

**Council**

**C(Extr.)/34/3**

**Thirty-Fourth Extraordinary Session  
Geneva, April 6, 2017**

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**REPORT BY THE PRESIDENT ON THE WORK OF THE NINETY-THIRD SESSION OF THE CONSULTATIVE COMMITTEE; ADOPTION OF RECOMMENDATIONS, IF ANY, PREPARED BY THAT COMMITTEE**

*Document prepared by the Office of the Union*

*Disclaimer: this document does not represent UPOV policies or guidance*

1. The Consultative Committee held its ninety-third session in Geneva in the morning of April 6, 2017.

**RECOMMENDATIONS BY THE CONSULTATIVE COMMITTEE FOR DECISION BY THE COUNCIL**

2. The recommendations made by the Consultative Committee on the following items, as set out in this report, will be considered by the Council under the relevant agenda items (see document C(Extr.)/34/1 Rev.):

- (a) Adoption of documents (document C(Extr.)/34/2)
- (b) Calendar of Meetings in 2017 (document C(Extr.)/34/4)
- (c) Press Release (document C(Extr.)/34/5).

3. The Consultative Committee also made the following recommendations for decision by the Council:

*Scheduling of the UPOV sessions*

4. The Consultative Committee recommended to the Council to organize a single set of sessions from 2018, as follows:

- (a) an arrangement for the scheduling of the UPOV bodies, on the following basis:

Monday	Technical Committee
Tuesday	Technical Committee
Wednesday	Administrative and Legal Committee
Thursday	Consultative Committee
Friday	Council (afternoon Symposium /Seminar (if appropriate))

- (b) TC-EDC to meet twice a year; once in the period March/April and once in conjunction with the TC sessions later in the year;

- (c) meetings of ad hoc working groups to take place during Monday to Friday of the annual sessions unless electronic participation was possible, such as was the case for the EAF meetings, in which case meetings could take place in the period March/April;

- (d) with regard to timing of the UPOV sessions, it was recommended to retain the current timing of the October/November sessions.

5. The Consultative Committee recommended to the Council to adopt the proposals of the TC, at its fifty-third session, on the following measures:

- (a) Test Guidelines that could not be prepared in time for adoption by the Technical Committee at its session could be adopted by correspondence on the basis of the recommendations by the Enlarged

Editorial Committee (TC-EDC). The TC agreed that the TC-EDC should meet twice a year, once in the period March/April and once in conjunction with the TC sessions later in the year.

(b) to use the following contingency measures for 2018, subject to the Council deciding that the TC should hold its fifty-fourth session in late 2018:

- (i) for Test Guidelines proposed for adoption in 2018, to use a procedure for adoption by correspondence as follows:
  - Draft Test Guidelines would be prepared as agreed by the TWPs and circulated with the recommendations of the TC-EDC;
  - In the absence of any objections the Test Guidelines would be adopted;
  - In the case of objections, the objections would be referred to the relevant TWP for consideration at their 2018 session, and the Test Guidelines considered for adoption by the TC at its fifty-fourth session, in 2018;
  - TC-EDC to meet on March 26 and 27, 2018, and in conjunction with the TC at its fifty-fourth session, in 2018, if necessary.
- (ii) for TGP documents, to invite the TC-EDC to consolidate comments made by the TWPs at their sessions in 2017 and, in the absence of consensus between the TWPs, formulate proposals for further consideration by the TWPs at their sessions in 2018;
- (iii) all other matters to be considered at the fifty-fourth session of the TC in 2018 in the normal way.

*Electronic application form*

6. The Consultative Committee recommended to the Council to allow the Office of the Union to have flexibility in the charge to be made for use of the EAF in 2017, but not to make the EAF free of charge.

WORK OF THE CONSULTATIVE COMMITTEE AT ITS NINETY-THIRD SESSION

Documents proposed for adoption by the Council

7. The Consultative Committee considered documents C(Extr.)/34/2, UPOV/EXN/EDV/2 Draft 8, UPOV/EXN/PPM/1 Draft 7 and UPOV/INF-EXN/10 Draft 1.

