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## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

## Thirty-third Session

Geneva, October 27, 1993

UPOV MODEL ADMINISTRATIVE AGREEMENT FOR  
INTERNATIONAL COOPERATION IN THE TESTING OF VARIETIESDocument 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. The revision was continued at the subsequent session, which was also a joint meeting with the Technical Committee.

2. At that meeting, it was:

(i) proposed to amend the fourth recital of the preamble to place emphasis on the form that the cooperation agreements had to have in order to permit cooperation in areas neighboring on plant variety protection;

(ii) proposed to reintroduce a recital on the exchange of examination results but with a new wording;

(iii) noted that the German version of Article 1(1)(iii) and (iv) needed some adjustments;

(iv) decided to replace the phrase "person duly authorized by both of them" with "duly authorized person" in Article 4(3)(i).

(See paragraphs 23 to 25 and 27 of document CAJ/32/10-TC/29/9).

3. The Annex to this document contains a draft revised version of the Model Agreement which reflects the above points. The Committee is invited to express its views more specifically on the fourth and fifth recitals.

4. At the aforesaid meeting, it was asked whether there should be provisions in Article 1 to cover cases in which one bilateral agreement should be bracketed in favor of another; the view was expressed in reply that the Model Agreement should remain simple and that such cases should be settled, as they were at present, in a pragmatic way. It was also observed that the drawing up of a list of genera and species had the effect of making revision necessary every time cooperation was appropriate in a case not provided for; it was replied that, in the experience of States that had engaged in cooperation, agreements could be applied flexibly. (See paragraph 25 of document CAJ/32/10-TC/29/9).

5. The Committee may wish to reconsider those issues given that a "pragmatic" implementation of bilateral agreements might prove difficult, and even impossible, for some member States in the absence of an appropriate legal basis. The reconsideration could have the following aims:

(i) to amend Article 1(1) as follows:

"(1) Authority A shall provide the following services to Authority B, at the latter's request, in respect of the varieties..."

(ii) to insert the following provision into Article 1 (the present paragraph (3) would then become paragraph (4):

"(3) The authorities may agree, on an ad hoc basis, to apply this Agreement to a variety from a genus or species not listed in the relevant Annex."

[Annex follows]

## DRAFT

**MODEL ADMINISTRATIVE AGREEMENT FOR  
INTERNATIONAL COOPERATION IN THE TESTING OF VARIETIES**

- 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, where the centralization of the examination has not been achieved, it may be desirable that the examination of the distinctness, uniformity and stability of a variety being the subject of an application in more than one State be undertaken once only,<sup>1</sup>
- CONSIDERING that this Agreement must be conceived in such a way that it may also serve as the basis for cooperation in areas related to the protection of new plant varieties, in particular in the administration of the lists of varieties admitted to trade,<sup>2</sup>
- 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,

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<sup>1</sup> This recital did not appear in the previous draft. It reads as follows in the currently applicable text of the Model Agreement:

"- WHEREAS, 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."

<sup>2</sup> This recital was as follows in the previous draft:

"- 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."

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:

(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.

(iv) 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.

(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, 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.

**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.

**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.