



C/50/17

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

Geneva

**COUNCIL****Fiftieth Ordinary Session  
Geneva, October 28, 2016**

REPORT BY THE VICE-PRESIDENT ON THE WORK OF  
THE NINETY-SECOND 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-second session in Geneva on October 27, and on the morning of October 28, 2016.
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/50/1 Rev.2):
  - (a) Adoption of documents (document C/50/15)
  - (b) Financial statements for 2015 (document C/50/13)
  - (c) Report of the External Auditor (document C/50/14)
  - (d) Arrears in contributions as of September 30, 2016 (document C/50/11)
  - (e) Financial Management Report for the 2014-2015 Biennium (document C/50/4)
  - (f) Calendar of meetings in 2017 (document C/50/8)
  - (h) Press Release (document C/50/18)
3. The Consultative Committee recommended to the Council to retain the amount exceeding 15 percent of the total income for the 2014-2015 Biennium (i.e. 31,860 Swiss francs) in the Reserve Fund.
4. The Consultative Committee proposed that the following FAQ concerning information on the situation in UPOV with regard to the use of molecular techniques for a wider audience ("FAQ on molecular techniques"), including the public in general, be proposed for adoption by the Council at its fiftieth ordinary session:

"Is it possible to obtain protection of a variety on the basis of its DNA-profile?"

"For a variety to be protected, it needs to be clearly distinguishable from all existing varieties on the basis of characteristics that are physically expressed, e.g. plant height, time of flowering, fruit color, disease resistance etc. The DNA-profile is not the basis for obtaining the protection of a variety, although this information may be used as supporting information.

"A more detailed explanation is provided in the FAQ 'Does UPOV allow molecular techniques (DNA profiles) in the examination of Distinctness, Uniformity and Stability ("DUS")?'

"See also:

"What are the requirements for protecting a new plant variety?"

5. The Consultative Committee recommended to the Council that the new UPOV logo be introduced on the UPOV website in conjunction with the introduction of the stakeholder-focused features on the UPOV website on November 8, 2016.

6. The Consultative Committee recommended to the Council to approve the launch of the Electronic Application Form (EAF) in January 2017 for rose, soya bean, lettuce, apple fruit varieties and potato, as set out in paragraphs 40 to 47.

7. The work of the Consultative Committee at its ninety-second session is summarized in the following paragraphs.

#### Documents proposed for adoption by the Council

##### *TGP/7: Development of Test Guidelines (Revision)*

8. The Consultative Committee recommended to the Council to adopt a revision of document TGP/7 "Development of Test Guidelines" (document TGP/7/5), on the basis of document TGP/7/5 Draft 1.

##### *TGP/8: Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Revision)*

9. The Consultative Committee recommended to the Council to adopt a revision of document TGP/8 "Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability" (document TGP/8/3), on the basis of document TGP/8/3 Draft 1.

##### *TGP/0: List of TGP documents and latest issue dates (Revision)*

10. The Consultative Committee recommended to the Council to adopt a revision of document TGP/0 "List of TGP documents and latest issue dates" (document TGP/0/9), on the basis of document TGP/0/9 Draft 1.

##### *UPOV/INF/16: Exchangeable Software (Revision)*

11. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/16 "Exchangeable Software" (document UPOV/INF/16/6), on the basis of document UPOV/INF/16/6 Draft 1.

##### *UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision)*

12. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/22 "Software and Equipment Used by Members of the Union" (document UPOV/INF/22/3), on the basis of document UPOV/INF/22/3 Draft 1.

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

13. 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/9) on the basis of document UPOV/INF-EXN/9 Draft 2.

#### Financial statements for 2015

14. The Consultative Committee recommended to the Council to approve the Financial Statements for 2015, as presented in document C/50/13.

Report of the External Auditor

15. The Consultative Committee noted the information contained in the Report of the External Auditor, as presented in document C/50/14.

Arrears in contributions as of September 30, 2016

16. The Consultative Committee noted the status of payment of contributions as of September 30, 2016, and noted that, due to recent payments, Belarus and the United States of America had no arrears.

