

Administrative and Legal Committee**CAJ/77/2****Seventy-Seventh Session
Geneva, October 28, 2020****Original:** English
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REPORT ON DEVELOPMENTS IN THE TECHNICAL COMMITTEE*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance***EXECUTIVE SUMMARY**

1. The purpose of this document is to report on developments in the Technical Committee (TC) at its fifty-sixth session, held in Geneva on October 26 and 27, 2020, of relevance for matters to be considered by the Administrative and Legal Committee (CAJ) at its seventy-seventh session, to be held in Geneva on October 28, 2020.
2. The report of the TC is available in document TC/56/23 "Report".
3. The CAJ is invited to:
 - (a) note that the TC, at its fifty-fifth session, endorsed the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1;
 - (b) note the measures agreed by TC to overcome barriers that prevent international cooperation in DUS examination;
 - (c) consider whether to develop measures to address the following policy or legal barriers that prevent international cooperation in DUS examination:
 - (i) Requirement of formal agreement for cooperation;
 - (ii) Obligation for DUS examination to be conducted by the authority granting the rights;
 - (iii) Non-acceptance of breeder-based DUS test reports;
 - (iv) Wish from breeders to use (or not) existing DUS reports;
 - (d) to consider the proposal by the TC for developing guidance to encourage UPOV members, on a voluntary basis, to take-over DUS test reports when the applicants could not submit plant material due to phytosanitary or other related issues where acceptable to the UPOV members concerned; and
 - (e) note the other relevant developments at the fifty-sixth session of the Technical Committee, as reported in this document.

4. The structure of this document is as follows:

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ANNEX I: Program for the development of TGP documents

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5. The following abbreviations are used in this document:

BMT:	Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular
CAJ:	Administrative and Legal Committee
TC:	Technical Committee
TC-EDC:	Enlarged Editorial Committee
TWA:	Technical Working Party for Agricultural Crops
TWC:	Technical Working Party on Automation and Computer Programs
TWF:	Technical Working Party for Fruit Crops
TWO:	Technical Working Party for Ornamental Plants and Forest Trees
TWV:	Technical Working Party for Vegetables
TWPs:	Technical Working Parties

AGENDA ITEM 6: DEVELOPMENT OF GUIDANCE AND INFORMATION MATERIALS (DOCUMENT CAJ/77/3 REV.)

Matters for adoption by the Council in 2020

6. The TC noted that document TC/56/4 Rev. had been considered by correspondence.

TGP Documents

7. The TC noted that decisions on document TC/56/4 Rev. had been taken and the following documents had been approved by the TC by correspondence as provided in document TC/56/22, paragraphs 19 to 61 and 67 to 71:

- (a) Document TGP/5: Experience and Cooperation in DUS Testing; Section 6: UPOV Report on Technical Examination and UPOV Variety Description (Revision) (document TGP/5: Section 6/3 Draft 1)
- (b) Document TGP/7: Development of Test Guidelines (Revision) (document TGP/7/8 Draft 1)
- (c) Document TGP/14: Glossary of Terms Used in UPOV Documents (Revision) (document TGP/14/5 Draft 1)
- (d) Document TGP/15: Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS) (Revision) (document TGP/15/3 Draft 1)
- (e) Document TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/12 Draft 1)

Information Materials

- (f) Document UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/9 Draft 2)
- (g) Document UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/7 Draft 1)

8. The TC noted the report from the Office of the Union that the TGP documents and information materials above had been adopted by the Council on October 25, 2020, in the procedure by correspondence (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraphs 16 to 24).

Possible future revisions of guidance and information materials

9. The TC considered document TC/56/14

Revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention" (document UPOV/EXN/DEN)

10. The TC noted that it had considered document TC/56/4 Rev. by correspondence.

11. The TC noted that the TC had endorsed the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1, are set out in document TC/56/4 Rev..

12. The TC noted that draft document UPOV/EXN/DEN/1 would be considered by the CAJ, at its session to be held on October 28, 2020.

13. The TC noted that matters concerning a possible future revision of document UPOV/INF/12 were reported in document TC/56/INF/7 "Variety denominations."

