

CPVO POLICY ON THE STATUS OF PLANT MATERIAL SUBMITTED FOR DUS TESTING PURPOSES

The aim of this document is to make transparent the policy of the CPVO concerning material sent for DUS testing in the framework of Community Plant Variety Right applications. It provides guidance for the implementation of article 88.4 of Council Regulation (EC) 2100/94 as well as article 13.3 of COMMISSION REGULATION (EC) No 874/2009. It will also contribute to a coherent practice by all entrusted Examination Offices in the CPVO. This will permit breeders to make an informed decision before sending material for testing. It is not the competence of the CPVO to decide what examination offices may do in relation to material submitted in the framework of a national PVR application or for national listing purposes. Accordingly, the CPVO cannot assure breeders that the below policy has been applied when the CPVO takes over reports from tests which has been carried out or is in the process of being carried out. The CPVO would nevertheless urge examination offices to follow the same principles when testing varieties for purposes other than in the framework of Community Plant Variety Right applications.

The policy does not apply to any examination offices other than examination offices entrusted by the Administrative Council of the CPVO for the same given species (hereinafter "**Examination Office**"). Accordingly, when the below mentioned policy refers to a transfer of material between two Examination Offices, this relates only to material of a given species that both the sending and receiving Examination Offices are entrusted to test by the Administrative Council of the CPVO.

Reference to "**material**" in this policy also applies to DNA samples taken by an Examination Office from plant material submitted to it for DUS purposes.

1. What should an Examination Office do with material if the application is withdrawn or rejected?

- 1.1. The Examination Office should either destroy or send back the material to the applicant.
- 1.2. If the variety is of common knowledge, the Examination Office may keep the material in its reference collection.

2. May an Examination Office send material...

- 2.1. To another Examination Office?
 - 2.1.1 On request, the Examination Office should send material to another Examination Office.
 - 2.1.2 If the material concerned consists of parent lines or would disclose information on hybrid formulas, the Examination Office should inform the person entitled that the material has been sent to another Examination Office
 - 2.1.3 The Examination Office shall not use the material received from another Examination Office for any other purposes than for DUS tests or R&D projects between Examination Offices only aiming to improve DUS testing.

If the R&D projects aiming to improve DUS testing involve any non-entrusted examination office or any third party, consent of the title holder is required. The provisions on confidentiality and conflicts of interest in the Designation Agreement between the CPVO and the Examination Office shall apply and be reflected in the consortium agreement signed by the partners of the R&D projects.

- 2.1.4 If the material is used for any other purposes than those mentioned under 2.1.1 - 2.1.3, consent of the title holder is required. In that case also, the provisions on confidentiality and conflicts of interest in the Designation Agreement between the CPVO and the Examination Office shall apply.
- 2.2 To a non-entrusted examination office or a certification authority or any other entity?
 - 2.2.1 On request, the Examination Office may send material to another non-entrusted examination office only if consent from the person entitled has been obtained and delivered (or referred to) by this other non-entrusted examination office.
 - 2.2.2 The Examination Office may provide material to a certification authority on request only if consent has been obtained from the person entitled and delivered (or referred to) by the certification authority.
 - 2.2.3 Furthermore, the Examination Office may provide material to any other entity only if consent from the person entitled has been obtained and delivered (or referred to) by this other entity.

3. What may the Examination Office do with the material after the variety has been granted a Community PVR?

- 3.1 If the Examination Office does not keep a living reference collection the material shall be destroyed or sent back to the applicant.
- 3.2 If the Examination Office keeps a living reference collection including DNA samples the material should be kept by the Examination Office.
- 3.3 If the material is kept, the Examination Office may, on request, transfer material to another Examination Office or to a non-entrusted examination office on the same conditions as provided for in Section 2 above.

4. After the Community Plant Variety Expires

- 4.1. Material kept in a reference collection should be kept upon expiry of a Community plant variety right.