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## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON  
INTERNATIONAL COOPERATION IN EXAMINATION

Third Session

Geneva, April 15 to 17, 1975

POSSIBLE WAYS OF ACHIEVING  
MULTILATERAL COOPERATION  
IN EXAMINATIONMemorandum by the Office of the Union

1. Possible ways of achieving multilateral cooperation in examination were outlined in a memorandum by the Office of the Union submitted to the January 1975 session of this Committee of Experts (document ICE/II/2). In that session, the Committee of Experts examined the memorandum and made a number of suggestions for further consideration (see document ICE/II/6, paragraphs 12 to 17).
2. The principles of the January memorandum accepted by the Committee of Experts, as well as the suggestions of that Committee--with such additions as further consideration of the matter seemed to require--are now presented in the form of a draft Decision by the Council. It is realized that the matter is not yet ripe for decision by the Committee of Experts, and even less for action by the Council, but it is believed that discussions in the Committee of Experts may be facilitated if they are based on a text--however tentative--rather than merely on broad principles. It is also realized that no choice has yet been made as to the legal form that such text should take. Should it be a "special agreement" under Article 30(2) of the UPOV Convention, an "administrative agreement" concluded between national Offices or a decision by the Council under Article 21(h) of the UPOV Convention? This was one of the questions that were asked, but not yet answered, by the Committee of Experts (see document ICE/II/6, paragraph 14). It is believed that the proposed Decision could easily be transformed into a special agreement or an administrative agreement since the basic ideas would be the same whatever the form chosen. It is believed, however, that a Decision by the Council would be the form which would bring the system into effect more rapidly than any of the two kinds of agreement mentioned since it would not require ratification by the legislative bodies of the States (as would a special agreement in most countries) or approval by the national authorities supervising the national Offices (as would an administrative agreement in all probability). For the same reasons, a Decision could always be amended by a simpler and faster procedure than an agreement, which would be a further advantage since amendments in the light of experience would probably become desirable within a relatively short period after the entry into force of the Decision.
3. In any proposed multilateral system, an important role should be entrusted to the Council. The Council should be the forum in which the practical details of cooperation should be discussed. It should, by persuasion and discussion, extend the multilateral system to the greatest number of genera and species, avoid duplication of effort, and achieve economies for both the national Offices and the applicants. It should have the power to regulate any details in what could be called "the Regulations" under the multilateral agreement or the Council's Decision.

4. Since the expected advantages of a multilateral system are well known to the members of the Committee of Experts, they need not be repeated here. Only one of them--which is important for the territorial expansion of the Union--is mentioned here, mainly for the benefit of possible readers in non-member States. It is believed that acceptance of the UPOV Convention would be greatly facilitated if such States knew (i) that a multilateral system existed which--by enabling them to avoid the performance of examinations they did not wish to perform--allowed them to grant plant breeders' rights with much less effort and expense than without such a system, (ii) that the extent to which they might wish to use it and the extent to which legal effect would be given to examinations performed abroad depended on them, and (iii) that by becoming members of the Union--and thus also members of the Council--they could participate in the improvement of the system. The possibility of concluding bilateral agreements is probably less attractive to such countries: willing partners must be found and negotiations conducted separately in each case. There is less likelihood of a rapid and relatively simple solution to their problems of examination under a network of bilateral agreements than in a multilateral system.

5. The questions involved are so well known to the members of the Committee of Experts that it did not seem necessary, at this stage, to explain the various provisions of the draft Decision (whose text is attached as an Annex to this document). It also seemed premature to propose at this stage the draft text of the Regulations which would accompany the Decision or, if the form of a multilateral agreement is preferred, such agreement. The draft Decision gives a rather precise indication of the matters that should be reserved for the Regulations. The Committee of Experts may wish to transfer some of those matters to the Decision and to make provision for the inclusion of additional matters in the Regulations. The points referred to in document ICE/III/6, paragraph 17, are also of the kind which could be covered in the Regulations. Once the views of the Committee of Experts are known, a draft of the Regulations could also be prepared.

6. Naturally, a multilateral system and bilateral agreements are not mutually exclusive.

[Annex follows]

## ANNEX

Draft  
DECISION

1. The Council of the International Union for the Protection of New Varieties of Plants (hereinafter referred to as "the Council" and "the Union," respectively),
2. Desiring to extend the possibility of the application of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Convention") to the greatest possible number of genera and species in the greatest possible number of member States of the Union through cooperation, among the national Offices of such States, in the examination of varieties whose protection is sought by their breeders,
3. Considering that Article 30(2) of the Convention contemplates the conclusion of special agreements between member States of the Union with a view to the joint utilization of the services of the authorities entrusted with the examination of new varieties in accordance with Article 7 of the Convention and with assembling the necessary reference collections,
4. Considering further that, according to Article 21(h) of the Convention, one of the duties of the Council is to take the necessary decisions to ensure the efficient functioning of the Union,
5. Has agreed and decided as follows:

