

**Working Group on a Possible International System  
of Cooperation**

UPOV/WG-ISC/3/2

**Third Meeting  
Geneva, October 24, 2017****Original:** English  
**Date:** October 6, 2017

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**NEXT STEPS***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. The purpose of this document is to summarize developments at the first and second meetings of the Working Group on a possible International System of Cooperation (WG-ISC), as a basis for considering next steps for the work of the WG-ISC.

**BACKGROUND**

2. The Consultative Committee, at its ninety-second session, held in Geneva on October 27, 2016, agreed the draft mandate and terms of reference for a Working Group on a Possible International System of Cooperation (WG-ISC), as set out in Annex I to this document (see document CC/92/20 "Report on the Conclusions", paragraph 59).

3. At its first meeting, held in Geneva on October 27, 2016, the WG-ISC agreed that the WG-ISC should, in the first instance, identify the needs of the PVP Offices of the members of the Union (see document UPOV/WG-ISC/1/2 "Report", paragraph 10).

4. The WG-ISC agreed that, having identified needs of PVP Offices, the next step would be to analyze the issues in document CC/92/10, paragraph 10, in relation to those needs. The document should be structured on the basis of the following elements, within which the specific needs would be presented and the issues related to those needs identified (see document UPOV/WG-ISC/1/2 "Report", paragraph 27):

- (i) DUS Examination
- (ii) Novelty
- (iii) Priority
- (iv) Denomination
- (v) Cooperation in administrative matters
- (vi) Facilitating applications.

5. At its second meeting, held in Geneva on April 5, 2017, the WG-ISC considered document UPOV/WG-ISC/2/2. Annex I to that document proposed a list of issues that might be considered relevant for the needs of the PVP Offices, as identified at the first meeting of the WG-ISC, structured on the basis of the elements in paragraph 4. A copy of document UPOV/WG-ISC/2/2, Annex I, is reproduced as Annex II to this document.

6. At its second meeting, the WG-ISC concluded the following with regard to the content of document UPOV/WG-ISC/2/2, Annex I:

DUS Examination

*Needs of PVP Offices*

(a) to add capacity-building in DUS examination as a need of PVP Offices;

(b) to broaden the scope of “Needs of PVP Offices” identified in document UPOV/WG-ISC/2/2, Annex I, item (ii) to cover the “Needs of PVP Offices” for use and exchange of DUS reports in accordance with their policy; and

*Relevant issues in document CC/92/10 “International system of cooperation”*

The WG-ISC agreed that some of the issues were not of a high priority and/or were not feasible in the short/medium-term but agreed to retain all issues for the time being, as far as they were within the terms of reference of the WG-ISC.

In relation to Issue 9(a), the WG-ISC agreed that it would be useful to consider whether quality assurance systems introduced by individual members of the Union (without UPOV involvement) could facilitate cooperation in DUS examination.

Novelty

*Relevant issues in document CC/92/10*

The WG-ISC agreed that consideration of a preliminary observation office would not be a priority.

Denomination

*Needs of PVP Offices*

The WG-ISC agreed to await for the outcome of the work by the Working Group on Variety Denominations (WG-DEN) before further discussions concerning variety denominations.

*Relevant issues in document CC/92/10*

The WG-ISC agreed that consideration of a preliminary observation office would not be a priority.

Cooperation in administrative matters

*Needs of PVP Offices*

With regard to “(i) a means of mutually recognizing documents produced by other members of the Union, e.g. a digital signature”, the WG-ISC agreed to organize presentations at its third meeting by members of the WG-ISC on ways to mutually recognize documents.

With regard to “(ii) a mechanism to receive payments for the take-over of DUS reports from other members of the Union”, the WG-ISC noted that some members of the Union, including Australia, Canada and Japan, did not charge for the take-over of DUS reports.

*Relevant issues in document CC/92/10*

The WG-ISC noted that there were some concerns with regard to Issue 24 but agreed to retain the issue for the time being, on the basis that it would not be a priority.

Facilitating applications

*Needs of PVP Offices*

The WG-ISC agreed with the "Needs of PVP Offices" identified in document UPOV/WG-ISC/2/2, Annex I.

*Relevant issues in document CC/92/10*

The WG-ISC noted that Issue 19 would imply substantial new work for the Office of the Union and agreed that it would not be appropriate to consider that issue.

