

Council**C/51/18****Fifty-First Ordinary Session
Geneva, October 26, 2017****Original:** English
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**REPORT BY THE PRESIDENT ON THE WORK OF THE NINETY-FOURTH 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-fourth session in Geneva on October 25, and on the morning of October 26, 2017.
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/51/1 Rev.):
 - (a) Extension of the appointment of the Vice Secretary-General (document C/51/16)
 - (b) Examination of the conformity of the Plant Varieties Protection Order of 2015 of Brunei Darussalam with the 1991 Act of the UPOV Convention (document C/51/17)
 - (c) Examination of the conformity of the Draft Law for the Protection of New Varieties of Plants of Guatemala with the 1991 Act of the UPOV Convention (document C/51/20)
 - (d) Examination of the conformity of the Draft Law on New Plant Variety Protection of Myanmar with the 1991 Act of the UPOV Convention (document C/51/21)
 - (e) Adoption of documents (document C/51/14)
 - (f) Examination and approval of the Draft Program and Budget for the 2018-2019 Biennium (document C/51/4)
 - (g) Financial statements for 2016 (document C/51/12)
 - (h) Report of the External Auditor (document C/51/13)
 - (i) Arrears in contributions as of September 30, 2017 (document C/51/11)
 - (j) Calendar of meetings in 2018 (document C/51/8)
 - (k) Press Release (document C/51/19)
3. The work of the Consultative Committee at its ninety-fourth session is summarized in the following paragraphs.

Extension of the appointment of the Vice Secretary-General

4. The Consultative Committee recommended to the Council to extend the appointment of the Vice Secretary-General from December 1, 2018, until November 30, 2021.

Preliminary examination of the conformity of the Plant Varieties Protection Order of 2015 of Brunei Darussalam with the 1991 Act of the UPOV Convention

5. The Consultative Committee recommended to the Council to:
- (a) take note of the analysis in document C/51/17;
 - (b) take a positive decision on the conformity of the Plant Varieties Protection Order of Brunei Darussalam with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Brunei Darussalam to deposit its instrument of accession to the 1991 Act;
 - (c) to authorize the Secretary-General to inform the Government of Brunei Darussalam of that decision.

Preliminary examination of the conformity of the Draft Law for the Protection of New Varieties of Plants of Guatemala with the 1991 Act of the UPOV Convention

6. The Consultative Committee recommended to the Council to
- (a) take note of the analysis in document C/51/20;
 - (b) take a positive decision on the conformity of the “Draft Law for the Protection of New Varieties of Plants” (“Draft Law”) with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Guatemala once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act;
 - (c) to authorize the Secretary-General to inform the Government of Guatemala of that decision.

Preliminary examination of the conformity of the Draft Law on New Plant Variety Protection of Myanmar with the 1991 Act of the UPOV Convention

7. The Consultative Committee recommended to the Council to
- (a) note the analysis in document C/51/21.
 - (b) take a positive decision on the conformity of the “Draft Law on New Plant Variety Protection” (“Draft Law”) with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Myanmar once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act;
 - (c) authorize the Secretary-General to inform the Government of Myanmar of that decision.

Documents proposed for adoption by the Council

UPOV/INF/16: Exchangeable Software (Revision)

8. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/16/6 “Exchangeable Software” (document UPOV/INF/16/7), on the basis of document UPOV/INF/16/7 Draft 1.

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

9. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/22/3 “Software and equipment used by members of the Union” (document UPOV/INF/22/4), on the basis of document UPOV/INF/22/4 Draft 1.

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

10. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF-EXN/10 "List of INF-EXN Documents and Latest Issue Dates" (document UPOV/INF-EXN/11) on the basis of document UPOV/INF-EXN/11 Draft 1.

Draft Program and Budget for the 2018-2019 Biennium

11. The Vice Secretary-General clarified that the Council would be invited to approve the maximum ceiling of expenditure in the regular budget. In a situation where the income from the EAF was lower than budgeted, expenditure on non-personnel costs would be reduced accordingly.

