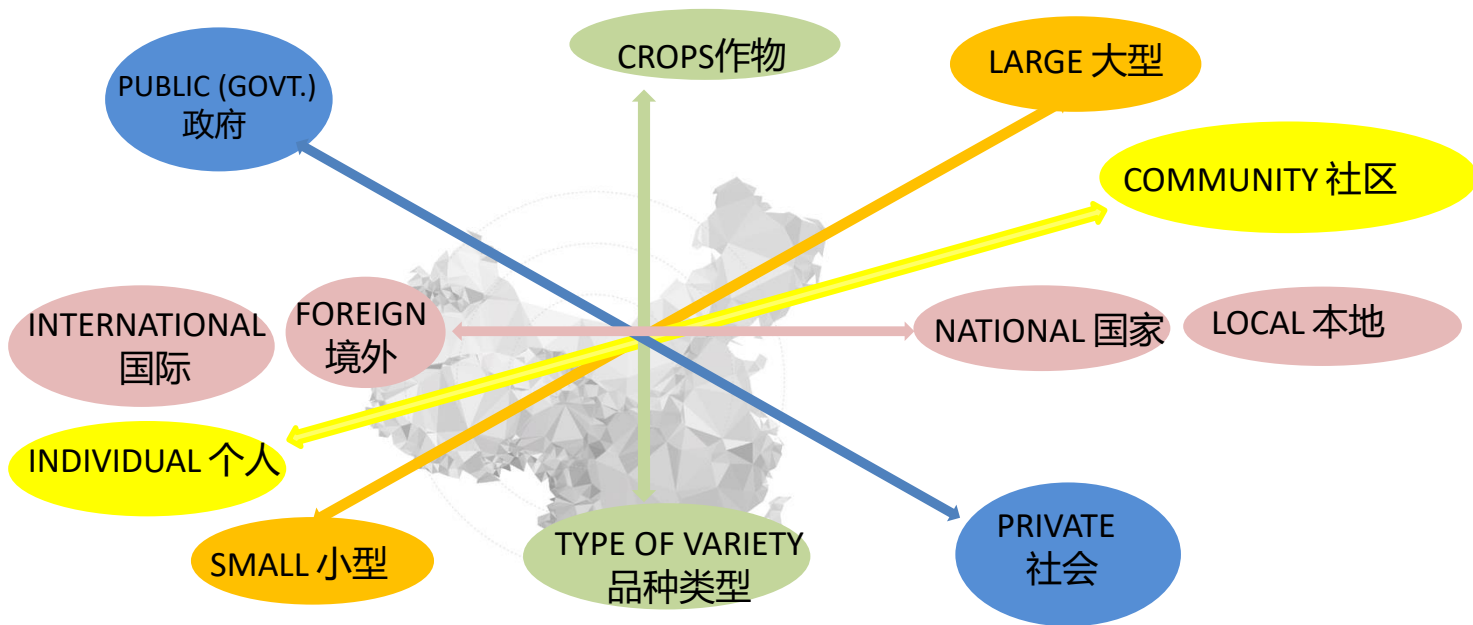
Consider New Plant Varieties important  
to **respond to climate change**  
新植物品种**对应对气候变化**是否重要



Consider New Plant Varieties important  
for the **sustainability of food systems**  
新植物品种**对食物体系可持续性**是否重要