7. The WG-ISC agreed that its third meeting should focus on the presentation of information on the current situation within UPOV and within individual members of the Union participating in the WG-ISC in relation to the following items, with a view to facilitating consideration of substantial matters at its fourth meeting.

DUS Examination

- presentation by the Office of the Union and the Chairperson of the Technical Committee (TC) on existing arrangements for DUS cooperation and the results of the TC survey on cooperation in DUS examination
- presentations by members of the WG-ISC on existing quality assurances systems in members of the Union.

Novelty

- presentation by the Office of the Union on key elements in the explanatory notes on novelty and the role of the PLUTO database; and
- presentations by members of the WG-ISC on examples of the implementation of the novelty provisions.

Priority

- presentation by the Office of the Union on key elements in the explanatory notes on priority; and
- presentations by members of the WG-ISC: on experiences in the implementation of the priority provisions, including determination of the date of the first application.

Cooperation in administrative matters

- presentations by members of the WG-ISC on ways to mutually recognize documents.

8. In response to the invitation issued by the Office of the Union in Circular E-17/114, of July 5, 2017, the following members of the Union offered to make presentations at the third meeting of the WG-ISC:

- (a) European Union: DUS Examination - existing quality assurances systems  
Novelty - examples of the implementation of the novelty provisions
- (b) New Zealand: DUS Examination - existing quality assurances systems
- (c) Norway: Novelty - examples of the implementation of the novelty provisions  
Priority- experiences in the implementation of the priority provisions, including determination of the date of the first application  
Cooperation in administrative matters - ways to mutually recognize documents

NEXT STEPS

9. The WG-ISC, at its second meeting, agreed that its third meeting should focus on the presentation of information on the current situation within UPOV and within individual members of the Union participating in the WG-ISC in relation to the items identified above, with a view to facilitating consideration of substantial matters at its fourth meeting.

*10. The WG-ISC may wish to consider inviting the Office of the Union to prepare a document updating Annex II to this document "Possible Issues Relevant for the Needs of the PVP Offices as Identified at the First Meeting of the WG-ISC" on the basis of:*

*(a) the changes agreed by the WG-ISC at its second meeting, as set out in paragraph 6 of this document, and*

*(b) any matters agreed as a result of discussions arising from the presentations at the third meeting of the WG-ISC.*

[Annexes follow]

ANNEX I

Mandate and Terms of Reference for the  
Working Group on a Possible International System of Cooperation (WG-ISC)

(as agreed by the Consultative Committee at its ninety-second session, held in Geneva on October 27, 2016:  
see document CC/92/20 "Report on the Conclusions", paragraph 59)

*Purpose*

1. To prepare proposals for consideration by the Consultative Committee concerning a possible ISC that would:
  - (a) not affect the responsibility of the members of the Union in relation to the grant and protection of breeders' rights, or other international obligations;
  - (b) be relevant for all members of the Union, irrespective of the Act of the UPOV Convention by which they are bound;
  - (c) would not affect the existing flexibility of members of the Union to formulate policy and to address their own specific needs and circumstances according to the relevant Act of the UPOV Convention;
  - (d) be based on voluntary participation by members of the Union according to their measures for participation;
  - (e) allow members of the Union to choose to participate in selected elements of an ISC;
  - (f) be based on voluntary cooperation between members of the Union;
  - (g) not affect cooperation with, and between, members of the Union that did not participate in an ISC;
  - (h) be based on filing of applications with individual members of the Union and not with the Office of the Union;
  - (i) not be based on examination of applications by the Office of the Union;
  - (j) not affect the determination and payment of fees by individual members of the Union;
  - (k) not affect the right of each member of the Union to conduct its own examination for the granting of breeders' rights;
  - (l) be based as far as possible on existing UPOV initiatives and materials, including in particular: the GENIE database; the Electronic Application Form (EAF) project; the UPOV similarity search tool for variety denomination purposes; and UPOV information materials.
  
2. For the above proposals, to provide the Consultative Committee with an analysis of the:
  - (a) the need for an ISC;
  - (b) advantages and disadvantages of the proposals, compared to existing arrangements;
  - (c) existence of a legal basis under the Acts of the UPOV Convention;
  - (d) impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members;
  - (e) potential advantages and disadvantages for:
    - i) society in the members of the Union;
    - ii) PVP Offices of members of the Union, including:
      - costs and income
      - number of applications and income received for applications;
    - iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);
    - iv) farmers; and
    - v) UPOV.