12. The Consultative Committee recommended to the Council to approve:

(a) the proposals contained in the Draft Program and Budget for the 2018-2019 Biennium, as presented in the Annex to document C/51/14, including the amount of contributions from members of the Union;

(b) the proposed maximum ceiling of expenditure in the regular budget; and

(c) the total number of posts for the Office of the Union.

Financial statements for 2016

13. The Consultative Committee recommended to the Council to approve the Financial Statements for 2016.

Internal Audit and Reports of the WIPO Independent Advisory Oversight Committee

14. The Consultative Committee noted that, on the basis of the risk assessment of UPOV, there had been no internal audit of UPOV in 2016 and that the Secretary-General had not been made aware of the need for any investigations in UPOV in 2016.

15. The Consultative Committee noted that, in response to the recommendation presented in the Evaluation Report by IOD, the Consultative Committee, at its ninety-second session, had approved the proposal of the Office of the Union to prepare a draft Strategic Business Plan which would be considered by the Consultative Committee under agenda item "Draft Strategic Business Plan".

16. The Consultative Committee noted the information contained in the IAOC quarterly reports for 2016 (documents WO/IAOC/40/2, WO/IAOC/41/2, WO/IAOC/42/2 and WO/IAOC/43/2), and in the IAOC Annual Report 2015-2016 (document WO/PBC/25/2).

17. The Consultative Committee agreed the inclusion of the regular item "Internal oversight and the WIPO Independent Advisory Oversight Committee (IAOC)" in the agenda of the October/November sessions of the Consultative Committee.

Report of the External Auditor

18. The Consultative Committee considered document C/51/13 and noted the information contained in the Report of the External Auditor.

Arrears in contributions as of September 30, 2017

19. The Consultative Committee noted the status of payment of contributions as of September 30, 2017, and noted that due to recent payments, Belarus, China and the United States of America had no arrears.

Appointment of the External Auditor of UPOV

20. The Consultative Committee noted the decision of the WIPO General Assembly at its Forty-Ninth (23rd ordinary) Session, held in Geneva from October 2 to 11, 2017, to appoint the Comptroller and Auditor General of the United Kingdom as the WIPO External Auditor for a period of six years to begin on January 1, 2018.

21. *In accordance with the Financial Regulation and Rules of UPOV, the Consultative Committee recommended to the Council to appoint the Comptroller and Auditor General of the United Kingdom as the External Auditor of UPOV for a period of six years to begin on January 1, 2018.*

Draft Strategic Business Plan

22. The Consultative Committee approved the Draft Strategic Business Plan.

Financing of long-term employee benefits

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

24. Ms. Janice Cook Robbins, Director, Finance Division, WIPO, reported that as at December 31, 2016, the funds in the separate bank account for financing UPOV's After-Service Health Insurance (ASHI) liability amounted to CHF 677,879. Those funds were held with the Swiss Federal Finance Administration (AFF) but, in order to comply with the AFF's request, those funds would be withdrawn by December 13, 2017, and would be placed with another bank.

25. With regard to the Working Group on ASHI, Ms. Cook Robbins reported that it had since held two video-conferences. The Working Group reported that the response received from UN Member States regarding the information-gathering exercise on national health plans had been very small and, as a consequence, the Working Group members had decided upon a slightly different strategy. The Working Group members had been asked to identify those countries to which the majority of their staff retire and, as a consequence, the Working Group had compiled a list of seven countries for which the group's members would prepare cost/benefit comparisons with their own health insurance plans. The seven countries were Austria, France, Italy, Switzerland, Thailand, United Kingdom and the United States of America. If the cost/benefit analysis demonstrated that a national health plan could provide comparable care at a lower cost, the Working Group would make enquires of the Member State concerned in order to establish how feasible it would be to offer the national health plan to employees (active and retired).

