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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Forty-Ninth Session
Geneva, April 1, 2004

**RECOMMENDATIONS TO ENSURE THE INDEPENDENCE
OF THOSE DUS EXAMINATION CENTERS WHICH HAVE,
OR HAVE LINKS TO, BREEDING ACTIVITIES**

Document prepared by the Office of the Union

1. At its forty-sixth session, on October 21 and 22, 2002, the Administrative and Legal Committee (hereinafter referred to as “the CAJ”) identified certain issues concerning the transfer of material for examination of distinctness, uniformity and stability (DUS) which require further attention by the CAJ. In particular, it was suggested that the CAJ might consider the development of recommendations to ensure the independence of those DUS examination centers which have, or have links to, breeding activities (see paragraph 38 of document CAJ/46/8, and paragraphs 1 to 3 of document CAJ/47/4).
2. Article 12 of the 1991 Act of the International Convention for the Protection of New Varieties of Plants (1991 Act) provides that “... In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, ...” This establishes that the authority may conduct growing trials or other tests itself or, alternatively, the authority may arrange for other parties to conduct the growing trials or other tests, e.g. an independent DUS examination center.

3. Draft recommendations were prepared for the forty-eighth session of the CAJ, held on October 20 and 21, 2003. The CAJ considered the first version of the draft recommendations contained in the Annex to document CAJ/48/2. Those draft recommendations do not concern examination activities of breeders in relation to their own varieties (Breeder-based Testing System).

4. It was agreed that a new version of those draft recommendations, incorporating the suggestions and modifications made during the meeting (see paragraphs 88 to 100 of document CAJ/48/7 Prov.), would be prepared for the forty-ninth session of the CAJ. The revised version of the draft recommendations are reproduced in the Annex to this document.

5. The CAJ is invited to consider and comment on the contents of this document and the draft recommendations contained in the Annex to this document.

[Annex follows]

DRAFT RECOMMENDATIONS TO ENSURE THE INDEPENDENCE
OF THOSE DUS EXAMINATION CENTERS WHICH HAVE,
OR HAVE LINKS TO, BREEDING ACTIVITIES

These draft recommendations apply where authorities are responsible for obtaining, using or distributing plant variety material. In particular, they do not apply to cases where breeders are responsible for obtaining plant material for the examination.

Draft Recommendation 1

The authority¹ should require that a party entrusted with a particular examination activity (“center”) declares to the authority, interests and/or activities that may raise a possible conflict of interest with the particular examination activity. Such centers include those that are part of the authority or another government body. The interests and/or activities would include: breeding activities conducted by the center; the center being the applicant or holder of breeders’ rights or other rights; and members of staff of the center that may be involved in the examination activity having personal interests, where such interests and/or activities were considered, by the authority, to be in a related area.

Draft Recommendation 2

In relation to information, documents or material furnished to the center for a particular examination activity, the authority should follow UPOV “Draft Recommendations Concerning Information, Documents or Material Furnished for Examination Purposes”² and, if applicable, the specific conditions provided in draft Recommendation 4 of this document.

Draft Recommendation 3

On the basis of a declaration (see draft Recommendation 1) and, if appropriate, after consultation with the breeder(s)³ which might be affected by the center’s possible conflict of interest, the authority should decide to:

¹ The term “authority” refers to the authority entrusted with the task of granting breeders’ rights (Article 30(1)(ii) of the 1991 Act).

² The content of a final version of UPOV “Draft Recommendations Concerning Information, Documents or Material Furnished for Examination Purposes” is still unknown as it would depend on the results of the deliberations of the CAJ in relation to the Annex to document CAJ/49/2.

³ The term “breeder” refers to the person entitled to apply for protection in relation to his variety (Article 1(iv) of the 1991 Act).

- (a) confirm the work on the basis that there is no conflict of interest;
- (b) confirm the work subject to specific conditions to address the possible conflict of interest; or
- (c) withdraw the particular examination activity related to the conflict of interest.

Draft Recommendation 4

If the authority has evaluated a declaration of interest (see draft Recommendation 1) and decides to “confirm the work subject to specific conditions” (see draft Recommendation 3(b)), these conditions should include a requirement for the center to adopt appropriate measures to ensure that:

- (a) plant material of the variety is not released to any other party without the permission of the authority;
- (b) measures are taken to ensure that members of staff involved in the center’s possible conflict of interest do not have access to the plant material;
- (c) members of staff involved in the examination activity are not involved with, or related to, the center’s interest that has raised the possible conflict;
- (d) members of staff involved in the examination activity have no personal interests that could affect an objective and independent conduct of the examination.

Draft Recommendation 5

The authority should, as a matter of transparency, make available to breeders the measures it has taken to ensure the independence of centers conducting examination activities.

[End of Annex and of document]