*Composition*

- (a) to be composed of the following members of the Union:
  - Bolivia (Plurinational State of)
  - Brazil
  - Canada
  - Chile
  - Colombia
  - Ecuador
  - European Union (European Commission, Community Plant Variety Office of the European Union (CPVO), Estonia, France, Germany, Netherlands and United Kingdom)
  - Japan
  - Norway
  - United States of America
- (b) other members of the Union would be free to participate at any meeting of the WG-ISC and make comments, where so desired;
- (c) the WG-ISC would be restricted to members of the Union and the WG-ISC would revert back to the Consultative Committee if the WG-ISC recommends to invite observers or experts to any of its meetings;
- (d) meetings to be chaired by the Vice Secretary-General.

*Modus operandi*

- (a) to meet, as far as possible, in conjunction with the sessions of the Consultative Committee at a time and frequency to address the requests of the Consultative Committee;
- (b) in the first instance, to prepare a document presenting the issues for consideration according to the following structure:
  - vi) International system of administration
  - vii) Preliminary observation on novelty and denomination
  - viii) DUS examination
  - ix) Examination by members of the Union using the ISC;
- (c) to prepare a document containing proposals, analysis and information according to the purpose specified above, for consideration by the Consultative Committee, according to a timetable to be specified by the Consultative Committee;
- (d) to report on progress to the Consultative Committee after each meeting of the WG-ISC;
- (e) WG-ISC documents to be made available to the Consultative Committee.

[Annex II follows]

## ANNEX II

[reproduction of document UPOV/WG-ISC/2/2, Annex I]

POSSIBLE ISSUES RELEVANT FOR THE NEEDS OF THE PVP OFFICES AS IDENTIFIED  
AT THE FIRST MEETING OF THE WORKING GROUP ON A POSSIBLE  
INTERNATIONAL SYSTEM OF COOPERATION (WG-ISC)

## DUS EXAMINATION

Needs of PVP Offices

- (i) to improve cooperation in order to improve the quality and completeness of variety collections;
- (ii) to accept DUS reports from any member of the Union without further consideration;
- (iii) information on varieties that were considered by members of the Union to be a matter of common knowledge;
- (iv) information on varieties that had been included in the DUS examination; and
- (v) centralized database(s) of variety descriptions, particularly for molecular data.

Relevant issues in document CC/92/10

<u>CC/92/10 Reference</u>	<u>CC/92/10 Item</u>	<u>Relevant Need</u>
Issue 8	(a) to consider whether the establishment of an accreditation system, or other means of conveying objective information on DUS examination capacity, might facilitate cooperation in DUS examination and the features of such a system.	DUS examination (i)-(v)
	(b) to consider the functioning of an accreditation system including: <ul style="list-style-type: none"> <li>• the accrediting entity, the accreditation period, the costs associated with the Offices and the entity that determines the examination rates</li> <li>• how the system would function for native varieties of each country and what would happen if these varieties need to be registered with the ISC and the Office is not accredited</li> </ul>	DUS examination (i)-(v)
Issue 9	(a) to consider other measures that might facilitate cooperation in DUS examination between members of the Union.	DUS examination (i)-(v)
	(b) to consider how plant material would be obtained in cases where the DUS examination was conducted by another member of the Union	DUS examination (i)
	(c) to consider differences of geographic conditions and test conditions in terms of agricultural practices	DUS examination (ii)
Issue 10	to consider how an ISC could be used to support capacity in DUS examination with a view to facilitating cooperation, including the development of capacity that would facilitate cooperation.	DUS examination (i)-(v)

<u>CC/92/10 Reference</u>	<u>CC/92/10 Item</u>	<u>Relevant Need</u>
Issue 22	[part] (a) to consider whether information in Issue 22 (v) and (vi) should be monitored and maintained by members of the Union and made available at a general level via the PLUTO database  [(v) maintain standard UPOV variety descriptions, information on varieties of common knowledge included in the DUS examination, status and disposition of any propagating material provided by the breeder and information relating to pedigree and parental lines of hybrids (to be maintained as confidential); and (vi) include a search for relevant varieties of common knowledge against which the application variety may be compared.]	DUS Examination (i)-(v)
	[part] (b) to consider whether information in Issue 22 (v) and (vi) should be monitored and maintained by members of the Union and made available at a general level via the PLUTO database	DUS Examination (i)-(v)

## NOVELTY

### Needs of PVP Offices

- (i) to have access to more timely and accurate information on novelty from members of the Union;
- (ii) to have more information on novelty-breaking criteria for individual members of the Union; and
- (iii) to have more information on novelty-breaking acts, rather than just dates, from applicants.