26. The Working Group had also started to look at the question of portability (movement of employees between agencies that carry a liability) and was endeavoring to assess whether the issue would justify potentially complex work. The Working Group had also discussed a possible approach in relation to the areas of eligibility, contributions and plan design.

Special project fund

27. The Consultative Committee noted the activities that had been supported by the Special Project Fund.

28. The Consultative Committee agreed that the remaining balance of the Special Project Fund be used in 2018 for activities in the context of the UPOV training and assistance strategy, taking into account the clarification 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.

Observers in UPOV bodies

29. The Consultative Committee noted the granting of observer status to Kazakhstan in the Technical Committee and the Technical Working Parties.

30. The Consultative Committee noted the granting of observer status to Myanmar in the Council.

31. The Consultative Committee noted the granting of observer status to Thailand in the Technical Working Parties.
32. The Consultative Committee noted the *ad hoc* invitations issued to experts.
33. The Consultative Committee decided to extend the observer status of the International Commission for the Nomenclature of Cultivated Plants (ICNCP) to the Administrative and Legal Committee (CAJ) and the Technical Committee (TC).

Communication strategy

Developments

34. The Consultative Committee noted the introduction of the new UPOV logo.
35. The Consultative Committee noted the adoption of the 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.
36. The Consultative Committee noted the plans to develop videos to illustrate various benefits of the UPOV system of plant variety protection.

Proposal for an FAQ on the United Nations Sustainable Development Goals

37. *The Consultative Committee approved the draft FAQ on how the UPOV system of plant variety protection contributes to the United Nations Sustainable Development Goals (SDGs), reproduced in Annex I, and agreed to recommend the FAQ for adoption by the Council at its fifty-first ordinary session.*

38. *The Consultative Committee agreed to recommend the text reproduced in Annex I for adoption by the Council. It further agreed that the Office of the Union should seek the assistance of a professional communication expert to prepare a new draft for consideration at its ninety-fifth session.*

Possible New FAQ on the importance of new plant varieties

39. The Consultative Committee requested the Office of the Union to draft an FAQ on the benefits of new varieties of plants for society, for consideration by the Consultative Committee at its ninety-fifth session.

Social media

40. The Consultative Committee noted that UPOV had created an entry on LinkedIn with a Showcase page for the EAF, in order to raise awareness of potential users of the Electronic Application Form (EAF).
41. The Consultative Committee agreed that proposals for increasing UPOV’s use of social media, including a timetable in accordance with the resourcing strategy, should be presented for consideration at its ninety-fifth session.

Electronic application form

42. The Consultative Committee noted the developments concerning EAF Version 1.1, the plans for the development of Version 2.0 and the strategy for the addition of new crops/species.

43. The Consultative Committee agreed that the name PRISMA and the logo, as set out below, be proposed for approval at the fifty-first ordinary session of the Council, to be held in Geneva on October 26, 2017:



44. The Consultative Committee noted that the success of the EAF would depend on maximizing the number of UPOV members participating in the EAF for all crops and species and on members of the Union promoting the EAF to their applicants.

45. The Consultative Committee recommended to the Council to approve the UPOV charge for the EAF at CHF150 per application for the 2018-2019 biennium, but to agree that the EAF could be made free of charge for an introductory period if the budgeted costs of the EAF were funded by means other than the regular budget. In that regard, the Consultative Committee noted that the Office of the Union had received a letter from the Secretary General of the International Seed Federation (ISF) offering to contribute CHF20,000 in order to increase the use of the EAF during the launch period and to extend the system to a larger number of crops and UPOV members. It further noted that Canada and Australia would be interested to explore the possibility of funding the EAF in the form of an annual subscription.

46. The Consultative Committee requested the Office of the Union to report on developments concerning the EAF at its ninety-fifth session and further agreed to follow the use and analyze the benefits of the electronic application form for users and to review the arrangements for funding of the EAF at its ninety-fifth session.

International system of cooperation

47. The Consultative Committee noted the progress in the work of the Working Group on an International System of Cooperation (WG-ISC).