17. The Consultative Committee noted that the payment of the contribution of Brazil would be made in the near future.

Financial Management Report for the 2014-2015 Biennium

18. The Consultative Committee recommended to the Council to approve the Financial Management Report for the 2014-2015 Biennium, as presented in document C/50/4.

Procedure for the appointment of the External Auditor of UPOV

19. The Consultative Committee noted the developments with regard to the procedure to appoint the External Auditor of WIPO for a term of office of six years starting from January 2018. In particular, it noted that nominations had only been received from WIPO member States that were also members of UPOV, which meant that, in accordance with the Financial Regulations and Rules of UPOV, there was no need for UPOV to launch its own procedure for the appointment of the External Auditor of UPOV.

Financing of long-term employee benefits

20. The Consultative Committee noted the developments with regard to the financing of long-term employee benefits.

Special project fund

21. The Consultative Committee approved the inclusion of expenditure on agency staff involved in the administration of activities in the context of the UPOV training and assistance strategy in the Special Project Fund (SPF) expenditure.

Evaluation report by the WIPO Internal Oversight Division

22. The Consultative Committee considered the IOD Evaluation Report and a presentation by Mr. Tuncay Efendioglu, Acting Director, WIPO Internal Oversight Division (IOD).

23. The Consultative Committee noted that the IOD Evaluation Report would be published on the UPOV website after the fiftieth ordinary session of the Council.

24. In response to the recommendation of the IOD Evaluation Report, the Consultative Committee approved the proposal of the Office of the Union to prepare a draft Strategic Business Plan to be presented to the Consultative Committee in October/November 2017.

25. The Consultative Committee expressed its appreciation to the WIPO IOD for the Evaluation Report.

26. The Consultative Committee noted that the conclusions of the Consultative Committee concerning the IOD Evaluation Report would be reported to the Council, at its fiftieth ordinary session, to be held in Geneva on October 28, 2016.

### Observers in UPOV bodies

27. The Consultative Committee noted the *ad hoc* invitations issued to experts.
28. The Consultative Committee considered the information provided by the International Institute for IP Management (I<sup>3</sup>PM), at its ninety-second session, in relation to the I<sup>3</sup>PM request for the granting of observer status to the Council.
29. The Consultative Committee concluded that, at that stage, it was not possible to agree that I<sup>3</sup>PM had demonstrated its “competence in areas of direct relevance in respect of matters governed by the UPOV Convention”.
30. In relation to the request of the European Law Students’ Association (ELSA) for the granting of observer status to the Council and to the CAJ, the Consultative Committee concluded that, at that stage, it was not possible to agree that ELSA had demonstrated its “competence in areas of direct relevance in respect of matters governed by the UPOV Convention”.
31. The Consultative Committee requested that the Office of the Union, when informing I<sup>3</sup>PM and ELSA of the outcome, offer to explore possibilities to provide information on the UPOV system of plant variety protection to their members.

### Communication strategy

32. The Consultative Committee noted the presentation made by Mr. Steffen Noleppa, Manager, HFFA Research GmbH, Berlin, Germany, on the preliminary findings of “the socio-economic and technological benefits of plant breeding in Viet Nam since the introduction of PVP / UPOV membership – Preliminary Results of an ex-post assessment.”
33. The Consultative Committee received a demonstration of the redesigned UPOV website, incorporating the new UPOV logo and stakeholder features, and agreed that a demonstration be made at the fiftieth ordinary session of the Council.
34. The Consultative Committee noted that the planned UPOV channel on YouTube would be launched in conjunction with the introduction of the new UPOV logo and stakeholder features on the UPOV website.
35. The Consultative Committee agreed that the proposed FAQ on how the UPOV system of plant variety protection contributes to the United Nations Sustainable Development Goals (SDGs), be circulated to the Consultative Committee with an invitation to make proposals to revise the text and to provide examples. On the basis of the inputs received, a new draft would be prepared for consideration by the Consultative Committee at its ninety-fourth session in October 2017.
36. The Consultative Committee agreed that it would not be feasible to prepare an updated version of the Impact Study in the current format and agreed that individual members of the Union should be encouraged to undertake their own studies and provide the resulting information to the Office of the Union. It also agreed that the Office of the Union should develop videos to illustrate various benefits of the UPOV system of plant variety protection.
37. The Consultative Committee noted the report on the use of web conferencing and e-workshops.
38. The Consultative Committee noted that the results of the communication strategy would continue to be reported as a part of the annual report of the Secretary-General and performance report for the biennium.

