

**Administrative and Legal Committee**

**CAJ/78/9**

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

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**MEASURES TO ENHANCE COOPERATION IN EXAMINATION**

*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 present possible measures to address policy or legal barriers identified by the Technical Committee (TC) as preventing international cooperation in DUS examination.
2. The CAJ is invited to consider the following measures to address policy or legal barriers that the TC had identified as preventing international cooperation in DUS examination:
  - (a) survey members of the Union for information on their policies or legal barriers that could prevent international cooperation in DUS examination;
  - (b) develop explanatory notes to Article 12 of the UPOV Convention (“Examination of the Application”); and
  - (c) request breeders’ organizations to clarify the issues concerning the wish of breeders to use, or not to use, existing DUS reports.
3. The structure of this document is as follows:

EXECUTIVE SUMMARY ..... 1

BACKGROUND ..... 2

POSSIBLE MEASURES TO ADDRESS POLICY OR LEGAL BARRIERS PREVENTING INTERNATIONAL COOPERATION IN DUS EXAMINATION ..... 2

ANNEX MEASURES AGREED BY TC TO OVERCOME BARRIERS THAT PREVENTED INTERNATIONAL COOPERATION IN DUS EXAMINATION

4. The following abbreviations are used in this document:

- 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
- TWPs: Technical Working Parties
- TWV: Technical Working Party for Vegetables

## BACKGROUND

5. The CAJ, at its seventy-seventh session<sup>1</sup>, noted the information in document CAJ/77/2 and in the oral report by Mr. Nik Hulse, Chair of the TC (see document CAJ/77/10 “Report”, paragraphs 11 to 15).

6. The CAJ noted the measures agreed by the TC to overcome barriers that prevented international cooperation in DUS examination (see Annex to this document).

7. In response to the request of the TC, the CAJ requested the Office of the Union to prepare a document for consideration, at its seventy-eighth session, concerning the following policy or legal barriers that the TC had identified as preventing international cooperation in DUS examination and possible measures to address those barriers:

- (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.

## POSSIBLE MEASURES TO ADDRESS POLICY OR LEGAL BARRIERS PREVENTING INTERNATIONAL COOPERATION IN DUS EXAMINATION

8. The following are possible measures, to address the policy or legal barriers (i) requirement of formal agreement for cooperation; (ii) obligation for DUS examination to be conducted by the authority granting the rights; and (iii) non-acceptance of breeder-based DUS test reports:

- (a) survey members of the Union for information on their policies or legal barriers that could prevent international cooperation in DUS examination. The survey would include a request for information on members' requirements for formal cooperation agreements, obligation for DUS examination to be conducted by the authority granting the rights; and non-acceptance of breeder-based DUS test reports.
- (b) develop explanatory notes to Article 12 of the UPOV Convention (“Examination of the Application”). (Note: UPOV provides guidance on cooperation in DUS examination in document TGP/5, Section 1 “Model Administrative Agreement for International Cooperation in the Testing of Varieties” and Section 5 “UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results”. However, this guidance is not all-encompassing, is not easily accessible to non-technical experts and is not included in document UPOV/INF/6 “Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention”. Therefore, it is proposed to develop a coherent set of guidance and model agreements to address cooperation in DUS examination for different situations, as part of the Explanatory Notes on Article 12 of the 1991 Act of the UPOV Convention.)

9. Before proposing measures to address the policy or legal barrier (iv) “wish from breeders to use (or not) existing DUS reports”, it would be important to clarify the issues concerned. Therefore, it is proposed to request breeders' organizations to clarify the issues concerning the wish of breeders to use, or not to use, existing DUS reports.

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<sup>1</sup> Held via electronic means on October 28, 2020.

10. *The CAJ is invited to consider the following measures to address policy or legal barriers that the TC had identified as preventing international cooperation in DUS examination:*

*(a) survey members of the Union for information on their policies or legal barriers that could prevent international cooperation in DUS examination;*

*(b) develop explanatory notes to Article 12 of the UPOV Convention (“Examination of the Application”); and*

*(c) request breeders’ organizations to clarify the issues concerning the wish of breeders to use, or not to use, existing DUS reports.*

[Annex follows]

## MEASURES AGREED BY TC TO OVERCOME BARRIERS THAT PREVENTED INTERNATIONAL COOPERATION IN DUS EXAMINATION<sup>2</sup>

The TC, at its fifty-fifth<sup>3</sup> 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.

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:

### *“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”

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”

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<sup>2</sup> Extract from document CAJ/77/2 “Report on developments at the Technical Committee”.

<sup>3</sup> Held in Geneva on October 28 and 29, 2019.

The TC, at its fifty-sixth session<sup>4</sup>, 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](mailto: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’”.

[End of Annex and of document]

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<sup>4</sup> Held via electronic means on October 26 and 27, 2020.