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**UPOV****CAJ/32/5 - TC/29/5****ORIGINAL : French****DATE : March 23, 1993****INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS****GENEVA****ADMINISTRATIVE AND  
LEGAL COMMITTEE****TECHNICAL COMMITTEE****Thirty-second Session****Twenty-ninth Session****Geneva, April 21 and 22, 1993****Geneva, April 21, 1993****UPOV MODEL ADMINISTRATIVE AGREEMENT FOR  
INTERNATIONAL COOPERATION IN THE TESTING OF VARIETIES**

Document prepared by the Office of the Union

1. At its thirty-first session, the Administrative and Legal Committee started revising the Model Administrative Agreement for International Cooperation in the Testing of Varieties (hereinafter referred to as "Model Agreement") as a result of its work on the question of fees in relation to cooperation in examination. It agreed not to limit revision to adjustment to the prior decisions taken on fees (or considerations), and took a number of decisions and made suggestions in preparation for the work to be done at this session (see paragraphs 8 to 10 of document CAJ/31/5).

2. The Annex to this document contains a draft revised version of the Model Agreement (right-hand pages), with explanations on the amendments made or proposed on the basis of previous discussions (left-hand pages).

[Annex follows]

## ANNEX

**OBSERVATIONS ON THE DRAFT (REVISED) MODEL ADMINISTRATIVE AGREEMENT FOR INTERNATIONAL COOPERATION IN THE TESTING OF VARIETIES****Preamble, Article 1 and Article 5**

1. At its thirty-first session, the Administrative and Legal Committee noted that the Model Agreement was currently limited to those cases where variety examination was carried out by an official service. It considered that it would be desirable to include provisions on other forms of examination, for example on cooperation in inspection of growing trials carried out by breeders.

2. The Model Agreement would thus have a new dimension, which makes a re-drafting of the preamble desirable. Its text should be finalized once the substantive provisions are known. The proposed text is based on the following considerations:

(i) It is desirable to mention at the outset--and in general terms--the rationale for cooperation in examination. Two reasons are proposed: the first is for internal use by the authorities, and the second is directed to the users of the protection system.

(ii) As in the current text, the 'centralization of testing' (or 'examination') is referred to. But the 'exchange of examination results' is no longer mentioned; the current text ("where applications in respect of one variety have been filed in more than one country, it is desirable that the testing for distinctness, homogeneity and stability be carried out by only one authority") is no longer relevant in a Union of States from very different climatic zones.

(iii) A reference to the Model Agreement has been added.

(iv) In view of the emphasis placed on plant variety protection and UPOV in the first and fifth preambular paragraphs, it is desirable to add a reference to the national lists.

3. It is proposed to set out in Article 1 all forms of cooperation covered by the Agreement (in the current text, the system of 'exchange of examination results' is referred to in Article 5, which creates the need for, in particular, a statement that previous Articles are applicable by analogy; Article 5 will thus be simplified). Four forms are mentioned in the draft revised Model Agreement:

(i) the 'centralization of examination';

(ii) the 'sharing of tasks,' which would be further defined in the relevant annex (see below);

(iii) the delegation of the supervisory role.

(iv) the 'exchange of examination results' (and supervision results);

4. This list is not exhaustive but reflects the current and envisaged forms of examination. The 'sharing of tasks' may consist in the fact that the examination would be undertaken simultaneously in two States (the States party to the bilateral agreement, in which case there would be one annex only, or in one of those States and a third one). For instance, the examination of ryegrass

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- CONSCIOUS of the importance attaching to cooperation between the members of the International Union for the Protection of New Varieties of Plants (UPOV) in the examination of the distinctness, uniformity and stability of the varieties that are the subject of an application for a breeder's right, as a means of optimizing the functioning of their plant variety protection systems,
- CONSIDERING that cooperation may take various forms depending on the special biological, technical and economic features of each botanical taxon,
- CONVINCED that the centralization of the examination and the standardization of the technical procedures brought about by other forms of cooperation have a beneficial effect on international trade in the field of plant varieties and seeds,
- CONSIDERING that the parties are desirous of extending cooperation to areas related to the protection of new plant varieties, in particular to the administration of the lists of varieties admitted to trade,
- CONSIDERING that the parties are also desirous to conclude comparable agreements with other members of the Union, and that it is therefore necessary to base this Agreement on the Model Administrative Agreement for International Cooperation in the Testing of Varieties drawn up by UPOV and adopted by its Council at the ... ordinary session, on [date],
- CONSIDERING that any agreement in this field must necessarily be reviewed, evaluated and adjusted periodically,