### Training and assistance strategy

39. The Consultative Committee noted the developments concerning the implementation of the UPOV training and assistance strategy.

### Electronic application form

40. The Consultative Committee considered a presentation by the Office of the Union, including an oral report by the Vice Secretary-General on the Eighth Meeting on the Development of a Prototype Electronic Form (EAF/8 Meeting), held in Geneva on October 24, 2016, and the conclusions of the CAJ, at its the seventy-third session, held on October 25, 2016 (see document CAJ/73/10 "Report on the Conclusions").

41. The Consultative Committee noted that the EAF/8 Meeting had agreed that the prototype electronic application form Version 2 (PV2) had demonstrated the feasibility of the project. The Consultative Committee agreed with the following proposals made by the EAF/8 Meeting:

#### *Validation of the prototype*

- (a) Prototype Version 2 (PV2) had demonstrated the feasibility of the project;
- (b) PV2 meets the expectations of a functioning system for users to send and receive application data, and reuse submitted data;
- (c) PV2 should be used as the basis for the launch of an operational system;

#### *Languages*

##### Questions

- (d) The EAF would present all items (questions) in English, French, German and Spanish. Translations for all items (questions) in other languages would be made available if provided by the participating members of the Union, with a suitable disclaimer;

##### Answers

- (e) Users would be required to provide information (answers) in a language accepted by the PVP Office concerned, which would be indicated in the form;

#### *Payment*

- (f) The EAF would not affect the fees that PVP Offices receive per application;
- (g) Payment of the application fee would be made directly by the applicant to the relevant PVP Office unless otherwise agreed with the Office of the Union. However, the EAF system would allow, if requested, for application fees to be collected via the EAF and distributed to the PVP Offices in a form and currency agreed by the PVP Office concerned;
- (h) The EAF charge per application would be as follows:
  - CHF 150 / submitted application in 2017/2018
  - CHF 250 / submitted application from 2019;

#### *Addition of new crops*

- (i) To launch the EAF on January 9, 2017 with rose, soya bean, lettuce, apple fruit varieties and potato;
- (j) To present to the next EAF meeting more details about the different approaches to add more crop/species to the system:
  - Customized technical questionnaire
  - Technical questionnaire based on the UPOV Test Guidelines
  - Generic technical questionnaire;
- (k) At the EAF/9 meeting in April 2017, to establish a list of priority for addition of new crops/species;

#### *Official variety lists*

- (l) To consider whether to include information for official variety list purposes in the EAF, at the EAF/9 meeting (in April 2017);

*Terms of use*

- (m) To finalize a detailed document explaining the “Terms of Use” with participating members and WIPO, on the following basis:
- (i) Application data to be transferred to the selected authority after submission and without waiting for the payment confirmation of the EAF charge and the application fee (if appropriate),
  - (ii) If the payment using bank transfer is not received within 45 days after the submission of the application, a reminder to be sent by the UPOV/WIPO Finance Department.
  - (iii) Charges for payment of application fees by credit card to be considered with PVP Offices on a bilateral basis,
  - (iv) Individual Authority Fees to be redistributed to PVP Offices, based on the requested payments (if appropriate),
  - (v) Payment transfers might have a delay according to the payment method chosen (credit card or bank transfer).