*UPOV/EXN/EDV: Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision)*

8. The Consultative Committee noted the intervention of the Delegation of the Russian Federation that the CAJ, at its seventy-third session, in October 2016, had agreed to consider the relevant elements of the comments of the Russian Federation, which were circulated to the CAJ on October 24, 2016, at its seventy-fourth session, with a view to developing guidance in a future revision of document UPOV/EXN/EDV and that, on that basis, the Delegation endorsed the adoption by the Council of document UPOV/EXN/EDV/2 Draft 8.

9. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/EXN/EDV/1 "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention" (document UPOV/EXN/EDV/2), on the basis of document UPOV/EXN/EDV/2 Draft 8.

*UPOV/EXN/PPM: Explanatory Notes on Propagating Material under the UPOV Convention*

10. The Consultative Committee recommended to the Council to adopt document UPOV/EXN/PPM/1 "Explanatory Notes on Propagating Material under the UPOV Convention" on the basis of document UPOV/EXN/PPM/1 Draft 7, with the following amended text:

"FACTORS THAT HAVE BEEN CONSIDERED IN RELATION TO PROPAGATING MATERIAL

"The UPOV Convention does not provide a definition of "propagating material". Propagating material encompasses reproductive and vegetative propagating material. The following are non-exhaustive

examples of factors that have been considered by members of the Union in relation to whether material is propagating material. Those factors should be considered in the context of each member of the Union and the particular circumstances.

- (i) plant or part of plants used for the variety reproduction;
- (ii) whether the material has been or may be used to propagate the variety;
- (iii) whether the material is capable of producing entire plants of the variety;
- (iv) whether there has been a custom/practice of using the material for propagating purposes or, as a result of new developments, there is a new custom/practice of using the material for that purpose;
- (v) the intention on the part of those concerned (producer, seller, supplier, buyer, recipient, user);
- (vi) if, based on the nature and condition of the material and/or the form of its use, it can be determined that the material is “propagating material”; or
- (vii) the variety material where conditions and mode of its production meet the purpose of reproduction of new plants of the variety but not of final consumption.

The above text is not intended as a definition of 'propagating material'.

UPOV organized a “Seminar on Propagating and Harvested Material in the context of the UPOV Convention” in Geneva on October 24, 2016. The proceedings of the Seminar can be found at [http://www.upov.int/meetings/en/topic.jsp?group\\_id=73](http://www.upov.int/meetings/en/topic.jsp?group_id=73).

*UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision)*

11. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/6 “Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention” (document UPOV/INF/6/5), on the basis of the proposed amendments to Part II of document UPOV/INF/6/4, as presented in the Annex to document C(Extr.)/34/2.

*UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision)*

12. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF-EXN/9 “List of INF-EXN Documents and Latest Issue Dates” (document UPOV/INF-EXN/10) on the basis of document UPOV/INF EXN/10 Draft 1.

Preliminary examination of the Draft Program and Budget of the Union for the 2018-2019 Biennium

13. The Consultative Committee noted the estimated income and expenditure for 2016, and the comments in relation to anticipated income and expenditure for the 2016-2017 Biennium in relation to its consideration of the preparation of the Draft Program and Budget of the Union for the 2018-2019 Biennium.

14. The Consultative Committee agreed that the structure and contents should be the basis for the preparation of the Draft Program and Budget of the Union for the 2018-2019 Biennium, subject to relevant adjustments of staff costs; the proposal to organize a single set of sessions from 2018, with the possible use of the Russian language, if appropriate.

Procedure for the appointment of the External Auditor of UPOV

15. The Consultative Committee noted the developments with regard to the procedure to appoint the external auditor of UPOV for a term of office of six years starting from January 2018.

International system of cooperation

16. The Vice Secretary-General reported on developments at the second meeting of the Working Group on a Possible International System of Cooperation (WG-ISC), held in Geneva on April 5, 2017, as follows:

- The WG-ISC had reviewed the needs of PVP Offices, as set out in document UPOV/WG-ISC/2/2, and had agreed that it would be useful to add capacity-building in DUS examination as

a need and to increase the scope of needs concerning exchange of DUS reports. The WG-ISC also reviewed the issues in document CC/92/10 that were associated with the identified needs. It agreed that some of the issues were not of a high priority and/or were not seen to be feasible in the short-/medium-term but agreed to retain all the associated issues for the time being, as far as they were within the terms of reference of the WG-ISC.

