

Technical Committee

Sixtieth Session
Geneva, October 21 and 22, 2024

SESSIONS/2024/3

Original: English
Date: October 1, 2024

Administrative and Legal Committee

Eighty-First Session
Geneva, October 23, 2024

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 invite consideration of possible measures to increase opportunities for international cooperation in the examination of distinctness, uniformity and stability (DUS), on the basis of the survey of members of the Union on their policies or legal barriers that could prevent international cooperation.

2. The TC is invited to note the developments reported in this document.

3. The CAJ is invited to:

(a) consider the possible measures to increase opportunities for international cooperation, as set out in paragraphs 14 to 20 of this document.

(b) consider organizing a seminar to create awareness on cooperation with breeders in DUS examination, as set out in the Annex to this document.

4. The structure of this document is as follows:

EXECUTIVE SUMMARY 1

BACKGROUND 2

 Possible measures to increase opportunities for international cooperation 2

INCREASING OPPORTUNITIES FOR INTERNATIONAL COOPERATION 3

 (a) “Environmental effect in expression of characteristics” 3

 (b) “Completeness and relevance of variety collections” 3

 (c) “Revise document TGP/5, Section 6 to provide information on elements required by UPOV members to use test reports from other UPOV members” 3

 (d) “Phytopathological issues that prevent or delay submission of plant material” 3

 (e) “Increase information on arrangements for testing at breeders’ premises” 4

ANNEX: Draft proposal for a seminar on the cooperation with breeders in DUS examination

BACKGROUND

5. The complete background to this matter is provided in document SESSIONS/2023/4, including the results of the survey of members of the Union on their policies or legal barriers that could prevent international cooperation in DUS examination.

6. The CAJ, at its seventy-seventh session¹, requested the Office of the Union to prepare a document for consideration, at its seventy-eighth session, concerning the following policies or legal barriers that the TC had identified as preventing international cooperation in DUS examination and possible measures to address those barriers (see document CAJ/77/10 "Report", paragraph 14):

- (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

7. The CAJ, at its seventy-eighth session², agreed to survey members of the Union for information on their policies or legal barriers that could prevent international cooperation in DUS examination. The CAJ, at its seventy-ninth session³, approved the proposed questions for the survey of members of the Union for information on their policies or legal barriers that could prevent international cooperation in DUS examination, with the following additional question at the end: "Are there developments that would increase the acceptance of DUS reports in the future?" (see document CAJ/79/11 "Report", paragraph 58).

Possible measures to increase opportunities for international cooperation

8. The TC⁴ and the CAJ⁵, at their sessions in 2023, considered document SESSIONS/2023/4 "Measures to enhance cooperation in examination", including the replies to the survey of members of the Union on policies or legal barriers that could prevent international cooperation in DUS examination. In accordance with the findings of the survey, the TC and the CAJ considered the following possible measures proposed to increase opportunities for international cooperation:

(a) "Environmental effect in expression of characteristics: organize events to explain how DUS examination takes into account environmental effect on the expression of characteristics and why it is not necessary to conduct DUS trials in each UPOV member;

(b) "Completeness and relevance of variety collections: organize events to demonstrate how UPOV members address the risks associated with incomplete collections of varieties of common knowledge (document TGP/4 "Constitution and maintenance of variety collections");

(c) "Revise document TGP/5, Section 6 "UPOV Report on Technical Examination and UPOV Variety Description" to provide information on: varieties of common knowledge grown in the same trial and/or otherwise considered in the DUS examination; and/or other elements required by UPOV members to use test reports from other UPOV members;

(d) "Phytosanitary issues that prevent or delay submission of plant material: to add information in document UPOV/INF/15 "Guidance for Members of UPOV" to propose considering the use of DUS test reports from other UPOV members where phytosanitary issues prevented or delayed submission of plant material; and

(e) "Increase information on arrangements for testing at breeders' premises:

(i) "Arrangements are specified by the authority entrusted with the task of granting breeders' rights (authority) and decisions on DUS are always taken by the authority;

(ii) "Maintaining independence in DUS examination and avoiding conflict of interests;

¹ CAJ, seventy-seventh session, held via electronic means on October 28, 2020.

² CAJ, seventy-eighth session, held in Geneva on October 27, 2021. See document CAJ/78/13 "Report", paragraph 43.

³ CAJ, seventy-ninth session, held in Geneva on October 26, 2022.