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

48. The Consultative Committee noted the views presented by the Association for Plant Breeding for the Benefit of Society (APBREBES), the European Seed Association (ESA) and the International Seed Federation (ISF).

49. The Consultative Committee considered the responses to Circular E-16/295 received from members of the Union and observers, and the views expressed at the ninety-fourth session of the Consultative Committee and *agreed the following approach for the further actions on the matter of the interrelations with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)*:

- (i) to review the FAQ on the interrelations between the UPOV Convention and the ITPGRFA; and
- (ii) exchange of experience and information on the implementation of the UPOV Convention and the ITPGRFA, with the involvement of stakeholders.

As a next step, the Consultative Committee would consider the need for a revision of the current guidance in the "Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention" (document UPOV/EXN/EXC/1).

50. In order to advance on items (i) and (ii), members of the Union and observers to the Council would be invited to make proposals on the revision of the above-mentioned FAQ and proposals on how to facilitate the exchanges of experiences and information on the implementation of the UPOV Convention and the ITPGRFA with the involvement of stakeholders. The Office of the Union would prepare a document

containing the proposals received for consideration by the Consultative Committee at its ninety-fifth session to be held in October 2018.

51. The Consultative Committee noted that the Proceedings of the “Symposium on Possible Interrelations between the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the International Convention for the Protection of New Varieties of Plants (UPOV Convention)”, held in Geneva, on October 26, 2016, had been published in English on the UPOV website (http://www.upov.int/meetings/en/details.jsp?meeting_id=40584) and that copies had been distributed at the session.

52. *The Consultative Committee agreed to report the approach in paragraph 49 for consideration by the Council and to invite the Council to inform the Seventh Session of the Governing Body of the ITPGRFA to be held in Kigali, Rwanda, from October 30 to November 3, 2017, accordingly.*

Possible use of the Russian language in UPOV

53. The Consultative Committee noted the information provided by the Delegation of the Russian Federation with regard to its plans to increase its number of units of contribution to the UPOV budget from 0.5 to 2 units.

54. *The Consultative Committee approved the proposed program for use of the Russian language in UPOV and proposed resourcing, as presented in Annex II, and recommended its approval by the Council.*

55. The Consultative Committee noted that the proposed program was based on circumstances related to the use of Russian language, which included in particular that Russian is a working language of the World Intellectual Property Organization (WIPO). Furthermore, it was based on the existing language capacity of WIPO facilities. Therefore, this proposed program should not be considered to be applicable to other additional languages without a separate analysis.

56. The Consultative Committee noted that a report on developments concerning the program for use of the Russian language in UPOV and its resourcing would be made at future sessions.

Organization of the UPOV sessions

57. *The Consultative Committee approved the proposals to amend document UPOV/INF/13/1 “Guidance on how to become a member of UPOV”, in order to introduce a procedure for examination of laws by correspondence, as presented in Annex III, and recommended to the Council to adopt the revision of document UPOV/INF/13/1 (document UPOV/INF/13/2) on that basis.*

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

58. The Consultative Committee noted the information provided.

Reports from new members of the Union

59. The Consultative Committee noted that Bosnia and Herzegovina had become a UPOV member and agreed that the timetable for presentations at the sessions of the Consultative Committee would be as follows:

October 2018	African Intellectual Property Organization (OAPI)
October 2019	Montenegro United Republic of Tanzania
October 2020	[no new member in 2016]
October 2021	Bosnia and Herzegovina

60. The Consultative Committee noted that the former Yugoslav Republic of Macedonia was not able to make a presentation at the Consultative Committee, at its ninety-fourth session.

61. The Consultative Committee noted the information on progress in the implementation of the UPOV system by Serbia and that the presentation by Serbia would be posted in the Consultative Committee section of the UPOV website.

62. The Consultative Committee agreed to invite the African Intellectual Property Organization (OAPI) to make a presentation at its ninety-fifth session in October 2018.