14. The TC noted the report from the Office of the Union that the CAJ had received comments in reply to Circular E-20/120 of August 21, 2020, on document UPOV/EXN/DEN/1 Draft 4 that were not of a straightforward nature and, therefore, document UPOV/EXN/DEN/1 Draft 4 was not included in Circular E-20/160 of September 25, 2020, for approval by correspondence and would be presented for consideration by the CAJ at its virtual session on October 28, 2020, in conjunction with the comments received (see document CAJ/77/9 "Outcome of consideration of documents by correspondence", paragraph 34).

15. The CAJ is invited to note that the TC, at its fifty-fifth session, endorsed the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1.

Review of document UPOV/INF/17 “Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (‘BMT Guidelines’)”

16. The TC considered document TC/56/13 and the proposed revision of document UPOV/INF/17 on the basis of document UPOV/INF/17/2 Draft 4.

17. The TC agreed to request the TWPs to consider a draft revision of document UPOV/INF/17/1 (document UPOV/INF/17/2 Draft 5) at their sessions in 2021.

18. The TC noted that a draft revision of document UPOV/INF/17 (UPOV/INF/17/2 Draft 6) would be proposed for adoption by the Council, at its fifty-fifth session, to be held on October 29, 2021, subject to agreement by the TC at its fifty seventh session and the CAJ, at its seventy eighth session, to be held in 2021.

Development of document UPOV/INF/23 “UPOV Code System”

19. The TC noted the report from the Office of the Union that the CAJ, on October 25, 2020, in the procedure by correspondence, had approved the “Guide to the UPOV Code System”, on the basis of document UPOV/INF/23/1 Draft 1, and proposed that the TC consider a new draft of document UPOV/INF/23/1 “Guide to the UPOV Code System” in 2021 (see document CAJ/77/9 “Outcome of consideration of documents by correspondence”, paragraphs 26 and 27).

Tentative program for the development of guidance and information materials

20. The TC, at its fifty-fifth session, agreed to extend the coverage of document “TGP Documents” to cover all relevant information materials, to be presented in future sessions of the Technical Committee (see document TC/55/25 Corr. “Report”, paragraph 177).

21. The Annexes to this document present the program for the development of guidance and information materials, as amended on the basis of the comments by the TC, at its fifty-sixth session.

AGENDA ITEM 6: PLUTO Plant Variety Database (document CAJ/77/8)

22. The TC considered document TC/56/8 by correspondence. The TC noted that decisions on document TC/56/8 had been taken by the TC by correspondence as provided in document TC/56/22, paragraphs 50 to 53, and reproduced below:

“50. The TC considered document TC/56/8.

“51. The TC agreed to request the Office of the Union to prepare a draft revised “Guide to the UPOV code system” on the basis of the proposal set out in document TC/56/8, paragraphs 15 to 26, for consideration by the TC and CAJ, at their sessions in 2021 and, subject to agreement by CAJ, present the draft revised “Guide to the UPOV code system” (document UPOV/INF/23) for adoption by the Council in 2021.

“52. The TC agreed to request the Office of the Union to invite comments by the TWPs at their sessions in 2021 on the draft revised “Guide to the UPOV code system” (document UPOV/INF/23) on the basis of the proposal set out document TC/56/8, paragraphs 15 to 26, to assist the TC in its consideration of the draft.

“53. The TC agreed to request the Office of the Union to present proposals to address the taxonomical reclassification of *Beta vulgaris* ssp. *vulgaris*, *Brassica oleracea*, *Citrus* and *Zea mays*, in conjunction with a proposal to revise the “Guide to the UPOV code system” (document UPOV/INF/23) for consideration by the TWPs and the TC at their sessions in 2021.”

AGENDA ITEM 12: MATTERS FOR INFORMATION

Molecular techniques (document CAJ/77/INF/5)

23. The TC considered document TC/56/7.

Cooperation between international organizations

Inventory on the use of molecular marker techniques, by crop

24. The TC noted that on October 16, 2020, the Office of the Union had issued Circular E-20/189 inviting members to complete the survey on the use of molecular marker techniques, per crop, by December 15, 2020.

25. The TC noted that the results of the survey would be presented to the Technical Committee, at its fifty-seventh session, to be held in 2021.

Lists of possible joint initiatives with OECD and ISTA in relation to molecular techniques

26. The TC agreed that another joint OECD, UPOV, ISTA workshop on molecular techniques should be organized in the near future.