⁴ TC, fifty-ninth session, held in Geneva on October 23 and 24, 2023. See paragraphs 53-55, Report TC/59/28

⁵ See paragraphs 37-40, Report, CAJ/80/6, October 25, 2023

(iii) “Invite policy makers from UPOV members and observers to meetings or seminars at UPOV members that conduct DUS examination at breeders’ premises to facilitate exchange of information and enable visiting their test sites.”

9. The TC noted the developments reported in document SESSIONS/2023/4, including the survey of members of the Union for information on policies or legal barriers that could prevent international cooperation in DUS examination. The TC noted that the CAJ would be invited to consider the document and possible measures to increase opportunities for international cooperation in DUS examination at its eightieth session.

10. The TC agreed to support the exchange of information from UPOV members on practices in DUS examination, including events to discuss the environmental effect in the expression of characteristics and variety collections.

11. The TC, at its fifty-ninth session, agreed that there was an opportunity to increase the exchange of information, including the possibility to organize events to discuss arrangements for testing at breeders’ premises, criteria for independence and avoiding conflict of interests.

12. The CAJ, at its eightieth session, noted the replies to the survey of members of the Union on policies or legal barriers that could prevent international cooperation in DUS examination, as presented in Annex II to document SESSIONS/2023/4. The CAJ further agreed to invite the Office of the Union to prepare a document for its eighty-first session to continue discussions on possible measures to increase opportunities for international cooperation in DUS examination.

13. The CAJ agreed that the above document would also contain the agreement to organize a seminar on cooperation with breeders in DUS examination. It was further agreed that proposals on the contents and arrangements for the seminar would be included in the document. The CAJ further agreed that the Office of the Union would prepare the proposals for the seminar in consultation with Australia, Brazil, Canada, the European Union, Japan, New Zealand and the United States of America, for consideration at its eighty-first session.

INCREASING OPPORTUNITIES FOR INTERNATIONAL COOPERATION

14. The measures to increase cooperation in international cooperation considered by the TC and the CAJ, at their sessions in 2023, were rather general. Different ways to follow-up could be organized to assist members when taking policy decisions on which conditions they are willing to increase cooperation. For example, discussions could take place in webinars to promote cooperation and address potential obstacles.

(a) “Environmental effect in expression of characteristics”

(b) “Completeness and relevance of variety collections”

15. The Office of the Union could organize webinars/events for members and observers of the TC, CAJ and Council to discuss how DUS examination takes into account environmental effect on the expression of characteristics and why it is not necessary to conduct DUS trials in each UPOV member. Similar webinar/events could be organized for UPOV members to demonstrate how they address the risks associated with incomplete collections of varieties of common knowledge (document TGP/4 “Constitution and maintenance of variety collections”).

(c) “Revise document TGP/5, Section 6 to provide information on elements required by UPOV members to use test reports from other UPOV members”

16. A proposal for the revision of document TGP/5, Section 6 to provide information on elements required by UPOV members to use test reports from other UPOV members is provided in document SESSIONS/2024/2.

(d) “Phytosanitary issues that prevent or delay submission of plant material”

17. In relation to point (d) on Phytosanitary issues that prevent or delay submission of plant material, a possible measure could be to add information on this matter in document UPOV/INF/15 “Guidance for Members of UPOV”. In many UPOV members, it is not the PVP Office that manages phytosanitary matters. It is important that competent authorities for phytosanitary matters and PVP Offices co-operate to find solutions that support the implementation of their respective objectives. A first step could be to organize a webinar where

interested members can address these matters and propose possible amendments to UPOV/INF/15. The conditions under which a DUS test report from another UPOV member can be used under these circumstances may be discussed.

(e) "Increase information on arrangements for testing at breeders' premises"

18. In relation to increasing information on arrangements for testing at breeders' premises, the Office of the Union has, in consultation with the members mentioned in paragraph 13, prepared a proposal for a seminar, as provided in the Annex to this document.

19. The seminar aims to create increased awareness and understanding on how DUS examinations in cooperation with breeders are conducted by some UPOV members. An overview of the role of breeders in DUS examination in different UPOV members would be presented as well as benefits, opportunities and challenges for further cooperation.

20. The UPOV Convention provides the flexibility for UPOV members to decide on how to arrange DUS tests in the most cost-effective way in accordance with their circumstances. Therefore, the seminar is not intended to harmonize procedures but to create awareness of the options provided by the UPOV Convention.

