

TGP/5: Section 11/2 Draft 1**Original:** English**Date:** August 31, 2026**DRAFT
(REVISION)**

Associated Document to the
General Introduction to the Examination of Distinctness, Uniformity and Stability
and the Development of Harmonized Descriptions of New Varieties of Plants (document TG/1/3)

DOCUMENT TGP/5**EXPERIENCE AND COOPERATION IN DUS TESTING****Section 11:****Examples of Policies and Contracts for Material Submitted by the Breeder**

Document prepared by the Office of the Union

to be considered by

the Technical Committee, the Administrative and Legal Committee, and the Council in 2026

Disclaimer: this document does not represent UPOV policies or guidance

Note for Draft version

Annex II of this draft contains an updated version of the “CPVO policy on the status of plant material submitted for DUS testing purposes”.

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1. BACKGROUND

1.1 Document TGP/4/1 "Constitution and Maintenance of Variety Collections", Section 3.1.2.2.2, explains that "[f]or the purposes of the examination of DUS, UPOV encourages cooperation between variety collectors (see Section 3.2) including, in particular, the exchange of information and living plant material for the examination of distinctness. However, in the particular case of parent lines submitted as a part of the examination of a candidate hybrid variety, living plant material should only be made available to other variety collectors in such a way that the legitimate interests of the breeder would be safeguarded. Examples of policies and contracts for material submitted by the breeder are provided in document TGP/5 'Experience and Cooperation in DUS Testing' (document TGP/5)."

1.2 Furthermore, the UPOV "Model Administrative Agreement for International Cooperation in the Testing of Varieties" (document TGP/5 "Experience and Cooperation in DUS Testing", Section 1) states that:

"Article 4

"(1) The Authorities shall take all necessary steps to safeguard the rights of the applicant.

"(2) Except with the specific authorization of the Receiving Authority and the applicant, the Executing Authority shall refrain from passing on to a third person any material of the varieties for which testing has been requested.

"(3) Access to the documents and the test plots shall be given only to:

"(i) the Receiving Authority, the applicant and any duly authorized person;

"(ii) the necessary staff of the institution that carries out the testing and special experts called in who are bound to secrecy in public service. Those special experts shall have access to the formulae of hybrid varieties only if it is strictly necessary and if the applicant does not object.

"This paragraph does not exclude general access to test plots by visitors, provided due regard is had to paragraph (1) above.

"(4) If another authority is a Receiving Authority under a similar agreement, access may be granted in accordance with the rules applicable under that agreement."

1.3 This document provides some examples of the policies of authorities to ensure that the legitimate interests of the breeder are safeguarded.

2. EXAMPLES OF POLICIES AND CONTRACTS FOR MATERIAL SUBMITTED BY THE BREEDER

2.1 Australia

Annex I to this document presents an example of a contract between *Seminis Vegetable Seeds, Inc.* and *IP Australia*.

2.2 European Union

Annex II to this document presents the policy of the Community Plant Variety Office (CPVO) of the European Union with regard to the status of plant material submitted for DUS testing in the framework of applications for Community Plant Variety Rights.

[Annexes follow]

ANNEX I

EXAMPLE CONTRACT BETWEEN
SEMINIS VEGETABLE SEEDS, INC. AND IP AUSTRALIA

CONDITIONS ON PROVISION OF PLANT MATERIAL

The applicant *Seminis Vegetable Seeds, Inc.* has attached the following conditions to the filing of the underlying application for Australian Plant Breeders Rights of a proprietary parental line of the applicant.

It concerns the application of:

Species :

Variety denomination or breeder's reference :

1. The applicant does not agree that any material of the parent line has to be released as a result of Section 19 of the Australian PBR law (1994) and hereby invokes the exemption under subsection 19(11) in which is stated that no material of the variety has to be released if the variety has no direct use as a consumer product.

The candidate line is a parent line which is only used for the production of other (hybrid) varieties. The applicant herewith certifies that the candidate line will NOT be sold AS SUCH on the market and that the line will NOT be used in any other way as a consumer product.

2. The applicant does not agree that any material of the candidate parent line is tested by a Qualified Person (QP) or other party with an interest in vegetable breeding, unless agreed upon by the applicant. Material of the parent lines can only be tested by a QP who is not involved in any way in vegetable breeding. Prior to the testing of the candidate line, the applicant needs to be informed of the identity of the QP, and will be requested to give his consent.

3. In the course of the examination, or after granting the PBR certificate, the applicant does not agree that any material of the parent line is exchanged between examining authorities and/or QP's without the applicants authorization.

4. In case the applicants parent line appears to be (one of) the most similar variety(ies) of a newer application of a third party, the applicant can only agree to the provision of material of applicants parent line if conditions no. 2 and no. 3 are met.

5. Upon expiry or withdrawal of the PBR certificate, or in case the application is withdrawn or rejected, all material of applicants parent line should be destroyed or sent back to the applicant.

These conditions have been discussed on several occasions with Mr. Doug Waterhouse, Registrar of the Australian PBR Office.

