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UPOV

CAJ/31/3

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

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

## Thirty-first Session

Geneva, October 26 and 27, 1992

UPOV MODEL ADMINISTRATIVE AGREEMENT  
FOR INTERNATIONAL COOPERATION  
IN THE TESTING OF VARIETIESDocument prepared by the Office of the Union

1. At its thirtieth session, the Administrative and Legal Committee (hereinafter referred to as "the Committee") considered the question of fees in relation to cooperation in examination and agreed to propose to Council that the Recommendation on that question be repealed, the Model Administrative Agreement for International Cooperation in the Testing of Varieties (hereinafter referred to as "the Model Agreement") being appropriately revised. In the light of the decisions taken by the Committee, the aims of the revision are to:

(i) reflect the (new) principle that the considerations connected with cooperation in examination are not linked to the national fee scales (i.e., that they may be set bilaterally or multilaterally, by mutual consent, at a level differing from that of the corresponding examination fees);

(ii) refer explicitly--and no longer through a reference to the aforementioned Recommendation--to the consideration corresponding to 350 Swiss Francs levied where examination results are taken over.

Reference is made in this respect to document CAJ/30/4, which sets out the history of this issue, and to paragraphs 35 to 37 of document CAJ/30/6, which give an account of the discussions of the Committee.

2. The annex to this document contains a revised version of the Model Agreement. The principle set out in paragraph (1)(i) above led to the addition, in Article 6, of "the considerations" and to the replacement, in Article 7(1), of the reference to an amount equal to the full testing fee by a reference to the

agreed consideration. Consequential amendments have been made in paragraphs (2) and (3) of Article 7 since a reference to the testing fee and to a consideration is now required; the first applies where the prior application has been filed with the examining authority, and the second, where the prior application has been filed with a third authority. The consideration of 350 Swiss Francs is mentioned in Article 7(3). It is to be underlined that that Article already provides in its present text for the possibility that the parties may agree a different amount.

3. The text proposed in the annex is also adjusted to the 1991 Act. The fourth recital no longer refers to the standardization of the lists of protected genera and species, but to the more general objective of optimizing the functioning of the protection systems. In addition, some terminological adjustments have been made in the French and German texts. Finally, in the light of experience, the third recital has been strengthened by the deletion of the reference to the provisional character of the agreements and made more general by the deletion of the reference to the period of five years in relation to the review and evaluation of the agreements.

4. The Committee is invited to:

(i) adopt the text appearing in the annex;

(ii) recommend to Council to adopt that text.

[Annex follows]

## ANNEX

## DRAFT

MODEL ADMINISTRATIVE AGREEMENT FOR  
INTERNATIONAL COOPERATION IN THE TESTING OF VARIETIES\*

- WHEREAS the centralization of technical testing for distinctness, homogeneity and stability of varieties of plants belonging to certain genera/species has proved valuable in the field of cooperation,
- WHEREAS, where applications in respect of one variety have been filed in more than one country, it is desirable that the testing for distinctness, homogeneity and stability be carried out by only one authority,
- WHEREAS any arrangements in this respect must necessarily be reviewed, evaluated and adjusted periodically,
- WHEREAS parties should as far as possible offer each other testing facilities in order to optimize the functioning of their plant variety protection systems,
- WHEREAS parties are willing to contemplate comparable agreements with other countries,
- WHEREAS these arrangements should promote the standardization of technical procedures and the centralization of testing for distinctness, homogeneity and stability,

Party A

and

Party B

have agreed as follows:

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\* The Model Administrative Agreement can also serve as a basis for bilateral agreements for those parties which only wish to enter into the obligation deriving from Article 1, but not the obligation deriving from Article 5. In that case, Article 5 has to be deleted and the subsequent articles have to be adapted. Should two parties intend to enter into obligations which go beyond the provisions in the Model Administrative Agreement, additional provisions will have to be included; where appropriate, Articles 2 and 5 would also have to be replaced or amended. The Office of the Union is prepared to assist in the drafting of bilateral agreements should cases of that kind arise.