Developments of relevance to UPOV in other international fora

63. The Consultative Committee approved the assistance of the Office of the Union to the Trade and Agriculture Directorate of the Organization for Economic Co-operation and Development (OECD) in relation to data in the PLUTO database.

Preparation of the calendar of meetings

64. The Consultative Committee recommended to the Council to approve the calendar of meetings in 2018, and to note the tentative dates of meetings in 2019 and 2020, as set out in document C/51/8.

Draft press release

65. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the draft press release contained in document C/51/19 Prov.

66. *The Council is invited to:*

(a) consider the recommendations of the Consultative Committee contained in paragraphs 21, 37, 38, 43, 45, 49, 52, 54, 57, and in Annexes I to III to this document; and

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

[Annexes follow]

FAQ on the United Nations Sustainable Development Goals (SDGs)**Question:****How does the UPOV system contribute to the United Nations Sustainable Development Goals (SDGs)?**

The vision of the 2030 Agenda for Sustainable Development (see <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>) includes a world where “food is sufficient, safe, affordable and nutritious”, there is “sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger” and one in “which development and the application of technology are climate-sensitive, respect biodiversity and are resilient”. The mission of UPOV is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. The benefits that the UPOV system provides to society will be an important component in realizing the vision of the 2030 Agenda for Sustainable Development.

UPOV's mission is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. In particular, new varieties of plants are an important means of responding to the challenges of a growing and increasingly urbanized population, climate change, parallel demands for food and energy production and evolving human needs.

The tremendous progress in agricultural productivity in various parts of the world is largely based on improved varieties, together with improved farming practices, and future food security depend on them. There is also a need to further increase food production in the years leading up to 2030. World population is anticipated to grow until 2050, and urbanization will continue. Therefore, the need for increased productivity in sustainable agricultural production will continue for the foreseeable future. New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users' needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties.¹

Diversity of breeders and breeding is needed to develop new varieties that are able to respond to such a wide range of challenges. The UPOV system of plant variety protection provides an effective mechanism for breeders in both the public and private sectors, and facilitates public-private partnerships. It is a system that is equally relevant for individual breeders, SMEs and larger breeding institutes/enterprises. Plant variety protection supports long-term investment in breeding and provides a framework for investment in the delivery of seed and other propagating material of varieties suited to farmers' needs.

The UPOV system encourages the development of new varieties of plants, therefore adding to diversity. The “breeder's exemption” in the UPOV Convention enables plant diversity to be available for further breeding activities because acts done for the purpose of breeding other varieties are not subject to any restriction by the breeder. This reflects the fact that access to protected varieties contributes to sustain greatest progress in plant breeding and, thereby, to maximize the use of genetic resources for the benefit of society.²

The UPOV Report on the Impact of Plant Variety Protection (Impact Study) (see http://www.upov.int/edocs/pubdocs/en/upov_pub_353.pdf) notes that membership of UPOV provide important technical assistance and facilitate opportunities for cooperation, which enables PVP to be extended to the widest range of plant genera and species in an efficient way thereby enabling the benefits to be maximized.³

¹ <http://www.upov.int/about/en/faq.html> (Why do farmers and growers need new plant varieties?)

² <http://www.upov.int/about/en/faq.html> (Why does UPOV require varieties to be uniform and stable; doesn't that lead to a loss of diversity?)

³ http://www.upov.int/edocs/pubdocs/en/upov_pub_353.pdf

The UPOV system has particular relevance in relation to the following United Nations Sustainable Development Goals (SDGs):

- Goal 1. End poverty in all its forms everywhere (Targets 1.1, 1.4, 1.5, 1.a, 1.b)
- Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture (Targets 2.1, 2.2, 2.3, 2.4, 2.5, 2.a)
- Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation (Target 9.5)
- Goal 12. Ensure sustainable consumption and production patterns (Targets 12.2, 12.3, 12.4, 12.a)
- Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss (Target 15.3)
- Goal 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development: Systemic issues: Multi-stakeholder partnerships (Target 17.17)".