27. The TC recalled that, at its fifty-fifth session¹, it had noted that there were no definitions on biochemical and molecular techniques in UPOV and had agreed that information from the survey on the techniques could help to clarify techniques that were considered to be biochemical or molecular. The TC agreed that joint OECD, UPOV, ISTA workshop on molecular techniques would be an opportunity to discuss the definitions used in molecular techniques with a view to their harmonization.

Joint document explaining the principal features of the systems of OECD, UPOV and ISTA

28. The TC noted that developments on a joint document explaining the principal features of the systems of OECD, UPOV and ISTA were reported to the TC at its fifty-sixth session, with the aim of proposing a draft joint document explaining the principal features of the systems of OECD, UPOV and ISTA for consideration by the TC at its fifty-seventh session.

29. The TC noted that the joint document would provide information on the status of molecular techniques for the purposes of each organization. The TC recalled that UPOV provided guidance for harmonized use of molecular techniques in documents UPOV/INF/17, TGP/15 and Test Guidelines.

Session to facilitate cooperation in relation to the use of molecular techniques

30. The TC noted the information provided by participants at the nineteenth session of the BMT on their work on biochemical and molecular techniques and areas for cooperation, as reproduced in the Annex to document TC/56/7.

31. The TC agreed to invite the TWPs and BMT to form discussion groups to allow participants to exchange information on their work on biochemical and molecular techniques and explore areas for cooperation.

32. The TC noted that the BMT had discussed “confidentiality, ownership and access to molecular data” at its nineteenth session.

OTHER MATTERS FOR CONSIDERATION BY THE CAJ

Cooperation in examination

33. The TC, at its fifty-fifth¹ session, noted that the TWPs, at their sessions in 2019, had formed discussion groups to discuss the technical concerns that prevent cooperation in DUS examination and to propose how to overcome the technical concerns raised.

34. The TC considered the outcomes of discussions held at the TWO, TWV, TWF, TWA and TWC, at their sessions in 2019, as set out in document TC/55/10, paragraphs 19 to 26, reproduced as follows:

¹ held in Geneva, on October 28 and 29, 2019

Technical and related administrative issues:

- Sufficient experience for conducting DUS examination of a particular crop / quality of examination performed
- Suitable variety collection
- Information on varieties included in DUS examination
- Different descriptions due to environmental influence on expression of characteristics
- Lack of assessment of or divergent protocols and nomenclature for disease resistance characteristics
- Requirement for a specific comparison variety to be described along with candidate
- Lack of information on quality controls for DUS at breeders' premises
- DUS test reports that do not conform to UPOV Test Guidelines (missing or different characteristics)
- Difficulty to complete variety collections (e.g. import / phytosanitary issues)
- Lack of global DNA database for selection of similar varieties
- Language barriers
- Difficulty to identify contact persons
- Lack of information on available DUS test reports

Policy or legal issues:

- Requirement of formal agreement for cooperation
- Obligation for DUS examination to be conducted by the authority granting the rights
- Non-acceptance of breeder-based DUS test reports
- Wish from breeders to use (or not) existing DUS reports

35. The TC, at its fifty-fifth session, agreed to report to the CAJ the related policy or legal issues presented in document TC/55/10, paragraphs 27 and 28, reproduced below:

- Requirement of formal agreement for cooperation
- Obligation for DUS examination to be conducted by the authority granting the rights
- Non-acceptance of breeder-based DUS test reports
- Wish from breeders to use (or not) existing DUS reports

36. The TC, at its fifty-sixth session, noted that it had considered document TC/56/11 by correspondence. The TC noted that decisions on document TC/56/11 had been taken by the TC by correspondence as provided in document TC/56/22, paragraphs 39 to 44, and reproduced below:

39. The TC considered document TC/56/11

40. The TC noted that members of the Union have the possibility to update information on a person(s) to be contacted for matters concerning international cooperation in DUS examination by:

(i) updating information when invited to provide information for document TC/[xx]/4 "List of genera and species for which authorities have practical experience in the examination of distinctness, uniformity and stability"; and/or

(ii) notifying the Office of the Union by sending an e-mail to upov.mail@upov.int;