### Relevant issues in document CC/92/10

Issue 11	(b) to consider the basis on which a preliminary observation office(s) would be selected to conduct the preliminary observation.	Novelty (i) Denomination (i), (ii), (iii)
Issue 12	(a) to clarify that that a preliminary observation should, as far as possible, aim to assess the acceptability of a proposed variety denomination for all members of the Union.	Novelty (i) Denomination (iii)
	(c) to consider how to take into consideration members of the Union that do not have national catalogs and those that do not file their data in the PLUTO database.	Novelty (i) Denomination (i), (ii), (iv), (v)
Issue 16	to recall that the UPOV Model Form for the Application for Plant Breeders' Rights (document TGP/5 "Experience and Cooperation in DUS Testing" Section 2), Item 8, provides a request for relevant information concerning novelty.	Novelty (i)
Issue 17	(a) to recall that the PLUTO database includes an item to allow for information to be provided on dates on which a variety was commercialized for the first time in the territory of application and other territories.	Novelty (i)
	(b) to take into account that the concept of "first commercialization" differs among the UPOV members	Novelty (ii), (iii)



## RIGHT OF PRIORITY

### Needs of PVP Offices

- (i) to improve the timeliness and quality of data available within UPOV in relation to priority, particularly dates of applications.

### Relevant issues in document CC/92/10

[none]

## DENOMINATION

### Needs of PVP Offices

- (i) easier access to variety denomination information;
- (ii) access to complete and up-to-date information on variety denominations;
- (iii) a common tool/service to facilitate harmonized decisions on variety denominations;
- (iv) information on reasons for rejection of denominations by members of the Union that had previously been proposed to, or registered by, another member of the Union; and
- (v) a network of denomination contact persons.

### Relevant issues in document CC/92/10

Issue 11	(b) to consider the basis on which a preliminary observation office(s) would be selected to conduct the preliminary observation.	Novelty (i) Denomination (i), (ii), (iii)
Issue 12	(a) to clarify that that a preliminary observation should, as far as possible, aim to assess the acceptability of a proposed variety denomination for all members of the Union.	Novelty (i) Denomination (iii)
	(b) to consider how to take into consideration marks, geographical indications and designations of origin	Denomination (iv)
	(c) to consider how to take into consideration members of the Union that do not have national catalogs and those that do not file their data in the PLUTO database.	Novelty (i) Denomination (i), (ii), (iv), (v)
Issue 13	to consider, in the case that a member of the Union subsequently considered the proposed denomination unsuitable within its territory, the procedure for the breeder to submit another denomination.	Denomination (iii)
Issue 14	to note the value of a UPOV similarity search tool for variety denomination purposes and to consider extending such a tool [to] include words or elements that are considered to be unsuitable by members of the Union.	Denomination (iii)
Issue 15	to consider the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union.	Denomination (i), (ii), (v)

## COOPERATION IN ADMINISTRATIVE MATTERS

### Needs of PVP Offices

- (i) a means of mutually recognizing documents produced by other members of the Union, e.g. a digital signature; and
- (ii) a mechanism to receive payments for the take-over of DUS reports from other members of the Union.

### Relevant issues in document CC/92/10

Issue 24	to consider whether the examination by members of the Union using the ISC would be resourced by the members of the Union under their current arrangements for examination of applications and whether the collection of fees to cover that work might be organized as a part of the international system of administration of an ISC.	Cooperation in administrative matters (ii)
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## FACILITATING APPLICATIONS

### Needs of PVP Offices

- (i) to facilitate applications by residents and non-residents, including in particular applications by individuals and small- and medium-sized enterprises/organizations, in order to increase the number of varieties available in members of the Union; and
- (ii) to have a more efficient arrangement for processing applications in order to avoid delays resulting from an increased number of applications.

### Relevant issues in document CC/92/10

Issue 2	(b) to utilize software and technical specifications that would make it possible for all members of the Union to participate in an ISC without prejudice to national standards	Facilitating applications (i)
Issue 19	to consider that the EAF Project, and/or ISC, might provide a basis for members of the Union to move towards greater harmonization in their application forms, thereby creating possibilities at a later stage for an ISC to include the checking of the completeness of the application, preparation for publication and inserting the relevant information about the application in a centralized application database.	Facilitating applications (ii)

[End of Annex II and of document]