Article 1Readiness To Examine Plant Varieties  
or To Communicate Test Results

- (1) [Readiness To Examine] The national Office of each member State ("the offering Office") shall announce to the Office of the Union the list of genera and species which it is ready to examine at the request of the national Office of any other member State of the Union ("the requesting Office").
- (2) [Readiness To Communicate Test Results] The national Office of each member State ("the offering Office") shall inform the Office of the Union whether it is ready to communicate, at the request of the national Office of any other member State of the Union ("the requesting Office"), the test results of any examination which it is carrying out or has carried out in connection with an application for protection of plant breeders' rights in a variety or for inclusion of a variety in the national catalogue of authorized varieties, and, if so, shall announce to the Office of the Union the list of genera and species to which such readiness applies.
- (3) [New Member States] Any announcement made under paragraphs (1) or (2) shall apply to requests made by national Offices of States which were members of the Union at the date the announcement was made. Where a State becomes a member of the Union at a later date ("the new member State"), it shall be left to the discretion of the offering Office to decide whether its announcement will apply also to the new member State. The offering Office shall notify the Office of the Union accordingly.
- (4) [Application of Test Guidelines] Where guidelines for the conduct of tests approved by UPOV exist for the genus or species concerned, any examination referred to in paragraph (1) shall be carried out according to such guidelines.

(5) [Fees] The amount of the fees payable for the services rendered under paragraphs (1) and (2) shall be fixed by the offering Office.

(6) [Changes in the Announcement] The list referred to in paragraph (1) may be extended at any time; except with the agreement of all the members of the Council, the said list may be restricted only subject to three years' notice. Any announcement made under paragraph (2) may be restricted or withdrawn at any time. Extensions, restrictions and withdrawals shall be notified to the Office of the Union. No restriction or withdrawal shall have effect in respect of requests made before notification of the restriction or withdrawal, except with the approval of the requesting Office.

(7) [Furnishing of Propagating Material] Where the examination is carried out in compliance with a request made under paragraph (1), the offering Office shall not furnish third persons with any propagating material which has been given to it by the requesting Office or on the instructions of that Office, except with the specific authorization of the requesting Office.

(8) [Details] The Regulations referred to in Article 5 shall provide the details for the application of paragraphs (1) to (6), including:

(i) the time when the fees are due;

(ii) the effect of changes in the fees in respect of requests made before such changes occurred;

(iii) the effect on the amount of the fees where several national Offices request the examination, or the test results of the examination, of the same variety;

(iv) the modalities of the transmittal to the offering Office, by the requesting Office or under its direction, of the material to be examined under paragraph (1);

(v) the obligation on the part of the offering Office to specify the extent to which its tests deviated or deviate from the guidelines referred to in paragraph (4) where the test results communicated relate to an examination carried out in connection with an application for inclusion of a variety in the national catalogue of authorized varieties;

(vi) the details which the interim reports, the final examination reports and the reports on the test results must contain, the time limits within which such reports must be communicated, and the languages in which they should be drawn up;

(vii) the details of the description of the variety which must accompany the examination reports;

(viii) the conditions under which the applicant, his accredited agent and other persons authorized by the requesting Office will have access to the tests while they last and to the records of any completed examination;

(ix) the method to be applied for the conduct of tests where the variety belongs to a genus or species for which no test guidelines approved by UPOV exist;

(x) the obligations on the part of the offering Office in respect of the maintaining of reference collections and the procuring, for the purposes of the requesting Office, of materials from those collections for purposes of comparison.

Article 2

Reporting and Noting of Announcements  
Made Under Article 1

(1) [Reporting by the Office of the Union] The Office of the Union shall-- where necessary, after consultation with the offering Office--report to the Council all announcements received under Article 1(1), (2), (3) and (6).

(2) [Noting by the Council] The Council shall officially note the announcements referred to in paragraph (1) and reported to it by the Office of the Union.

(3) [Details] The Regulations referred to in Article 5 shall provide the details for the application of paragraphs (1) and (2), including:

(i) the time limits within which the Office of the Union must report to the Council,

(ii) the time limits within which the Council must note the announcements reported to it.

Article 3

Effect Given by the Requesting Office to Examination  
Reports and Test Results of Offering Offices

(1) [Notifications of Any Effect Given] Where any member State is prepared to give any effect, for the purposes of the procedure of the grant of plant breeders' rights in that State, to the examination reports or test results requested and received by its national Office under Article 1(1) or (2), such Office shall notify the Office of the Union of the extent of such effect. Any effect so given may depend on the identity of the offering Office and may be different in respect of each genus or species.

(2) [Modification or Withdrawal of the Notification] Any notification given under paragraph (1) may be modified or withdrawn at any time by a communication addressed to the Office of the Union. Such notification shall be effective as from its date. It shall, however, have no effect, except with the approval of the applicant, in respect of requests made before the date of the said notification.

Article 4

Publications by the Office of the Union

The Office of the Union shall promptly publish in the form of a document or in its Gazette, which shall be available to any authority or person, the announcements noted by the Council and referred to in Article 2(2), the notifications referred to in Article 3(1), the communications referred to in Article 3(2) and any other information prescribed by the Regulations referred to in Article 5.

Article 5

Regulations

(1) [Matters Provided for in the Regulations] The Council shall adopt Regulations concerning matters in respect of which this Decision expressly refers to the Regulations, as well as any other details useful in the implementation of the provisions of this Decision.

(2) [Adoption and Modification of the Regulations] The Regulations shall be adopted and may be amended by the Council. Adoption of the Regulations and of any amendment thereto shall require two-thirds of the votes cast.

Article 6

Amendment of the Decision

This Decision may be amended by the Council. Adoption of any amendment shall require that no member of the Council vote against the proposed amendment.

[End of Annex and  
of document]