21. The TC is invited to note the developments reported in this document.

22. The CAJ is invited to:

(a) consider the possible measures to increase opportunities for international cooperation, as set out in paragraphs 14 to 20 of this document; and

(b) consider organizing a seminar to create awareness on cooperation with breeders in DUS examination, as set out in the Annex to this document.

[Annex follows]

DRAFT PROPOSAL FOR A SEMINAR ON THE COOPERATION WITH BREEDERS IN DUS EXAMINATION

Relevant information taken from the report of the eightieth session of the Administrative and Legal Committee (document CAJ/80/6)**“Measures to enhance cooperation in examination (document SESSIONS/2023/4)**

“37. The CAJ considered document SESSIONS/2023/4.

“38. The CAJ noted the replies to the survey of members of the Union on policies or legal barriers that could prevent international cooperation in DUS examination, as presented in Annex II to document SESSIONS/2023/4.

“39. The CAJ agreed to invite the Office of the Union to prepare a document for its eighty-first session to continue discussions on possible measures to increase opportunities for international cooperation in DUS examination.

“40. The CAJ agreed that the above document would also contain the agreement to organize a seminar on cooperation with breeders in DUS examination. It was further agreed that proposals on the contents and arrangements for the seminar would be included in the document. The CAJ further agreed that the Office of the Union would prepare the proposals for the Seminar in consultation with Australia, Brazil, Canada, European Union, Japan and New Zealand and the United States of America, for consideration at its eighty-first session.”

INTRODUCTION:

The goal is to organize a Seminar to outline the approaches and practices that UPOV members use in cooperating with breeders in DUS examination.

The presentations and documents prepared for the Seminar should:

- (1) create awareness and foster open and constructive discussions amongst UPOV members,
- (2) inform and further increase understanding of how distinctness, uniformity and stability (“DUS”) examinations in cooperation with breeders are conducted,
- (3) provide content, information and practices that could, if appropriate, be used to compile a training module on “Role of breeders in DUS examination” (e.g. recorded Power Point presentations and/or a webinar; series of short videos; guidance, procedures or other text).

GUIDANCE AND DISCUSSION:

The UPOV Convention (Article 7(1) of the 1961/1972 and 1978 Acts and Article 12 of the 1991 Act), require that a variety be examined for compliance with the distinctness, uniformity and stability criteria. An authority may, for example, use one or more of the following arrangements:

- (a) *the authority conducts growing trials, or other tests, itself;*
- (b) *the authority arranges for another party / other parties to conduct the growing trials or other tests;*
- (c) *the authority takes into account the results of growing tests or other trials which have already been carried out.*

Based on these options, UPOV members have taken different approaches and practices to assess new varieties of plants whereby each authority is responsible to grant or refuse plant breeders’ rights based on the examination. The general UPOV guidance and principles for DUS examination and the associated crop specific Test Guidelines have allowed for a high degree of harmonization in the examination of new varieties.

Some examples of how UPOV members cooperate include the purchase, exchange, mutual recognition of DUS test reports; and testing on behalf of another authority through bilateral agreements, centralized testing and/or breeders' cooperation in DUS testing.

Enhanced cooperation among UPOV members can result in time and cost savings for PVP Offices. To this end, the scope of the three suggested themes below should be expanded in the draft proposal for the seminar:

DATE AND VENUE

It is proposed that the seminar would be a side event during the UPOV Sessions in October 2025 in hybrid format.

THEME I: Overview of the role of breeders in DUS examination in different UPOV members (roles and responsibilities of breeders and PVP Offices in growing the trial and the examination)

- General description of the involvement of breeders in DUS testing.
 - What is the reasoning for and benefit of involving breeders in the PVP/DUS testing process?
 - Are breeders involved in testing for all or a limited number of species? What are the differences in arrangements and level of involvement for each crop? Do the estimated number of DUS tests for a species per year play a role in deciding to involve breeders?
 - How would there be different arrangements according to the type and size of the breeder, e.g. individuals, small, medium, and large enterprises?
 - Which tasks are carried out by the PVP Offices and which tasks are carried out by the breeders in DUS testing? (e.g. selecting varieties for the growing trial, identifying similar varieties, providing samples, providing facilities, conducting the trial, assessing characteristics, other)
- Has the PVP Office/legislator adopted procedures setting out the tasks and methods to be applied by breeders that have a role in DUS testing? Are there approval/accreditation systems in place? Which criteria should breeders follow when cooperating in DUS examination?
- In cases where breeders have a role in DUS testing, to what extent do the PVP Offices supervise the procedure to ensure respect of applicable procedures and methods?