41. The TC agreed to propose the development of a package of compatible IT tools with the following elements:

- a) Platform for:
 - i) exchange of existing DUS reports for:
 - (1) UPOV members to post and receive existing DUS reports and arrange payment, as appropriate
 - (2) PVP applicants to request use of existing DUS reports and make payments, as appropriate
 - ii) UPOV members to make their documented DUS procedures and information on their quality management systems available to other members of the Union

- b) Tool to provide information on cooperation in DUS examination between UPOV members to PVP applicants in a user-friendly form, using information contained in the GENIE database
- c) Module for UPOV members to use the web-based TG Template and database of characteristics to develop individual authorities' test guidelines (IATG) in their language
- d) Platform for UPOV member databases containing variety description information

42. The TC noted the potential for machine translation technology to reduce translation costs for UPOV documents in UPOV languages and to make UPOV materials in a wider range of languages.

43. The TC agreed to revise document TGP/5, Section 6: "UPOV Report on Technical Examination and UPOV Variety Description", to include additional information in DUS test reports, to:

- provide information on varieties included in the variety collection
- report the varieties considered in the examination (not only similar varieties)
- provide data from field observations with the DUS test report for each variety
- provide information on environment in which the DUS examination was conducted

44. The TC agreed to assess the impact of the proposed plan on the basis of the number of cooperation agreements reported by members of the Union, as presented in document C/[xx]/INF/5 "Cooperation in examination".

37. *The CAJ is invited to:*

(a) note the measures agreed by TC to overcome barriers that prevent international cooperation in DUS examination; and

(b) consider whether to develop measures to address the following policy or legal barriers that prevent international cooperation in DUS examination:

- (i) Requirement of formal agreement for cooperation;*
- (ii) Obligation for DUS examination to be conducted by the authority granting the rights;*
- (iii) Non-acceptance of breeder-based DUS test reports;*
- (iv) Wish from breeders to use (or not) existing DUS reports.*

Proposals for next steps

38. The TC considered document TC/56/22 "Outcome of consideration of documents by correspondence".

39. The TC noted the comments received during the procedure of consideration of documents by correspondence on document TC/56/11 "Cooperation in examination", as reported in document TC/56/22, paragraphs 45 to 48.

40. The TC noted the comment provided by the European Union in response to Circular E-20/119, of August 21, 2020, on the proposal to develop a package of compatible IT tools with the elements indicated in document TC/56/11, paragraph 19. The TC agreed to request the Office of the Union to present plans for the development of a package of compatible IT tools, for consideration by the TWPs and TC, at their sessions in 2021.

41. The TC noted the comment provided by Japan in response to Circular E-20/119, of August 21, 2020, on difficulties to submit plant material to the authority receiving an application due to phytosanitary, quarantine or other related matters, as reported in document TC/56/22, paragraphs 47 and 48.

42. The TC noted that plant material was required as a condition for granting breeders' rights in some members of the Union.

43. The TC agreed to propose to the CAJ the development of guidance to encourage UPOV members, on a voluntary basis, to take-over DUS test reports when the applicants could not submit plant material due to phytosanitary or other related issues where acceptable to the UPOV members concerned. The TC agreed that this proposal should be presented for consideration by the CAJ in document CAJ/77/2 "Report on developments in the Technical Committee."

44. The CAJ is invited to consider the proposal by the TC for developing guidance to encourage UPOV members, on a voluntary basis, to take-over DUS test reports when the applicants could not submit plant material due to phytosanitary or other related issues where acceptable to the UPOV members concerned.

Possible merger of BMT and TWC

45. The TC noted that document TC/56/10 Rev. had been considered by correspondence. The TC noted that decisions on document TC/56/10 Rev. had been taken by the TC by correspondence as provided in document TC/56/22, paragraphs 34 to 37.

46. The TC noted the report from the Office of the Union that the Council, on October 25, 2020, following the procedure by correspondence, had established the TWM to take effect from 2022 and elected the Chairperson of the BMT to act as Chairperson of the TWM ending with the fifty-seventh ordinary session of the Council, in 2023 (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraphs 32 to 35).

47. The CAJ is invited to note the other relevant developments at the fifty-sixth session of the Technical Committee, as reported in this document.