*Participation in the launch of EAF*

42. The Consultative Committee noted that each authority participating in PV2 (Argentina, Australia, Bolivia (Plurinational State of), Brazil, Chile, Canada, Colombia, Czech Republic, European Union, France, Georgia, Japan, Kenya, Mexico, Netherlands, New Zealand, Norway, OAPI, Republic of Korea, South Africa, Switzerland, Tunisia, United States of America, Uruguay and Viet Nam), would need to inform the Office of the Union if it wished to participate in the launch of the EAF, by November 11, 2016, and should provide the necessary information, including:

- Crops to be supported in EAF (from the 5 crops deployed in PV2)
- Accepted currencies
- Payment method (direct or via UPOV)
- To provide bank account information (if appropriate)
- Any other missing information requested (see Wiki)
- To test the system during the Pre-Launch Test (November-December 2016).

43. The Consultative Committee noted that User guides for breeders and PVP Offices would be made available online in English, French, Spanish, German and other relevant languages. The Office of the Union would develop, for PVP Offices and users, in consultation with participating members:

- a program of training (including Online sessions & Webinars);
- a program of users’ support and routine maintenance provisions; and
- a program of publicity of the availability of the system.

44. The Consultative Committee noted that the EAF would consider “On Line Application Form” (OLAF) as a possible name at the EAF/9 Meeting.

45. The Consultative Committee noted that the EAF/8 Meeting and the CAJ, at its seventy-third session, held on October 25, 2016, had agreed, subject to the approval by the Consultative Committee, to seek approval of the Council at its fiftieth ordinary session, to be held in Geneva on October 28, 2016, for the launch of the EAF in January 2017.

46. The Consultative Committee noted that the next meeting of the EAF (EAF/9) was agreed by the EAF to be held in Geneva on the evening of Wednesday April 5, 2017.

47. The Consultative Committee agreed to seek the approval of the Council at its fiftieth ordinary session, to be held in Geneva on October 28, 2016, for the launch of the EAF in January 2017 for rose, soya bean, lettuce, apple fruit varieties and potato.

International system of cooperation

48. The Consultative Committee agreed the draft mandate and terms of reference for a Working Group on a Possible International System of Cooperation (WG-ISC), as follows:

*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:
- (i) International system of administration
  - (ii) Preliminary observation on novelty and denomination
  - (iii) DUS examination
  - (iv) 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.

49. The Consultative Committee approved that a meeting of the WG-ISC be held immediately following the ninety-second session of the Consultative Committee.

### Plant variety protection statistics

50. The Consultative Committee noted that, in cases where there were significant differences between the data in the PLUTO database and in document C/50/7, the Office of the Union would consult relevant members of the Union.

51. The Consultative Committee noted that the Office of the Union would investigate the reason for the differences between years in relation to the completeness of data in the PLUTO database in terms of members of the Union providing data.

52. The Consultative Committee noted that the statistical analysis reported in document CC/92/12 would be provided in future versions of document C/[session]/7 "Plant variety protection statistics for the period [xxxx]-[xxxx]".



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

53. The Consultative Committee noted the information provided.

Reports from new members of the Union

54. The Consultative Committee welcomed the presentations of Oman and Peru on progress in the implementation of the UPOV system and areas where they would welcome guidance or assistance.

55. The Consultative Committee noted that it had not been possible for the former Yugoslav Republic of Macedonia to make a presentation in 2016, and agreed to renew the invitation in order to enable the former Yugoslav Republic of Macedonia to make a presentation at the ninety-fourth session of the Consultative Committee, to be held in October 2017.

56. The Consultative Committee approved the issue of an invitation to Serbia to make a presentation at the ninety-fourth session of the Consultative Committee, to be held in October 2017.

Developments of relevance to UPOV in other international fora

57. The Consultative Committee noted the developments of relevance to UPOV in other international fora.

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

58. The Consultative Committee received an oral report on the "Symposium on possible interrelations between the ITPGRFA and the UPOV Convention", held at UPOV Headquarters in Geneva, on October 26, 2016, from Mr. Raimundo Lavignolle, Vice-President of the Council. It noted that the Symposium had been attended by 147 participants, and had been opened by Mr. Francis Gurry, Secretary-General, UPOV and Mr. Kent Nnadozie, Secretary *ad interim* of the ITPGRFA.