- The WG-ISC agreed that the third meeting should focus on presentations of the current mechanisms within UPOV to meet the identified PVP offices, including possible limitations and should include the presentation of information from PVP offices on their experiences. Some of the elements that the WG-ISC agreed should be included were:
  - DUS Examination –presentations by the Office of the Union and the Chairperson of the Technical Committee on: existing arrangements for DUS cooperation; the results of the TC survey in on Cooperation in DUS Examination; existing quality assurances systems in members of the Union;
  - Novelty – presentations on: key elements in the explanatory notes on novelty; experiences in the implementation of the novelty provisions by members of the WG-ISC; role of the PLUTO Database;
  - Priority - presentations on: key elements in the explanatory notes on priority; experiences in the implementation of the priority provisions by members of the WG-ISC;
  - Cooperation in administrative matters – presentations on experiences of members of the WG-ISC on ways to mutually recognized documents;

With regard to variety denominations, the WG-ISC agreed to await for the outcome of the work at the WG-DEN before discussing the matter further.

17. The Consultative Committee noted, after consultation with the Chair of the Administrative and Legal Committee (CAJ), the next meeting of the WG-ISC (WG-ISC/3) had been proposed by the WG-ISC to be held in Geneva on October 24, 2017 (afternoon). The Consultative Committee recommended to the Council that the seventy-fourth session of the CAJ be held on October 23 and 24 (morning).

18. The Consultative Committee noted the progress in the work of the WG-ISC.

#### Organization of the UPOV sessions

19. The Consultative Committee noted the views of the Technical Committee (TC), at its fifty-third session, held from April 3 to 5, 2017, on the proposal to organize a single set of sessions from 2018:

“8. The TC agreed that the TC sessions could be organized on a suitable date in the period from late October to early December.

“9. The TC agreed to propose that Test Guidelines that could not be prepared in time for adoption by the Technical Committee at its session could be adopted by correspondence on the basis of the recommendations by the Enlarged Editorial Committee (TC-EDC). The TC agreed that the TC-EDC should meet twice a year, once in the period March/April and once in conjunction with the TC sessions later in the year.

“10. The TC agreed to use the following contingency measures for 2018, subject to the Council deciding that the TC should hold its fifty-fourth session in late 2018:

- (a) For Test Guidelines proposed for adoption in 2018, to use a procedure for adoption by correspondence as follows:
  - Draft Test Guidelines would be prepared as agreed by the TWPs and circulated with the recommendations of the TC-EDC;
  - In the absence of any objections the Test Guidelines would be adopted;
  - In the case of objections, the objections would be referred to the relevant TWP for consideration at their 2018 session, and the Test Guidelines considered for adoption by the TC at its fifty-fourth session, in 2018;
  - TC-EDC to meet on March 26 and 27, 2018, and in conjunction with the TC at its fifty-fourth session, in 2018, if necessary.

- (b) For TGP documents, to invite the TC-EDC to consolidate comments made by the TWPs at their sessions in 2017 and, in the absence of consensus between the TWPs, formulate proposals for further consideration by the TWPs at their sessions in 2018;
- (c) All other matters to be considered at the fifty-fourth session of the TC in 2018 in the normal way.

“11. The TC agreed that the scheduling of *ad hoc* Working Group meetings in the period March/April could defeat the purpose of moving to a single set of sessions, because it would require experts to travel to Geneva. However, it agreed that if electronic participation was possible, such as was the case for the EAF meetings, meetings at that time could be an efficient approach.”

*Opportunities for members of the Union to meet and exchange information in conjunction with the UPOV sessions*

20. The Consultative Committee agreed to the following measures to increase opportunities for members of the Union to meet and exchange information in conjunction with the UPOV sessions:

- (a) Book meeting rooms for delegates to use for bi-lateral/multi-lateral meetings;
- (b) Organize a meeting and/or visit of relevance for UPOV;
- (c) Organize an event of relevance for UPOV during one lunch-break or evening.

21. In the case of a visit or an event of relevance for UPOV, the Consultative Committee agreed that it could be organized in place of the traditional reception held on the evening of the first day of the March/April and October/November sessions, in order to minimize or eliminate the cost to participants.

*Nature and content of session documents in order to make the sessions as efficient as possible*

22. The Consultative Committee agreed the following in relation to the nature and content of documents:

- (a) Separation of documents into two types of documents:
  - (i) documents containing matters on which a decision by the body concerned is needed (“decision documents”)

In order to ensure that the documents containing matters on which a decision is needed are as brief as possible, matters for information concerning the same subject would be placed in a separate, information document.