Party A

and

Party B

have agreed as follows:

**Article 1**

(1) Authority A shall provide the following services to Authority B in respect of the varieties which are the subject of an application for a breeder's right filed with Authority B in accordance with the International Convention for the Protection of New Varieties of Plants, or for entry in the national list of varieties admitted to trade:

**Observations on the Draft (Revised) Model Administrative Agreement**

is undertaken (in fact by the breeders on the basis of a cooperative scheme) at one location in Australia and at another in New Zealand (see Annex V to document C/26/11). It may also consist in the fact that one of the authorities would undertake a special field or laboratory test (this form of cooperation may become quite commonplace in future in relation to the biochemical and molecular techniques).

5. It is to be noted that there could be a single annex or separate annexes for the 'exchange of examination results.'

6. France envisages to introduce an examination procedure for maize varieties which would combine a breeder's test in the first year and a test by an authority in the second. Such a system could be covered either by paragraph (1)(ii) in isolation--by means of a description of the examination system under Article 6-- , or by the combination of subparagraphs (ii) and (iii) of paragraph (1).

7. In view of the extended field of application of the Model Agreement, it is proposed to use definitions.

**Article 2**

8. At its thirty-first session, the Administrative and Legal Committee was informed of the fact that Article 2 would tempt the Technical Working Parties to limit the number of characteristics bearing an asterisk in the Test Guidelines--meaning that the characteristic would have to be examined for all varieties and would be shown in all variety descriptions--in order to limit the obligations deriving from a cooperation agreement. It was suggested that "except where otherwise agreed by the authorities under Article 6" be added to the end of the first sentence of Article 2. That proposal met with objections of various types: the role and significance of the Guidelines should not be weakened, but, on the contrary, strengthened; Article 6 already provided a possibility of detailing or redefining the scope of trials; the proposed addition, just as an extension of Article 6 through a reference to the characteristics to be examined, did not resolve the problem. The Committee finally decided to resume examination of the matter at this session.

9. The text appearing overleaf is identical to that of the current Model Agreement, except for the reference to the species which has been put into the singular.

**Article 3**

10. Paragraph (1) has been expanded in view of the broader scope of application of the Model Agreement. Paragraphs (2) and (4) have been simplified as a result of the definitions given in Article 1(3).

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(i) for the genera and species whose list is given in Annex A.1, it shall undertake the examination for distinctness, uniformity and stability of the variety concerned;

(ii) for the genera and species whose list is given in Annex A.2 [or A.2/B.2], it shall undertake the part of the examination specified in the said Annex;

(iii) for the genera and species whose list is given in Annex A.3, it shall supervise the examination of the variety, where such examination is undertaken on its territory by the applicant, or by a third party on his behalf, and evaluate the results thereof.

(iii) for the genera and species whose list is given in Annex A.4 [or A.4/B.4], it shall supply the results of the examination or supervision which it has undertaken or agreed to undertake on the basis of a prior application;

(2) Authority B shall, under the same conditions, provide the aforementioned services to Authority A, for the genera and species whose list is given in Annexes B.1, B.2 [or A.2/B.2], B.3 and B.4 [or A.4/B.4], respectively.

3) For the purposes of this Agreement:

(i) "Executing Authority" means the Authority which provides one of the services specified in subparagraphs (i) to (iv) of paragraph (1) above;

(ii) "Receiving Authority" means the Authority to which one of the aforementioned services is provided.

**Article 2**

Where the Council of UPOV has adopted Guidelines for the conduct of the testing of a species subject to this Agreement, the examination shall be conducted according to those Guidelines. In the absence of such Guidelines the Authorities shall adopt the testing methods by mutual consent before this Agreement is applied to the species in question.

**Article 3**

(1) For each variety the Executing Authority shall submit to the Receiving Authority, as the case may be:

(i) the reports relating to each testing period and a final examination report;

(ii) the reports relating to the part of the examination entrusted to it;

(iii) the reports relating to the supervision of the examination undertaken by the applicant, or by a third party on his behalf, and to the evaluation of the results thereof, and a final examination report.

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11. The Committees may wish to consider the possibility of adding the following sentence to paragraph (2): "Such results, opinion and description shall also be given in relation to a partial report that may give rise to them." That sentence would be relevant, for instance, in the case of certain biochemical and molecular tests.

12. Paragraph (5) results from a decision taken at the thirty-first session of the Administrative and Legal Committee. It has been supplemented by a reference to the partial reports which the receiving authority should, in principle, take duly into account.

