

Administrative and Legal Committee

CAJ/78/10

**Seventy-Eighth Session
Geneva, October 27, 2021**

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POSSIBLE GUIDANCE ON TAKE-OVER OF DUS REPORTS WHEN THE APPLICANTS CANNOT SUBMIT PLANT MATERIAL

Document prepared by the Office of the Union

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EXECUTIVE SUMMARY

1. The purpose of this document is to present options for developing guidance to encourage members of the Union, 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 members of the Union concerned.

2. The CAJ is invited to:

(a) note that proposals for enhancing cooperation and take-over of DUS test reports are provided in document CAJ/78/9 “Measures to enhance cooperation in examination”; and

(b) consider possible “guidance to encourage members of the Union, 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 members of the Union concerned” as part of the proposals and possible future work to be considered by the CAJ under document CAJ/78/9.

3. The structure of this document is as follows:

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4. The following abbreviations are used in this document:

CAJ: Administrative and Legal Committee
 TC: Technical Committee

BACKGROUND

5. The TC, at its fifty-sixth session¹ 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, paragraph 47, and reproduced as follows (see document TC/56/23 “Report”, paragraphs 61 to 63):

¹ Held via electronic means on October 26 and 27, 2020

“Background

“When applying for PVP in another UPOV member, breeders may experience difficulties to submit plant material to the authority receiving an application due to phytosanitary, quarantine or other related matters.

“Phytosanitary, quarantine or other related matters should be discussed and resolved at bilateral consultations. Such consultations may take considerable amount of time to be completed. During such period, applications for PVP may be rejected due to the impossibility for applicants to submit plant material for testing in such other UPOV members.

“In certain cases, propagating material of a variety might enter the territory of another UPOV member without the consent of the breeder, even when quarantine or non-importability would apply. This situation could cause severe problems in case the breeder's rights are not granted in that UPOV member due to phytosanitary, quarantine or other related issues.

“Proposal:

“Japan would like to propose developing guidance to encourage UPOV members to take-over DUS test reports when the applicants cannot submit plant material due to phytosanitary or other related issues. In case the Technical Committee agrees to developing such guidance, the proposal could be submitted for consideration by the CAJ.”

6. The TC, at its fifty-sixth session, noted that plant material was required for granting breeders' rights in some members of the Union.

7. 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.”

8. In response to the request of the TC, the CAJ, at its seventy-seventh session², further requested the Office of the Union to prepare a document for consideration, at its seventy-eighth session, with proposals for developing guidance to encourage members of the Union, 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 members of the Union concerned (see document CAJ/77/10 “Report”, paragraph 15).

PROPOSALS FOR GUIDANCE TO ENCOURAGE TAKE-OVER OF DUS TEST REPORTS WHEN THE APPLICANTS COULD NOT SUBMIT PLANT MATERIAL

9. Proposals for enhancing cooperation and take-over of DUS test reports are provided in document CAJ/78/9 “Measures to enhance cooperation in examination”.

10. It is proposed that possible “guidance to encourage members of the Union, 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 members of the Union concerned” be included as part of the proposals and possible future work to be considered by the CAJ under document CAJ/78/9.

11. *The CAJ is invited to:*

(a) note that proposals for enhancing cooperation and take-over of DUS test reports are provided in document CAJ/78/9 “Measures to enhance cooperation in examination”; and

(b) consider possible “guidance to encourage members of the Union, 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 members of the Union concerned” as part of the proposals and possible future work to be considered by the CAJ under document CAJ/78/9.

² Held via electronic means on October 28, 2020