- (ii) documents for information only.

Documents for information only to be posted on a separate section of the website of the body concerned (“information section”) and not considered individually. As a further measure to keep documents as clear and concise as possible and to improve accessibility of information, the “information section” to also contain reference material that is currently only accessible via references to UPOV session documents (e.g. Communication Strategy, Training and Assistance Strategy, Program for Improvements to the Plant Variety Database, UPOV Code System etc.);

- (b) Earlier posting of documents. The target would be to post “decision documents” at least three months before the UPOV sessions;

- (c) Consultation by correspondence between the UPOV sessions on selected subjects in order to facilitate discussion at the UPOV session; and

- (d) Preparation of joint documents for UPOV sessions to avoid the need for members of the Union to have multiple documents with the same substantial information.

*Examination of laws by correspondence*

23. The Consultative Committee agreed to consider, at its ninety-fourth session, a procedure for examination by correspondence that replicates the preliminary examination of laws by the Consultative Committee.

*Scheduling of the UPOV bodies*

24. The Consultative Committee recommended to the Council to organize a single set of sessions from 2018, as follows:

(a) an arrangement for the scheduling of the UPOV bodies, on the following basis:

Monday	Technical Committee
Tuesday	Technical Committee
Wednesday	Administrative and Legal Committee
Thursday	Consultative Committee
Friday	Council (afternoon Symposium /Seminar (if appropriate))

(b) TC-EDC to meet twice a year; once in the period March/April and once in conjunction with the TC sessions later in the year;

(c) meetings of ad hoc working groups to take place during Monday to Friday of the annual sessions unless electronic participation was possible, such as was the case for the EAF meetings, in which case meetings could take place in the period March/April;

(d) with regard to timing of the UPOV sessions, it was recommended to retain the current timing of the October/November sessions.

25. The Consultative Committee recommended to the Council to adopt the proposals of the TC, at its fifty-third session, on the following measures:

(a) Test Guidelines that could not be prepared in time for adoption by the Technical Committee at its session could be adopted by correspondence on the basis of the recommendations by the Enlarged Editorial Committee (TC-EDC). The TC agreed that the TC-EDC should meet twice a year, once in the period March/April and once in conjunction with the TC sessions later in the year.

(b) to use the following contingency measures for 2018, subject to the Council deciding that the TC should hold its fifty-fourth session in late 2018:

(i) for Test Guidelines proposed for adoption in 2018, to use a procedure for adoption by correspondence as follows:

- Draft Test Guidelines would be prepared as agreed by the TWPs and circulated with the recommendations of the TC-EDC;
- In the absence of any objections the Test Guidelines would be adopted;
- In the case of objections, the objections would be referred to the relevant TWP for consideration at their 2018 session, and the Test Guidelines considered for adoption by the TC at its fifty-fourth session, in 2018;
- TC-EDC to meet on March 26 and 27, 2018, and in conjunction with the TC at its fifty-fourth session, in 2018, if necessary.

(ii) for TGP documents, to invite the TC-EDC to consolidate comments made by the TWPs at their sessions in 2017 and, in the absence of consensus between the TWPs, formulate proposals for further consideration by the TWPs at their sessions in 2018;

(iii) all other matters to be considered at the fifty-fourth session of the TC in 2018 in the normal way.

Possible use of the Russian language in UPOV

26. The Consultative Committee agreed to consider, at its ninety-fourth session, a plan on the possible use of the Russian Language in UPOV, containing the following elements:

- Provision of interpretation in Russian at UPOV sessions in Geneva
- Provision of translations in Russian of key documents in the UPOV Collection
- Provision of translation of UPOV Distance Learning Courses
- Organizing for a Russian speaking professional to work in the Office of the Union and making provisions for that professional to travel on mission
- Facilitating PBR applications by Russian-speaking breeders in other members of the Union/ non-Russian-speaking breeders in the Russian-speaking region (EAF project)
- Provision of support with UPOV materials (e.g. guidance, experience, databases) for the development of a training center in the region for Russian speaking participants.