**Article 4**

13. The amendments made in this Article are as follows: the word "breeder" has been replaced in paragraph (1) by "applicant," which is used in the following paragraph; the decisions taken by the Administrative and Legal Committee at its thirty-first session are reflected in paragraphs (2) and (3) (the involvement of third persons now requires the authorization of both the Receiving Authority and the applicant); the use of definitions has led to simplifications; the other authority has been redefined in paragraph (4) in view of the broader scope of application of the Model Agreement.

14. The Committees may wish to reconsider the following phrase of paragraph (2): "material of the varieties for which testing has been requested." A restrictive interpretation would limit the scope of application of the provision to the 'centralization of examination.' Too broad an interpretation (or formulation), extending in particular to the 'exchange of examination results,' is perhaps not desirable.

**Article 5**

15. Paragraphs (1), (3), (4) and (5) have been deleted since the principle of the 'exchange of examination results' is now mentioned in Article (1)(iv). The remaining paragraph refers to that Article to define its scope of application.

16. The current Model Agreement contains a provision whereby each authority may unilaterally declare that it would draw upon the 'exchange of examination results' in respect of applications for entry into the national list. This provision has not been retained in the draft. Should the Committees decide to maintain it, Article (1)(i) may have to be redrafted, the reference to the national list being deleted from its introductory phrase and a provision being inserted to specify the extent to which the Model Agreement applies to national listing.

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(2) The final examination report shall detail the results of the examination concerning the characteristics of the variety and shall state the opinion of the Executing Authority on the distinctness, uniformity and stability of the variety. When those requirements are considered to be fulfilled or when the Receiving Authority asks for it, a description of the variety shall be added to the report.

(3) Reports and descriptions shall be written in ... (language).

(4) Any emerging problems shall be notified immediately to the Receiving Authority.

(5) With respect to the distinctness, uniformity and stability criteria, the Receiving Authority shall decide on the application, in principle, on the basis of the final examination report, or with due regard being given to the partial reports of the Executing Authority. Where exceptional circumstances require it, the Receiving Authority may carry out supplementary tests and trials. If it chooses to do so, it shall inform the Executing Authority thereof.

**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 and the applicant, and any person duly authorized by both of them;

(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.

**Article 5**

Where, in the case of a service specified in Article 1(1)(iv) above, the prior application is rejected or withdrawn, the Authorities may agree on the continuation of the examination or supervision on behalf of the Receiving Authority.



**Observations on the Draft (Revised) Model Administrative Agreement****Article 6**

17. This Article is substantially unchanged.

**Article 7**

18. The former paragraphs (2) and (3) have been combined--in the reverse order: the new paragraph (2)(i) deals with the general case of 'exchange of examination results' (including supervision results, which is an innovation), and paragraph (2)(ii) with the special situation where the prior application has been rejected or withdrawn. The solution retained for this case is the one that was agreed upon at the thirty-first session of the Administrative and Legal Committee.

**Article 8**

19. This Article is unchanged.

**Article 9**

20. This Article is unchanged.

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**Article 6**

Practical details arising out of this Agreement--regarding in particular the provisions relating to the considerations, application forms, technical questionnaires and requirements as to propagating material, testing methods, exchange of reference samples, maintenance of reference collections and the presentation of the results--shall be settled between the authorities by correspondence.

**Article 7**

(1) The Receiving Authority shall pay to the Executing Authority the consideration agreed upon under Article 6.

(2)(i) In the case of a service specified in Article 1(1)(iv) above, an administrative consideration equivalent to 350 Swiss Francs or of an amount agreed upon by correspondence between the Authorities shall be charged.

(ii) Where the prior application has been rejected or withdrawn and where, pursuant to Article 5 above, the Authorities have agreed on the continuation of the examination or supervision on behalf of the Receiving Authority, the amount payable shall be equal to the additional cost resulting from the continuation of the examination or supervision.

(3) Payments shall be effected within three months of receipt of an invoice specifying their amount.

**Article 8**

Each Authority shall make available any information, facilities or services of experts that the other Authority may need additionally, on condition that the latter undertakes to pay the costs involved.

**Article 9**

(1) This Agreement shall enter into force on ... (date) [and shall replace the Agreement of ... (date) on cooperation in the examination of plant varieties].

(2) This Agreement and its Annexes may be amended by mutual agreement.

(3) Any party wishing to revoke this Agreement in whole or in part shall give the other party notice to that effect.

(4) Unless the parties agree otherwise, any such revocation shall take effect only after observance of two years' notice, completion of pending tests and transmittal of the relevant reports.

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