59. In their closing remarks, the Co-Moderators: Mr. Muhamad Sabran, Chairperson of the Seventh Session of the Governing Body, ITPGRFA and Mr. Raimundo Lavignolle, Vice-President of the Council of UPOV, had concluded that:

- We have seen the objectives and benefits of both treaties: UPOV Convention, ITPGRFA;
- It is important to interpret and implement the two treaties in a mutually supportive way in the context of each Contracting Party;
- In order to succeed in these objectives, it is important for the two organizations to work together and to provide the necessary support;
- The Symposium highlights the need to involve all stakeholders in this process.

60. The Consultative Committee agreed that members of the Union and observers be invited to provide suggestions on any possible further action concerning interrelations between the ITPGRFA and the UPOV Convention for the consideration by the Consultative Committee at its ninety-third session.

61. The Consultative Committee noted the developments concerning the ITPGRFA Platform for the Co-Development and Transfer of Technologies.

Organization of the UPOV sessions

62. The Consultative Committee agreed to consider, at its ninety-third session, whether to organize a single set of sessions from 2018, according to the following proposal, subject to comments from the Technical Committee (TC), as follows:

(a) after 2017, to hold a single set of sessions of UPOV bodies in the period mid- to late November, with a more specific proposal for timing being developed after taking into account the views of the TC, which would be invited to consider the matter at its fifty-third session, to be held in Geneva from April 3 to 5, 2017;

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

Friday	Working Group (if appropriate)
Saturday	Working Group (if appropriate) / Enlarged Editorial Committee
Sunday	Working Group (if appropriate) / Enlarged Editorial Committee
<b>Monday</b>	<b>Technical Committee</b>
<b>Tuesday</b>	<b>Technical Committee</b>
<b>Wednesday</b>	<b>Administrative and Legal Committee</b>
<b>Thursday</b>	<b>Consultative Committee</b>
<b>Friday</b>	<b>Council</b>
Saturday	Symposium /Seminar/Working Group (if appropriate)

63. The Consultative Committee requested the Office of the Union to prepare proposals concerning:

- (i) opportunities for members of the Union to meet and exchange information in conjunction with the UPOV sessions;
- (ii) the nature and content of session documents in order to make the sessions as efficient as possible; and
- (iii) the examination of laws of future members.

64. The Consultative Committee agreed that a document providing certain key elements of the Draft Program and Budget should be prepared after the Consultative Committee session one year before the Draft Program and Budget would be presented to the Council for adoption, noting that a revised draft could be considered by correspondence in March/April, if necessary.

#### Preparation of the calendar of meetings

65. The Consultative Committee noted that:

(a) the CAJ had agreed that the work program for its seventy-fourth session could be covered by a session to be held on October 23 and 24, 2017;

(b) the next meeting of the Working Group on Variety Denominations (WG-DEN/3) had been agreed by the WG-DEN to be held in Geneva on the evening of Tuesday, April 4, 2017;

(c) the next meeting of the EAF (EAF/9) had been agreed by the EAF to be held in Geneva on the evening of Wednesday, April 5, 2017.

66. The Consultative Committee recommended to the Council, at its fiftieth ordinary session, to be held on October 28, 2016, to revise the "Calendar of Meetings in 2017" (document C/50/8), with the following changes:

#### Council

C(Extr.)/34    April 7~~6~~ (afternoon) (extraordinary session)  
C/51            October 26

#### Consultative Committee

CC/93            April 7~~6~~ (morning)  
                    ~~(Working Group on a Possible International System of Cooperation (WG-ISC/2):~~  
                    ~~April 5 (afternoon))~~  
CC/94            October 25

Administrative and Legal Committee

~~CAJ/74~~ April 6

CAJ/7574 October 23 and 24

(Working Group on Variety Denominations (WG-DEN/3): April 4 (evening))

(Meeting on the Development of a Prototype Electronic Form (EAF/9): April 5 (evening))

Draft press release

67. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the draft press release contained in document C/50/18 Prov.

68. *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-second session, as reported in this document.*

[End of document]