The plan would anticipate the following resources:

- Additional income from increasing number of units of contribution;
- Secondment (at no salary cost) of a professional to the Office of the Union;
- Additional income from EAF project;
- Hosting of a training center for Russian speaking participants.

Electronic Application Form

27. The Consultative Committee recommended to the Council to allow the Office of the Union to have flexibility in the charge to be made for use of the EAF in 2017, but not to make the EAF free of charge.

28. The Consultative Committee requested the Office of the Union to report to the Consultative Committee, at its ninety-fourth session, on the measures taken in 2017 and seek approval on the pricing policy for the 2018-2019 Biennium in accordance with its consideration of the draft Program and Budget for the 2018-2019 Biennium.

Preparation of the calendar of meetings

29. The Consultative Committee considered document C(Extr.)/34/4.

30. The Consultative Committee noted the following changes to the Calendar of meetings in 2017:

Consultative Committee

CC/94            October 25  
(Working Group on a Possible International System of Cooperation (WG-ISC/3):  
October 24 (afternoon)

Administrative and Legal Committee

CAJ/74            October 23 and 24 (morning)

31. The Consultative Committee noted the following changes to the Calendar of meetings in 2018:

Council

~~C(Extr.)/35 — March 30 (afternoon) (extraordinary session)~~  
C/52                November 1 2

Consultative Committee

CC/95                ~~March 30 (morning)~~ November 1  
~~CC/96 — October 31~~

Administrative and Legal Committee

CAJ/75 ~~March 29~~ October 31  
CAJ/76 ~~October 29 and 30~~

Technical Committee

TC/54 ~~March 26 to 28~~ October 29 and 30  
(Editorial Committee: ~~(January 10 and 11), March 26 (evening), March 27 (evening)~~  
March 26 and 27, October 28 and 29 (evening))

32. The Consultative Committee recommended to the Council to approve a revision of document C/50/8 Rev.2 "Revised Calendar of Meetings in 2017".

Interrelations with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

33. The Consultative Committee considered the request of APBREBES for its "representatives to be allowed to participate for the entirety of deliberations on the agenda item of interrelations as well as to make a statement on the subject given that APBREBES has made a submission on the matter" (see UPOV Circular E-17/062 of March 30, 2017).

34. The Consultative Committee agreed to invite APBREBES and other observers that provided submissions in reply to Circular E-16/295, to present their views at the relevant part of the item "Interrelations with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)", at its ninety-fourth session. The Consultative Committee agreed that observers would not be present during the deliberations within the Consultative Committee.

35. The Consultative Committee noted that there was insufficient time to consider this item and agreed to postpone considerations on this item until its ninety-fourth session.

Program for the ninety-fourth session

36. The following program was agreed for the ninety-fourth session of the Consultative Committee:
1. Opening of the session
  2. Adoption of the agenda
  3. Preliminary examination of the conformity of the legislation of Brunei Darussalam with the 1991 Act of the UPOV Convention
  4. Preliminary examination of the conformity of the legislation or proposed legislation of any State or organization having submitted a request under Article 34(3) of the 1991 Act of the UPOV Convention
  5. Documents proposed for adoption by the Council
  6. Draft Program and Budget for the 2018-2019 Biennium
  7. Financial statements for 2016
  8. Report of the External Auditor
  9. Arrears in contributions as of September 30, 2017
  10. Appointment of the External Auditor of UPOV
  11. Draft Strategic Business Plan
  12. Financing of long-term employee benefits
  13. Special project fund

14. Observers in UPOV bodies
15. Communication strategy
16. Electronic application form
17. International system of cooperation
18. Interrelations with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)
19. Possible use of the Russian language in UPOV
20. Organization of the UPOV sessions
21. Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention or which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention
22. Reports from new members of the Union
23. Developments of relevance to UPOV in other international fora
24. Preparation of the calendar of meetings
25. Draft press release
26. Program for the ninety-fifth session
27. Adoption of the report on the conclusions (if time permits)
28. Closing of the session

Draft press release

37. The Consultative Committee considered document C(Extr.)/34/5 Prov.
38. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the draft press release contained in document C(Extr.)/34/5 Prov.

39. *The Council is invited to:*

*(a) consider the recommendations of the Consultative Committee contained in paragraphs 3 to 6; and*

*(b) note the work of the Consultative Committee at its ninety-third session, as reported in this document.*

[End of document]