[Annex II follows]

PROGRAM FOR THE USE OF THE RUSSIAN LANGUAGE IN UPOV

1. The program below is based on circumstances related to the use of Russian language, which includes in particular that Russian is a working language of the World Intellectual Property Organization (WIPO). Furthermore, it is based on the existing language capacity of WIPO facilities. Therefore, this program should not be considered to be applicable to other additional languages without a separate analysis.

Provisions in Russian language

Interpretation in Russian at UPOV sessions in Geneva

2. Provision of interpretation services in the Russian language at UPOV sessions in Geneva.

Translation of UPOV materials into Russian

3. Translation of the following UPOV materials into Russian:

(a) Key documents in the UPOV Collection:

- (i) UPOV Convention
- (ii) UPOV/INF document series
- (iii) Explanatory notes on the UPOV Convention
- (iv) General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants
- (v) TGP documents

(b) UPOV Distance Learning Courses

(c) Standard UPOV presentation materials from the Train the Trainer course

4. The key documents in the UPOV Collection materials would be made available on the UPOV website.

5. The UPOV Distance Learning Courses in Russian would be maintained on the UPOV DL platform but administration and tutoring would be provided by a training center (see below).

Russian-speaking professional in the Office of the Union

6. The Office of the Union would accommodate a Russian speaking professional in the Office of the Union and enable that professional to support training and assistance activities in Russian-speaking countries.

Facilitating PBR applications

7. The Electronic Application Form (EAF) would provide a Russian-language interface and Russian-speaking members of the Union would be included in the EAF.

Training center

8. The Office of the Union would provide available training materials in Russian and guidance on the content of a suitable training course on the UPOV system of plant variety protection as a basis to develop a training center for Russian-speaking participants, hosted by the a relevant institute in the Russian Federation. The support would also include the provision of lectures by the Russian-speaking professional from the Office of the Union. The training center would be responsible for administration and tutoring for the UPOV Distance Learning Courses in Russian.

Resourcing

9. The following resource plan needs to be considered as a package from which individual items cannot be isolated.

10. The program would be resourced as follows:

1. *Additional units of contribution*

An additional 0.5 contribution unit (CHF26,820) would be required to sustain the direct costs associated with the provision of interpretation services in the Russian language at UPOV sessions in Geneva, subject to the UPOV sessions being organized as a single set of sessions and would, for example, allow for occasional extra-ordinary sessions.

2. *Provision of Russian-speaking professional*

A suitably qualified Russian-speaking professional would be provided at no cost to the Office of the Union via the UN Junior Professional Officer Program or via the WIPO/UPOV Fellowship scheme. The duration of the assignment for each individual professional would be a minimum of 2 years and a succession of individual professionals would be provided continuously during the program.

3. *Translation of relevant UPOV materials in Russian*

Option 1: Translations could be organized by UPOV via WIPO translation service subject the direct costs being covered by interested members of the Union.

Option 2: Translations could be provided to the Office of the Union for coordination and consistency-checks.

4. *Training center*

The training center hosted by a relevant institute in the Russian Federation would be developed and funded by interested members of the Union.

5. *Participation in the EAF*

Translations of relevant information into Russian would be provided by the participating members of the Union.

Income from the EAF would be a critical part of the sustainable resourcing of the program. Therefore, full participation in the EAF by Russian-speaking members of the Union would be necessary during the program and the sustainability of the program would depend on the level of use for relevant members of the Union.

[Annex III follows]

PROPOSALS TO AMEND DOCUMENT UPOV/INF/13/1
“GUIDANCE ON HOW TO BECOME A MEMBER OF UPOV”

SECTION B. ADVICE OF THE COUNCIL

Relevant Article

Article 34

Ratification, Acceptance or Approval; Accession

[...]

(3) [Advice of the Council] Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.