[Annexes follow]

ANNEX I - PROGRAM FOR THE DEVELOPMENT OF TGP DOCUMENTS

	Title of document	Current approved documents	2020					2021					2022				
			TC-EDC	TWPs	TC/56	CAJ/77	C/54	TC-EDC	TWPs	TC/57	CAJ/78	C/55	TC-EDC	TWPs	TC/58	CAJ/79	C/56
TGP/0	List of TGP Documents and Latest Issue Dates	TGP/0/10 ADOPTED						TGP/0/12 Adopt									TGP/0/13 Adopt
TGP/1	General Introduction with Explanations	-															
TGP/2	List of Test Guidelines Adopted by UPOV	TGP/2/2 ADOPTED															
TGP/3	Varieties of Common Knowledge	C(Extr.)/19/2 Rev.															
TGP/4	Constitution and Maintenance of Variety Collections	TGP/4/1 ADOPTED															
TGP/5	Experience and Cooperation in DUS Testing	ADOPTED															
	Section 6: UPOV Report on Technical Examination and UPOV Variety Description	TGP/5: Sec. 6/2 ADOPTED	X			X		TGP/5: S.6/3 Adopt		X	X			X		X	TGP/5: S.6/4 ADOPTED
TGP/6	Arrangements for DUS Testing	ADOPTED															
TGP/7	Development of Test Guidelines	TGP/7/7 ADOPTED															
	Presentation of full scale of notes for quantitative characteristics (Drafter: Office of the Union)		X			X		TGP/7/8 Adopt									
	Characteristics which only apply to certain varieties (Drafter: Office of the Union)					X		TGP/7/8 Adopt									
TGP/8	Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability	TGP/8/4 ADOPTED															
	Method of Calculation of COYU (Drafter: Adrian Roberts (GB))			X	X				X	X	X			X		X	TGP/8/5 Adopt
	Data Processing for the Assessment of Distinctness and for Producing Variety Descriptions (Drafter: Office of the Union)			X	X				X	X	X			X		X	TGP/8/5 Adopt
TGP/9	Examining Distinctness	TGP/9/2 ADOPTED															
TGP/10	Examining Uniformity	TGP/10/1 ADOPTED															
TGP/11	Examining Stability	TGP/11/1 ADOPTED															
TGP/12	Guidance on Certain Physiological Characteristics	TGP/12/2 ADOPTED															
TGP/13	Guidance for New Types and Species	TGP/13/1 ADOPTED															
TGP/14	Glossary of Terms Used in UPOV Documents	TGP/14/4 ADOPTED															
	Color names for the RHS Colour Chart (Drafter: Andrea Menne (DE))					X		TGP/14/5 Adopt									
TGP/15	Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)	TGP/15/2 ADOPTED															
	New example: Characteristic-specific marker with incomplete information on state of expression (Drafter: Amanda van Dijk (NL))					X		TGP/15/3 Adopt									

[Annex II follows]

CAJ/77/2

ANNEX II - PROGRAM FOR THE DEVELOPMENT OF RELEVANT INFORMATION MATERIALS

	Title of document	Current approved documents	2020					2021					2022				
			TC-EDC	TWPs	TC/56	CAJ/77	C/54	TC-EDC	TWPs	TC/57	CAJ/78	C/55	TC-EDC	TWPs	TC/58	CAJ/79	C/56
C(Extr./19/2 Rev.	The Notion of Breeder and Common Knowledge	C(Extr./19/2 Rev. ADOPTED															
INF/5	UPOV Model Plant Breeders' Rights Publication	INF/5/2 ADOPTED															
INF/12	Explanatory Notes on Variety Denominations under the UPOV Convention	INF/12/5 ADOPTED				X	X				X	EXN/DEN ADOPTED			X	EXN/DEN ADOPTED	
INF/16	Exchangeable Software	INF/16/8 ADOPTED			X	X	INF/16/9 ADOPTED										
INF/17	Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines")	INF/17/1 ADOPTED		X	X				X	X	X	INF/17/2 ADOPTED					
INF/18	Possible use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)	INF/18/1 ADOPTED															
INF/22	Software and equipment used by members of the Union	INF/22/6 ADOPTED		X	X	X	INF/22/7 ADOPTED		X	X	X	INF/22/8 ADOPTED		X	X	X	INF/22/8 ADOPTED
INF/23	UPOV Code System	New				X			X	X	X	INF/23/1 ADOPTED					

[End of Annex II and of document]