THEME II: Opportunities for cooperation with breeders in DUS examination (aspects on conflict of interest, independence, on-site examination, publication)

- Are there specific risks in involving breeders in DUS examinations? How are these mitigated?
- *How do PVP Offices/UPOV members work with plant breeders to validate DUS requirements? What are the potential conflicts of interest and how are they addressed?*
- Under which conditions could an organization, which also conducts plant breeding, be entrusted by / support an authority in charge of granting PBR to conduct / participate in testing varieties from other breeders?
- Can breeders access databases set up by PVP Offices when choosing similar varieties (variety collections, DNA profiles) for DUS tests purposes?
- How is raw data generated during DUS testing treated?
- How can similar varieties from other breeders be included in the DUS examination, when these are not yet protected/listed, but have priority (were applied first)?
- What training, guidance and information is provided to breeders or trial coordinators cooperating in DUS examinations?
- How to build trust in the system?

THEME III: Benefits, challenges and needs (PVP Offices and Breeders' perspectives)

- What costs and resources are borne by the PVP Offices, breeders/applicants? (infrastructure, operations, variety collections, etc ...)
- Policies on cost recovery and price charged for DUS examination.
- How to assess return on investment when breeders are involved in DUS testing, such as infrastructure, personnel and other resources?
- How to benefit from the expertise of breeders?
- How do breeders involved in DUS tests perceive the cooperation? What are the challenges and opportunities for breeders?
- Challenges for the breeder growing the trial, to get access to plant material of other breeders' varieties?
- Do PVP Offices have a sequence of preferences to organize DUS examination: e.g. take-over; examination by a PVP Office; examination organized by a PVP Office in another UPOV member; breeder cooperation (in any order)
- Are there requirements for the exchanges of DUS reports between authorities? If so, please provide.

Tentative Draft Program

(TBD – number of presentations and times per session)

9.30 – 9.40 **Welcome and opening remarks**
Ms. Yolanda Huerta, Vice Secretary-General, UPOV

SESSION I: OVERVIEW OF THE ROLE OF BREEDERS IN DUS EXAMINATION IN DIFFERENT UPOV MEMBERS (ROLES AND RESPONSIBILITIES OF BREEDERS AND PVP OFFICES IN GROWING THE TRIAL AND THE EXAMINATION)*Moderator I: Name, Title/Position*9.40 – 9.50 **Title of Presentation** *Presenter, Title/Position, Organization, Location, Country*9.50 – 10.00 **Title of Presentation** *Presenter, Title/Position, Organization, Location, Country*10.00 – 10.10 **Title of Presentation** *Presenter, Title/Position, Organization, Location, Country*10.10 – 10.20 **Title of Presentation** *Presenter, Title/Position, Organization, Location, Country*10.20 – 10.30 **Title of Presentation** *Presenter, Title/Position, Organization, Location, Country*10.30 – 11.00 **Discussion with speakers of Session I**11.00 – 11.35 **Coffee break****SESSION II: OPPORTUNITIES FOR COOPERATION WITH BREEDERS IN DUS EXAMINATION (ASPECTS ON CONFLICT OF INTEREST, INDEPENDENCE, ON-SITE EXAMINATION, PUBLICATION)***Moderator II: Name, Title/Position*11.35 – 11.45 **Title of Presentation** *Presenter, Title/Position, Organization, Location, Country*

11.45– 11.55	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
11.55 – 12.05	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
12.05 – 12.15	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
12.15 – 12.25	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
12.25 – 12.50	Discussion with speakers of Session II
12:50 – 14.50	Lunch Break

SESSION III: BENEFITS, CHALLENGES AND NEEDS (PVP OFFICES AND THE BREEDERS' PERSPECTIVES)

Moderator III: Name, Title/Position

14.50 – 15.00	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
15.00 – 15.10	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
15.10 – 15.20	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
15.20 – 15.30	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
15.30 – 15.40	Title of Presentation <i>Presenter, Title/Position, Organization, Location, Country</i>
15.40 – 16.05	Discussion with speakers of Session III
16.05 – 16.15	Closing remarks <i>Name, Title</i>

[End of Annex and of document]