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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Forty-Eighth Session
Geneva, October 20 and 21, 2003

**RECOMMENDATIONS TO ENSURE THE INDEPENDENCE
OF THOSE DUS EXAMINATION CENTERS WHICH HAVE,
OR HAVE LINKS TO, BREEDING ACTIVITIES**

Document prepared by the Office of the Union

1. At its forty-sixth session on October 21 and 22, 2002, the Administrative and Legal Committee (hereinafter referred to as "the CAJ") identified certain issues concerning the transfer of material for examination of distinctness, uniformity and stability (DUS) which require further attention by the CAJ. In particular, it was suggested that the CAJ might consider the development of recommendations to ensure the independence of those DUS examination centers which have, or have links to, breeding activities (see paragraph 38 of document CAJ/46/8 Rev., and paragraphs 1 to 3 of document CAJ/47/4).
2. Article 12 of the 1991 Act of the International Convention for the Protection of New Varieties of Plants (1991 Act) provides that "... 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, ..." This establishes that the authority may conduct growing trials, or other tests, itself ("Official Testing") or, alternatively, the authority may arrange for other parties to conduct the growing trials or other tests, e.g. an independent DUS examination center ("Center") or the breeders themselves. Nevertheless, the involvement of the Center is always under the control of the authority and will always result in a decision being taken by the authority.

3. In the policy of out-sourcing that an authority may pursue, it should be a guiding principle that the Centers that may be entrusted to undertake examination activities should follow the requirements for independence, as appropriate for a public service. In order to assist in this objective, draft recommendations have been prepared in the Annex to this document.

4. The CAJ is invited to consider and comment on the contents of this document and on the Draft Recommendations contained in the Annex to this document.

[Annex follows]

DRAFT RECOMMENDATIONS TO ENSURE THE INDEPENDENCE
OF THOSE DUS EXAMINATION CENTERS WHICH HAVE,
OR HAVE LINKS TO, BREEDING ACTIVITIES

Draft Recommendation 1

The Authority¹ may require the Center² entrusted with a particular examination activity to declare, to the Authority, interests and/or activities that may raise a possible conflict of interest with the particular examination activity. In particular, these interests could include breeding activities of the Center, or the Center being the applicant or holder of breeders' rights or patents in what is considered to be a related area.

Draft Recommendation 2

In relation to the transfer of material for a particular examination activity, the Center should observe the conditions established in the "UPOV Model Agreement on the Transfer of Material from the Breeder to the Examination Authority"³.

Draft Recommendation 3

On the basis of a declaration (see draft Recommendation 1), the Authority may decide to:

- confirm the work;
- or confirm the work subject to the acceptance of additional conditions;
- or withdraw the request for the particular examination activity related to the conflict of interest.

¹ The term "Authority" refers to the Authority entrusted with the task of granting breeders' rights (Article 30(1)(ii) of the 1991 Act).

² The term "Center" refers to the Center which has been entrusted by the Authority to undertake the growing of the variety or the carrying out of other necessary tests for the purposes of DUS examination (Article 12 of the 1991 Act).

³ The content of a final UPOV Model Agreement on the transfer of material from the breeder to the examination authority is still unknown as it would depend on the results of the deliberations of the CAJ in relation to the Draft Model Agreement based on the proposal of the International Seed Federation (ISF) (see document CAJ/47/4).

Draft Recommendation 4

If the Authority has evaluated a declaration of interest and decides to confirm the work subject to additional conditions (see draft Recommendation 3), it can:

- (a) request the Center to adopt appropriate measures to ensure that:
- the members of staff involved in the examination activity are not involved with, or related to, the interest that has raised the conflict;
 - documents, information or material are treated in a confidential way;
 - activities concerning the examination entrusted by the Authority take place in a defined area not accessible for the staff involved with, or related to, the interest that has raised the conflict;
 - the staff involved in the examination activity have no personal interests that could affect the staff's objective and independent conduction of the examination;

or

(b) adopt measures to ensure that the examination activity is conducted in an appropriate manner. These measures may include:

- inviting public comment on the published details of the examination activity;
- verification of the examination activity, where appropriate, by a person employed or appointed by the Authority;

or

(c) adopt a combination of the above.

Draft Recommendation 5

In the interest of transparency, the Authority may consider it appropriate to make available, to the users of the plant variety protection system, the measures it has taken to ensure the independence of those DUS examination centers which have, or have links to, breeding activities.

[End of Annex and of document]