# Different types of Breeders 不同类型的育种者

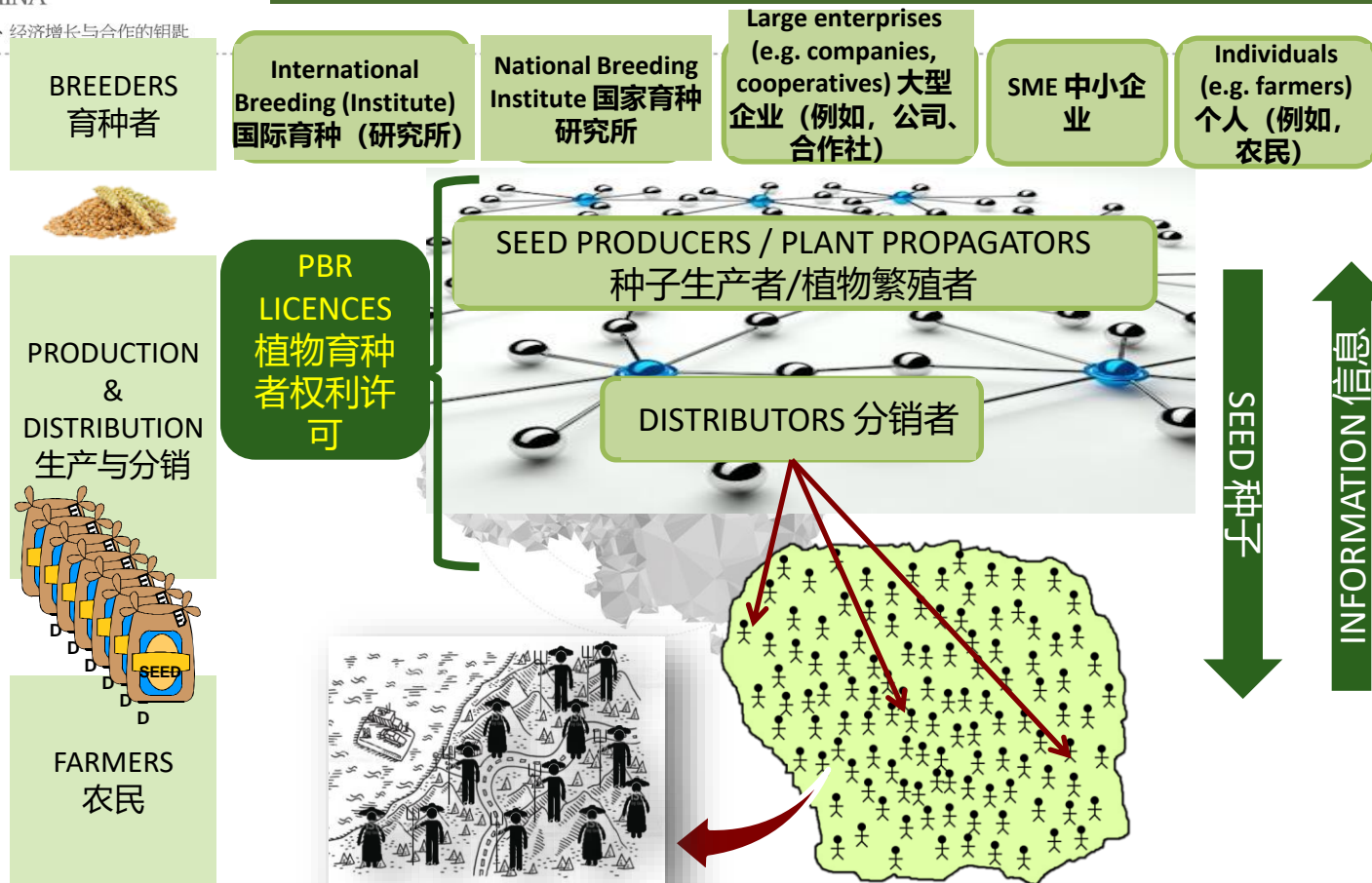


# What are the practical challenges for technology transfer and commercialization? 技术转让与商业化面临的实际挑战是什么? or... 或者.....

How to 如何:

- identify important variety **performance** and **quality** characteristics for farmers and consumers 为农民和消费者识别重要的品种**表现**和**质量**性状
- breed **new varieties** with those characteristics 培育具有上述性状的新品种
- deliver **good quality seed /propagating material** in a timely way 及时提供**高品质种子/繁殖材料**
- professional **distribution**, SMEs engagement in national, regional and international **trade** 推动专业**分销**以及中小企业参与国家、区域和国际**贸易**



