

Administrative and Legal Committee**CAJ/79/7 Add.****Seventy-Ninth Session
Geneva, October 26, 2022****Original:** English
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**ADDENDUM TO
MEASURES TO ENHANCE COOPERATION IN EXAMINATION***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. The purpose of this addendum is to present responses from breeders' organizations to Circular E-22/104, of July 26, 2022, concerning the wish of breeders to use, or not to use, existing DUS reports.

2. The structure of this document is as follows:

Annex I: Euroseeds

Annex II: International Community of Breeders of Asexually Reproduced Horticultural Plant Varieties. (CIOPORA)

Annex III: International Seed Federation (ISF)

[Annex I follows]

Feedback to UPOV

on the situations where breeders wish or not the taking over of existing DUS reports

In response to UPOV Circular E-22/104, Euroseeds would like to provide the following feedback on situations when breeders would wish to use, or not to use, existing DUS reports:

1. The situations and reasons when and why breeders would like to re-use existing DUS reports:

- When applying in several neighboring UPOV members (for example CPVO followed by UK and Serbia, etc), a new DUS would merely repeat the results from the previous one. The time that the examination takes and which the breeder would have to wait for, could delay the rate of innovation, adoption and uptake of a more modern variety which otherwise could be made available to farmers earlier. [A living example is the situation of farmers/growers in the UK where they might not be able to access new varieties as quickly as they used to and as farmers in the EU because extra costs are involved.]
- When applying in different countries that use the exact same reference set, a new DUS would just add extra observation for the same experiment, which results in unnecessary extra time and cost.

- When applying for varieties that are cultivated in controlled environments, thus expressing the same phenotype regardless of where they are planted. Same justification as above, the new DUS trial would be merely repetitive of the previous. In some countries a DUS test is not even carried out (eg: for winter barley in Sweden and Ireland), where breeders depend on the ability to buy a DUS report.
- Some countries constitute too small a market for breeders to justify spending resources on DUS testing (unlike the VCU test, the DUS is not relevant to evaluate the value of a variety in the given country/market). In such cases, taking over of a DUS report from a country with similar climatic conditions is very helpful.

In summary, taking over existing DUS reports reduces time and cost and results in less work for breeders and for the examination offices. When the existing DUS report is based on the UPOV technical guideline, there is generally no dispute on the technical validity of the plant breeder's right. Using the same DUS report based on the UPOV format also prevents interpretation problems. Further on, taking over of DUS reports is also effective in terms of seed use (only 1-2x seed shipment). In case the variety has already been accepted on the national variety list in the country where the DUS has already been done, besides saving time and money, the possibility to take over the DUS report also gives security.

2. The situations and reasons where breeders would not wish to use existing DUS reports:

- When the environment is different and may affect some of the characteristics which may be relevant in a different country that succeeds the first application. Local circumstances (soil, light intensity, growing methods) can have serious effect on a variety's behavior. If the DUS report that was taken over for protection purposes is also used to compare with locally drawn up descriptions, there may be considerable differences, that do not actually exist between both varieties. Or the opposite. In such cases it might be preferred to perform local testing.
- Also in cases where the existing DUS report is not based on the UPOV technical guidelines (in such case the validity could be disputed more easily and interpretation issues may also arise).

3. Problems that are often encountered by breeders in practice in relation to the acceptance or possibility to re-use DUS reports:

- In some countries taking over is not accepted at all, since only local trials are accepted.
- Some countries require the applicant to provide the existing DUS report, however, according to the UPOV agreement the DUS report should be exchanged between authorities only. The applicant is not a party to UPOV.
- In some countries the existing DUS report needs to be translated and sometimes even by a certified translator. PVP offices are not willing to do so, but they are not willing to send the original version to the applicant either, see previous bullet point. Not all countries follow the UPOV technical guidelines or apply some additional rules than required by UPOV (eg: in Australia they require at least one similar variety to be mentioned in the DUS report and require the examination to be based on two samples).
- Some countries expect the applicant company to obtain and provide the DUS report, and at least one country also requires legalization of the signature of the person signing on behalf of the authorities, which is not a feasible course of action.



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[Annex II follows]

ANNEX II

From: Paulo Peralta - CIOPORA <Paulo.Peralta@ciopora.org>
Sent: 26 September 2022 17:26
To: REZENDE TAVEIRA Leontino <leontino.taveira@upov.int>
Cc: Edgar Krieger - CIOPORA <edgar.krieger@ciopora.org>; mail, Upov <upov.mail@upov.int>
Subject: FW: Action by September 26, 2022: provision of information on DUS matters

Dear Leontino,

I hope this email finds you great. I am contacting you regarding the consultation we received about the provision of information on DUS matters.

CIOPORA selected breeders from Canada and New Zealand as DUS tests are exchanged on the regular basis between these two countries and with other members of UPOV. Then, CIOPORA proceeded to interview its members in New Zealand and Canada to request information on aspects such as their experiences using DUS reports from other countries, and their willingness to continue to do so in the future.

Summarizing the outcomes from the interviews, CIOPORA found out that in the case of fruit crops the purchase of DUS reports is a common practice among breeders of Canada and New Zealand. Breeders from Canada expressed that the process works well and efficiently. However, there is a clear indication that breeders recognize "odd comparators" in the DUS reports acquired from other countries. This refers to the use of different conditions to perform the trials that might not be applicable to local ones.

It is important to emphasize that these conclusions were extracted from a very reduced sample of breeders, they do not represent a position of the whole community of our members, as it would have required more time to get a representative sample.

Best regards,

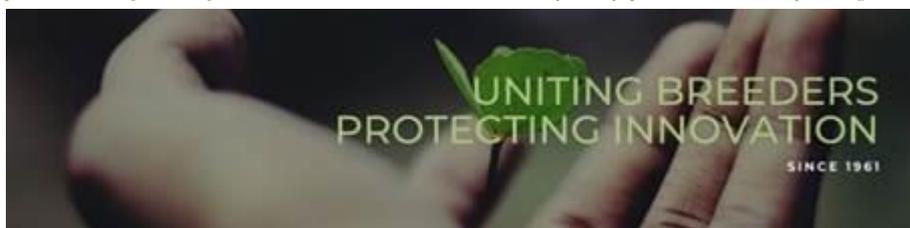
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[Annex III follows]

ANNEX III

From: Hélène Khan Niazi <H.khanniazi@worldseed.org>
Sent: 27 September 2022 11:00
To: mail, Upov <upov.mail@upov.int>
Subject: RE: Action by September 26, 2022: provision of information on DUS matters

Dear UPOV Secretariat,

ISF endorses the submission made by Euroseeds on the related matter.

We remain at your disposal if you need further information.

Best regards,
Hélène

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International Agricultural Manager

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