Article 1

(1) Authority A shall carry out, at the request of Authority B, the technical testing for distinctness, homogeneity and stability of varieties of plants, belonging to the genera/species listed in Annex I, for which applications have been made for the granting of plant breeders' rights in accordance with the International Convention for the Protection of New Varieties of Plants and/or for which applications have been made for inclusion in the national list of plant varieties.

(2) Authority B undertakes under the same conditions to carry out, at the request of Authority A, the same testing in respect of plant varieties belonging to the genera/species listed in Annex II.

Article 2

Where the Council of UPOV has adopted Guidelines for the conduct of the testing of species subject to this Agreement, the testing shall be conducted according to those Guidelines. In the absence of such Guidelines the authorities shall adopt the testing methods by mutual consent before this Agreement is applied to the species in question.

Article 3

(1) For each variety the testing authority shall submit to the requesting authority the reports relating to each testing period and a final examination report.

(2) The final report shall detail the results of the tests concerning the characteristics of the variety and shall state the opinion of the testing authority on the distinctness, homogeneity and stability of the variety. When those requirements are considered to be fulfilled or when the requesting authority asks for it, a description of the variety shall be added to the report.

(3) Reports and descriptions shall be written in . . . . . (language).

(4) Notice of any emerging problems shall immediately be given to the requesting authority.

Article 4

(1) The authorities shall take all necessary steps to safeguard the rights of the breeder.

(2) Except with the specific authorization of the requesting authority or the applicant, the testing authority shall refrain from passing on to a third person any material of the varieties for which testing has been requested.

(3) Access to the documents and the test plots shall be given only to:

- the requesting authority and the applicant, and any person duly authorized by either of them;
- the necessary staff of the institution that carries out the testing and special experts called in who are bound to secrecy in public service. Those special experts shall have access to the formulae of

hybrid varieties only if it is strictly necessary and if the applicant does not object.

This paragraph does not exclude general access to test plots by visitors, provided due regard is had to paragraph (1) above.

(4) If another authority has requested testing or test results under a similar agreement, access may be granted in accordance with the rules applicable under that agreement.

#### Article 5

(1) Each authority, unless it exceptionally decides otherwise, shall examine an application for the grant of a plant breeder's right on the basis of the test results of the other authority where that other authority has tested or agreed to test the variety for distinctness, homogeneity and stability following a prior application.

(2) If the prior application ceases to exist, the authorities may agree on the continuation of the tests on behalf of the requesting authority.

(3) With respect to one or more genera/species each authority may declare unilaterally that it will apply paragraph (1) to applications for inclusion in its national list of plant varieties.

(4) [This Article does not apply/applies to varieties of the genera/species listed in Annex III].

(5) For the purposes of this Article, the testing authority shall apply Articles 2, 3 and 4 mutatis mutandis.

#### Article 6

Practical details arising out of this Agreement, regarding in particular the considerations, application forms, technical questionnaires and requirements as to propagating material, test methods, exchange of reference samples, maintenance of reference collections and the presentation of the results, shall be settled between the authorities by correspondence.

#### Article 7

(1) The requesting authority shall pay to the testing authority the consideration agreed upon under Article 6.

(2) When paragraph (2) of Article 5 applies, the amount payable shall be equal to the difference between the consideration due under this Agreement and, as the case may be, either the testing fee or the consideration which has been/is to be charged in respect of the prior application.

(3) However, if the full testing fee or a consideration has been/is to be charged in respect of a prior application, an administrative consideration equivalent to 350 Swiss Francs or of an amount agreed upon by correspondence between the authorities shall be charged instead.

(4) Payments shall be effected within three months of receipt of an invoice specifying their amount.

Article 8

Each authority shall make available any information, facilities or services of experts that the other authority may need additionally, on condition that the latter undertakes to pay the costs involved.

Article 9

(1) This Agreement shall enter into force on . . . . . (date) [and shall replace the Agreement of . . . . . (date) on cooperation in the examination of plant varieties].

(2) This Agreement and its Annexes may be amended by mutual agreement.

(3) Any party wishing to revoke this Agreement in whole or in part shall give the other party notice to that effect.

(4) Unless the parties agree otherwise, any such revocation shall take effect only after observance of two years' notice, completion of pending tests and transmittal of the relevant reports.

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