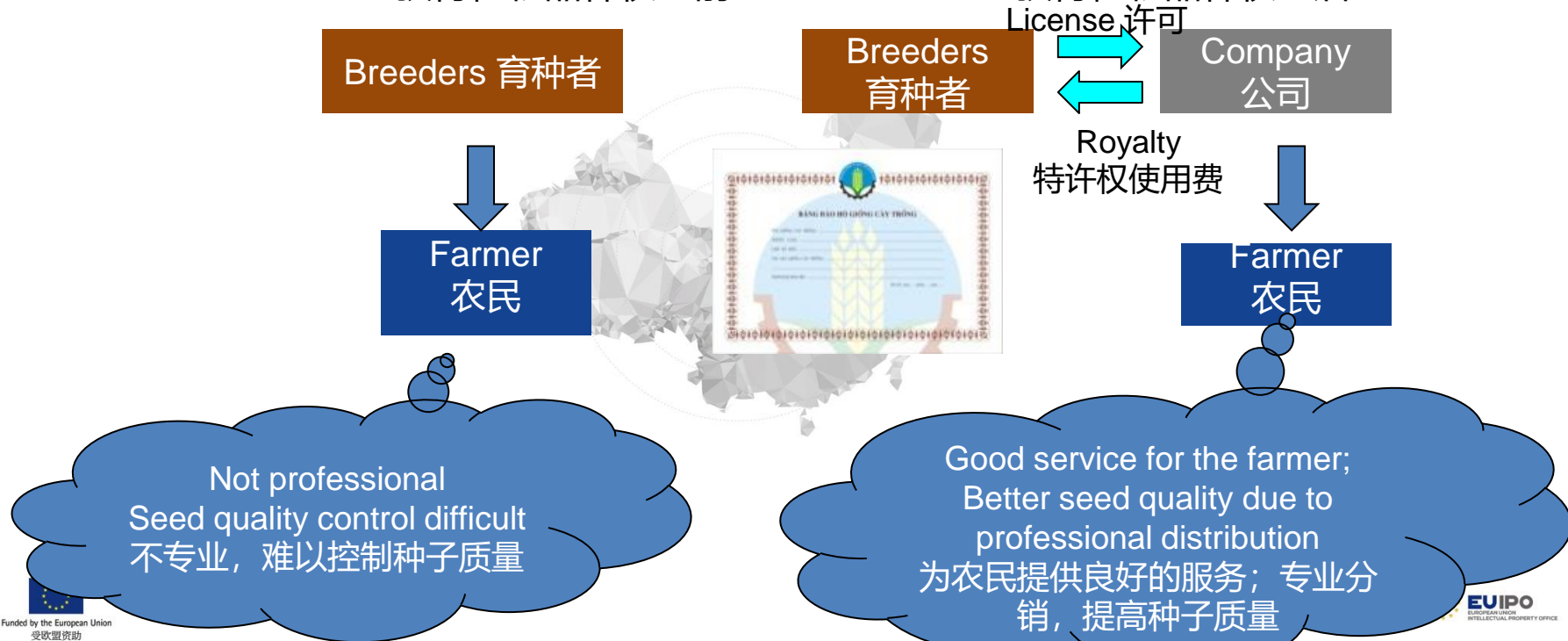


# Change the mode on the agriculture production (Viet Nam (Minh 2017)) 改变农业生产模式 (越南 2017)

## Seed distribution system of new varieties 新品种的种子分销体系

BEFORE PVP 获得植物品种权之前

AFTER PVP 获得植物品种权之后





Contact us Site map YouTube Twitter

ABOUT UPOV

MEMBERSHIP

UPOV SYSTEM

PVP DATA & STATISTICS

MEETINGS

NEWS

## MEETINGS

Home

Calendar of Meetings

Meeting Documents

Seminars & Symposia

Restricted area

Search Documents

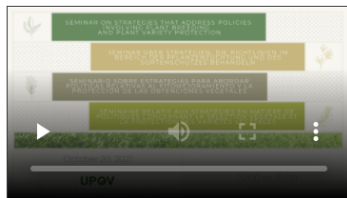
HOME » MEETINGS »

# Seminar on strategies that address policies involving plant breeding and plant variety protection (UPOV/SEM/GE/2/21) 关于植物育种和植物品种保护相关政策应对策略的研讨会

October 20, 2021 (Geneva, Switzerland)

[Meetings by Topic](#) » [Seminars & Symposia](#)

[UPOV/SEM/GE/21](#) >> [UPOV/SEM/GE/2/21](#)



Download all documents: [EN](#) [FR](#) [ES](#) [DE](#)



Funded by the European Union  
受欧盟资助

