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**UPOV**

INTERNATIONALER VERBAND  
ZUM SCHUTZ VON  
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE  
POUR LA PROTECTION  
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION  
FOR THE PROTECTION OF  
NEW PLANT VARIETIES

AD HOC JOINT TRIALS SCHEME STUDY GROUP

WORKING PAPER CONCERNING  
PRELIMINARY EXAMINATION  
ON AN INTERNATIONAL BASIS

Presented by the Secretariat

This paper outlines the background of the problem, possible ways of undertaking international examination, the necessary conditions to be established by the member States and the requirements to be met by the breeders.

## Background

1. Article 30(2) of the Convention provides for special agreements with a view to the joint utilization of authorities entrusted with the examination of new varieties. A recommendation adopted by the Diplomatic Conference in Paris in 1961 stressed the importance of the organization of the examination on an international basis, thus relieving member States of the onerous task which examination of the same variety in all member States represents, both from a technical and from a financial point of view.
2. Breeders, too, have a strong interest in the matter, considering the burden which the trial fees represent as well as the fact that internationally organized examinations will make it possible for countries which have adopted laws for the protection of plant breeders' rights to extend the number of species that may benefit from protection under their national laws, and for countries which have not yet introduced such legislation to do so.
3. At the fourth meeting of the Council in October 1970, the United Kingdom presented a detailed proposal (contained in Annex 5 to UPOV/C/IV/11) concerning preliminary examinations of new rose varieties, the idea being that this proposal could serve as a basis for a pilot scheme for other species as well.
4. The proposal was approved in principle by the Council, which requested the Secretariat to convene a meeting of experts to consider the question in detail and to authorize, if appropriate, the enforcement of the scheme and report to the Council on the results at its next meeting.
5. During the discussions of the Council, other species, such as apples and pears, were mentioned as being suitable for the same procedure, and in the report of the Technical Working Group for Ornamental Plants (Annex 6 to UPOV/C/IV/11) it was recommended that the U.K. proposal be adopted and species other than roses be considered.
6. For the reasons mentioned above, the Secretariat felt that discussions concerning joint trial arrangements should not be confined to roses alone, but that it would be necessary also to consider an extension of the procedure to other species in the not too distant future.
7. An outline for a Joint Trial Scheme is attached in Annex 1 to this paper.

General Remarks

8. Secrecy and right to consult records. National legislation concerning secrecy with regard to information given to the national authority must be kept in mind. The same applies to national legislation concerning the obligation for official authorities to inform private interested parties of the contents of the documents in their possession.
9. The question of secrecy does not seem to be an obstacle to the scheme in view of the fact that the breeder, who is the party who can claim and probably waive the conditions of secrecy, is also supposed to be interested in the cooperation.
10. Legislation on information to private parties differs from one country to another. Examples:
- (i) the interested party whose case is being considered has access to all documents;
  - (ii) any party has the right to study the documents (except where it might be harmful to a private person's interests - and in other cases of no relevance to the present question).
11. It might be useful if each delegation could present a short paper on the questions mentioned in paragraphs 8 to 10.
12. Article 12(3) of the Convention gives the breeder a rather long period in which to furnish to national authorities (other than the one with which he has filed his first application) additional documents and material. This provision may hamper the common examination procedure. However, since the procedure is intended for the benefit of the breeder, it is justified to assume that he will cooperate. In any case, any member State will have the right to refuse to register a variety on the basis of trials carried out prior to a certain point in time.
13. Paragraph 12 of the attached "Outline" only partly solves the problem. If the country in question has no facilities to carry out the examination, the method described in the Outline is impracticable. If need be, the normal examination fee could be charged (without the obligation for the authority to undertake trials).
14. If experts visit the testing stations in other countries, such visits will involve costs. Can these costs be borne by the authorities concerned?

15. Position of the breeders. The breeders must be adequately informed on the agreements. As for the species to be tested in the country of the breeders' own choice, the latter should be invited to indicate the country in which they wish the testing to be done.

16. It would be helpful if applications for the same variety were always presented to the national authorities under the same breeder's reference number.

/End of document UPOV/JT/1  
Annex follows/

OUTLINE FOR A JOINT TRIAL SCHEME

Scope of the Scheme

1. This Scheme shall apply only to species determined by agreement among several or all member States.
2. Agreement to apply this Scheme shall be subject to the fulfillment of the following requirements:
  - (i) approved guidelines for the examination of varieties of the species in question (including number of plants to be examined and number of growing seasons for trials to be carried out):
  - (ii) standard forms for breeder's application for protection of the variety;
  - (iii) standard questionnaire for technical information from breeders;
  - (iv) standard rules for delivery of plant material (time and quantity).
3. Choice of country to undertake examinations. There are three possibilities, namely:
  - (i) the country which receives an application concerning a certain variety;
  - (ii) the country which the breeder indicates in his application;
  - (iii) the country (or countries - see paragraph 5 below) agreed upon by the Council for the species in question.
4. There may be very little difference in practice between subparagraphs (i) and (ii) of paragraph 3 as the breeder decides when the application shall be filed, and for clarity's sake solution (ii) seems the most adequate.
5. Solution (iii) in paragraph 3 could be useful with regard to species of which special reference collections exist in certain countries and/or on which certain institutes have done specialized work.
6. The two possibilities (breeders' own choice or allocation of certain species to certain countries) may coexist for different genera and species, for instance:

- (a) roses: breeders' own choice;
- (b) pears: allocation to France;
- (c) apples: allocation to the United Kingdom.

7. In some cases it might be convenient to conduct trials in more than one country. A pear tree alleged to be resistant to fire-blight (*Erwinia amylovora*) might be tested in France for distinctness and in England for resistance.

8. Tasks, etc., of the examining country. The examining country informs the other countries on receipt of the application, with an indication of the breeder's reference number or submitted denomination.

9. After the trials the examining country passes the results to the other countries and expresses its opinion on distinctness, homogeneity and stability.

10. A standing invitation is extended to experts in other countries to visit the trial fields (glasshouses) and to discuss the results with the examining experts.

11. Position of the other countries. Normally these countries (hereinafter called "other countries") base their decisions regarding protection on the advice they have received from the examining countries.

12. Other countries are entitled to ask breeders to deliver smaller quantities of plant material for their own collections. In order to acquaint themselves with the variety, they may forward the request at an early stage. The material may be requested free of charge, and a small amount can be charged for the costs involved in growing the plant.

13. Other countries are entitled to examine the variety themselves without giving reasons for their decision on such examination. Such cases should, however, be exceptional.

14. Other countries are entitled to provide as a general rule that they will undertake examinations themselves if the breeder omits to file an application within a certain time limit after the first application, or if the breeder, by virtue of Article 12(3) of the Convention, refuses to deliver the necessary material and documents within a certain time limit.

15. Fees. The first country shall receive full payment of fees, that is, application fee, trial fee and (if applicable) publication fee. Other countries shall receive application fees and (if applicable) publication fees, but they shall not receive trial fees, unless trials have been carried out under paragraph 13 or by virtue of paragraph 14. However, they may receive the small fee mentioned in paragraph 12 and payment for necessary translations of papers containing the information, etc., referred to in paragraph 9.

16. Annual fees shall be paid as usual.

/End of Annex and document  
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