We herewith request the Australian PBR office to acknowledge in writing the acceptance of these conditions.

Signature:

Date:

[Annex II follows]

ANNEX II

CPVO POLICY ON THE STATUS OF PLANT MATERIAL
SUBMITTED FOR DUS TESTING PURPOSES

The aim of this document is to make transparent the policy of the CPVO concerning material sent for DUS testing in the framework of Community Plant Variety Right applications. It provides guidance for the implementation of article 88.4 of Council Regulation (EC) 2100/94 as well as article 13.3 of Commission Regulation (EC) No 874/2009. It will also contribute to a coherent practice by all entrusted examination offices in the CPVO. This will permit breeders to make an informed decision before sending material for testing. It is not the competence of the CPVO to decide what examination offices may do in relation to material submitted in the framework of a national PVR application or for national listing purposes. Accordingly, the CPVO cannot assure breeders that the below policy has been applied when the CPVO takes over reports from tests which has been carried out or is in the process of being carried out. The CPVO would nevertheless urge examination offices to follow the same principles when testing varieties for purposes other than in the framework of Community Plant Variety Right applications.

The policy does not apply to any examination offices other than examination offices entrusted by the Administrative Council of the CPVO for the same given species (hereinafter "Examination Office"). Accordingly, when the below mentioned policy refers to a transfer of material between two Examination Offices, this relates only to material of a given species that both the sending and receiving Examination Offices are entrusted to test by the Administrative Council of the CPVO.

Reference to "material" in this policy also applies to DNA samples taken by an Examination Office from plant material submitted to it for DUS purposes.

1. What should an Examination Office do with material if the application is withdrawn or rejected?

- 1.1 The Examination Office should either destroy or send back the material to the applicant.
- 1.2 If the variety is of common knowledge, the Examination Office may keep the material in its reference collection.

2. May an Examination Office send material...

2.1 To another Examination Office?

- 2.1.1 On request the Examination Office should send material to another Examination Office.
- 2.1.2 If the material concerned consists of parent lines or would disclose information on hybrid formulas, the Examination Office should inform the person entitled that the material has been sent to another Examination Office.
- 2.1.3 The Examination Office shall not use the material received from another Examination Office for any other purposes than for DUS tests or R&D projects between Examination Offices only aiming to improve DUS testing.

If the R&D projects aiming to improve DUS testing involve any non-entrusted examination office or any third party, consent of the title holder is required. The provisions on confidentiality and conflicts of interest in the Designation Agreement between the CPVO and the Examination Office shall apply and be reflected in the consortium agreement signed by the partners of the R&D projects.

- 2.1.4 If the material is used for any other purposes than those mentioned under 2.1.1 - 2.1.3, consent of the title holder is required. In that case also, the provisions on confidentiality and conflicts of interest in the Designation Agreement between the CPVO and the Examination Office shall apply.

2.2 To a non-entrusted examination office or a certification authority or any other entity?

- 2.2.1 On request, the Examination Office may send material to another non-entrusted examination office only if consent from the person entitled has been obtained and delivered (or referred to) by this other non-entrusted examination office.

2.2.2 The Examination Office may provide material to a certification authority on request only if consent has been obtained from the person entitled and delivered (or referred to) by the certification authority.

2.2.3 Furthermore, the Examination Office may provide material to any other entity only if consent from the person entitled has been obtained and delivered (or referred to) by this other entity.

3. What may the Examination Office do with the material after the variety has been granted a Community PVR?

3.1 If the Examination Office does not keep a living reference collection the material shall be destroyed or sent back to the applicant.

3.2 If the Examination Office keeps a living reference collection including DNA samples the material should be kept by the Examination Office.

3.3 If the material is kept, the Examination Office may, on request, transfer material to another Examination Office or to a non-entrusted examination office on the same conditions as provided for in Section 2 above.

4. After the Community Plant Variety Expires

4.1 Material kept in a reference collection should be kept upon expiry of a Community plant variety right.

DECLARATION BY THE CPVO WHEN RECEIVING APPLICATIONS
WHEREBY PARENTAL LINES WILL BE SUBJECT TO A DUS TEST

1. For the purpose of this declaration, “sample” means the seed or other propagating material of parental lines transferred to the examination office as well as any progeny derived there from and any material in the form of plant, plant part or component of a sample.
2. The CPVO hereby acknowledges receipt of the application. The CPVO will appoint an examination office within the CPVO network for the technical assessment of the variety that is the object of this application. The CPVO will ask you to provide samples to be sent for testing to the mentioned examination office.
3. You will be informed if the material sent by you is further transferred to another examination office within the CPVO network. The material will not be sent to an examination office outside the CPVO network without your written consent.
4. The CPVO only allows samples to be used by examination offices for DUS testing.
5. The CPVO only allows examination offices to undertake the DUS test at the examination office's own premises or premises authorised by the CPVO.
6. The CPVO only allows examination office personnel directly involved in performing the DUS test shall have access to samples and evaluation data.

[End of Annex II and of Section 11]