6. In order to become a member of the Union the advice of the Council in respect of the conformity of the law with the provisions of the UPOV Convention (Article 34(3) of the UPOV Convention) is required.

7. The advice of the Council involves the following procedure:

- (a) request by the State/intergovernmental organization for the advice of the Council;
- (b) preparation of a document with the analysis of the law by the Office of the Union (“analysis document”);
- (c) posting of the analysis document and the law on the UPOV website;
- (d) preliminary examination of the law by the Consultative Committee; and
- (e) decision embodying the advice of the Council.

Further information on the procedure is provided below.

(a) Request by the State/intergovernmental organization for the advice of the Council

8. The request from any State or any intergovernmental organization for the advice of the Council in respect of the conformity of its law with the provisions of the UPOV Convention is required to be made in a letter addressed to the Secretary-General of UPOV (example letter available upon request). A copy of the law, or its translation, in one of the UPOV languages (English, French, German, Spanish) is required to be enclosed in the letter.

9. A State or intergovernmental organization may submit to the Council an adopted law or, alternatively, may submit a draft law as presented to its parliament or relevant legislative body. The draft law can provide the basis for a positive decision of the Council on accession to the UPOV Convention, provided that no modifications are introduced in the draft law during the parliamentary procedure other than any modification proposed by the Council in its decision (see below subsection (e) “decision embodying the advice of the Council”).

10. Requests for examination of laws by the Council are required to reach the Office of the Union at least four weeks prior to the week of the relevant ordinary session of the Council session. In general, r Requests received after that date would be considered at the subsequent session of the Council, unless the procedure of examination of laws by correspondence is applicable (see paragraph 11). The Council holds its ordinary session in October/November, and, where necessary, holds an extraordinary session in March/April. The dates of the sessions can be found at <http://www.upov.int/meetings/en/calendar.html>.

11. The procedure of examination of laws by correspondence will be applicable if:

(i) the request is received less than four weeks prior to the week of the earliest ordinary session of the Council and more than six months before the date of the subsequent ordinary session of the Council; and

(ii) the analysis of the Office of the Union anticipates a positive decision and does not identify any significant issues concerning the conformity of the legislation with the UPOV Convention.

(b) Preparation of a document with the analysis of the law by the Office of the Union

11.12. In order to assist the Council in its examination of the law, the Office of the Union prepares a document that analyzes the law in relation to the text of the UPOV Convention (“analysis document”).

(c) Posting of the analysis document and the law on the UPOV website

12-13. The analysis document and the law are posted on the UPOV website in advance of the examination of the Law by the Council session at which the law will be examined to assist members and observers in their consideration of the law. This procedure also provides an opportunity for comments from members and observers prior to the examination of the law by the Council. Any comments received are communicated to the State or the intergovernmental organization requesting the examination of the law and to the members of the Union. Where so requested by the member or observer making the comment, comments are posted on the UPOV website on a section accessible to observers.

14. In the case of examination of a law by correspondence (see paragraph 11), the procedure will be as follows:

(i) the analysis document and the law will be posted on the UPOV website within six weeks of receipt of the request and members and observers to the Council will be informed accordingly; and

(ii) members or observers will have the opportunity to provide comments within 30 days from the date the analysis document is posted on the UPOV website.

(d) Preliminary examination of the law by the Consultative Committee

13-15. Prior to consideration by the Council, the law will undergo a preliminary examination by the Consultative Committee, which is the body charged with the preparation of the sessions of the Council. The Consultative Committee is composed exclusively of members of the Union and, in general, meets immediately prior to the sessions of the Council. Although observers do not participate in the sessions of the Consultative Committee, a delegation from the State or intergovernmental organization concerned will be invited to participate in the session of the Consultative Committee in which the examination of its law will take place. The delegation will be present during the introduction of the law and will be invited to answer any questions raised by the Consultative Committee.

16. In the case of examination of a law by correspondence (see paragraph 11), the procedure will be as follows:

(i) after the period for comments (see paragraph 14 (ii)) the Consultative Committee will be invited to make a positive recommendation by correspondence within 30 days;

(ii) if no objections are received from the representative to the Council of any of the members of the Union, the Consultative Committee will be deemed to have made a positive recommendation;

(iii) if an objection is received from the representative to the Council of one or more members of the Union, the examination of the law will be referred to the earliest ordinary session of the Council and the Consultative Committee will be informed accordingly;

(iv) if the Consultative Committee makes a positive recommendation by correspondence, the Council will be invited to take a positive decision by correspondence in accordance with the procedure in paragraph 18 (see below subsection "(e) Decision embodying the advice of the Council").

(e) Decision embodying the advice of the Council

14-17. At the Council session, will consider the recommendations of the Consultative Committee will be considered and the Council and will take its decision in respect of the conformity of the law with the provisions of the UPOV Convention. The delegation from the State or intergovernmental organization concerned will be invited to participate in the session of the Council.

18. In the case of examination of a law by correspondence (see paragraph 11), the procedure will be as follows:

(i) the designated persons to the Council (members and observers) will be informed that the Consultative Committee has made a positive recommendation and the Council will be invited to take a positive decision;

(ii) if no objections are received from the representative to the Council of any of the members of the Union within 15 days, the Council will be deemed to have taken a positive decision and the Council would be notified accordingly;

(iii) if an objection is received from the representative to the Council of one or more members of the Union, the examination of the law will be referred to the earliest ordinary session of the Council and the Council will be notified accordingly.

15-19. Some possible scenarios concerning the decisions of the Council are summarized below:

(i) if the decision of the Council embodying the advice concerning an adopted law is positive, the instrument of accession may be deposited (Article 34(3) of the UPOV Convention) (see Section C. "Implementation of the Convention"), provided that the law is not amended in the meantime;

(ii) ~~if the~~ decision of the Council embodying the advice concerning a draft law is positive; ~~and~~ if the draft law is adopted with no changes, and in force, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C "Implementation of the Convention");

~~(iii)~~ The decision of the Council embodying the advice concerning a draft law is positive; however, changes are introduced during the procedure of adopting the law: if in the opinion of the Office of the Union those changes do not affect the substantive provisions of the 1991 Act of the UPOV Convention, the Office of the Union will prepare a document presenting those changes and its opinion and the Council will be invited to reaffirm its decision of conformity. If the Council reaffirms its decision of conformity, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C "Implementation of the Convention"). The procedure for examination of a law by correspondence will apply mutatis mutandis to the procedure to reaffirm a decision of conformity of the Council if the conditions in paragraph 11 apply;

~~(iii)(iv)~~ ~~if the~~ decision of the Council embodying the advice concerning a draft law is positive, subject to modifications; reference to those modifications will be made in the decision of the Council embodying the positive advice. Once the required modifications are made to the draft law and that law is adopted with no other changes, and in force, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C "Implementation of the Convention");

~~(v)~~ The decision of the Council embodying the advice concerning a draft law is positive, subject to modifications; however, additional changes are introduced during the procedure of adopting the law: if in the opinion of the Office of the Union those additional changes do not affect the substantive provisions of the 1991 Act of the UPOV Convention, the Office of the Union will prepare a document presenting those additional changes and its opinion and the Council will be invited to reaffirm its decision of conformity. If the Council reaffirms its decision of conformity, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C "Implementation of the Convention"). The procedure for examination of a law by correspondence will apply mutatis mutandis to the procedure to reaffirm a decision of conformity of the Council if the conditions in paragraph 11 apply;

~~(iv)(vi)~~ ~~if the~~ decision of the Council is that modifications to a law are required; the Council decision would recommend that once the modifications have been incorporated in the law, the amended law would need to be submitted for examination by the Council ~~at a subsequent session~~.

~~46-20~~. The Secretary-General of UPOV will communicate the decision of the Council to the authority requesting the examination of the law.

[End of Annex III and of document]