

**Council****C/55/12.****Fifty-Fifth Ordinary Session  
Geneva, October 29, 2021****Original:** English  
**Date:** October 5, 2021**OUTCOME OF THE CONSIDERATION OF DOCUMENTS BY CORRESPONDENCE***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance***EXECUTIVE SUMMARY**

1. The purpose of this document is to report the outcome of consideration of the Council documents by correspondence, in accordance with the procedure adopted by the Council in 2021<sup>1</sup>.

2. The Council is invited to note the approval of the Council by correspondence on September 21, 2021, of the decisions contained in the following documents:

Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document C/55/10)

Adoption of documents (document C/55/3 Rev.)

UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (Annex to document C/55/3 Rev.)

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)

UPOV/INF/17: Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines") (Revision) (document UPOV/INF/17/2 Draft 6)

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 2)

UPOV/INF/23: UPOV Code System (document UPOV/INF/23/1 Draft 3)

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)

TGP/5: Experience and Cooperation in DUS Testing, Section 2: UPOV Model Form for the Application for Plant Breeders' Rights (Revision) (document TGP/5: Section 2/4 Draft 1)

TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)

Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)

UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/EXN/DEN/1 Draft 6)

Financial statements for 2020 (document C/55/5)

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4)

3. The Council is invited to note the comments received in response to Circular E-21/125 of August 23, 2021, on document C/55/4 "Draft Program and Budget for the 2022-2023 Biennium" that have not resulted in a revision of document C/55/4 (see paragraph 30).

<sup>1</sup> The procedure for consideration of documents by correspondence is provided in Circular E-21/063 of May 14, 2021 (available at the TC/57, CAJ/78, CC/98 and C/55 webpages).

4. The Council is invited to note that the responses received to Circular E-21/125 of August 23, 2021, also included comments on document C/55/6 "Report of the External Auditor" which was not part of the procedure for approval by correspondence, and will be considered at the virtual session of the Council in October 2021. The Council is invited to note that the comments received concerning document C/55/6 are presented in this document for information of the Council (see paragraph 26).

5. The structure of this document is as follows:

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## BACKGROUND

6. The Council adopted the procedure for the UPOV sessions in October 2021, in accordance with Circular E-21/063 of May 14, 2021 (available on the [C/55](#) webpage). The fifty-fifth ordinary session of the Council (C/55) will be held on October 29, 2021, by electronic means (see invitation Circular E-21/073 of May 31, 2021), in combination with prior consideration of certain documents by correspondence.

7. In consultation with the President of the Council, the following documents in Circular E-21/089 of June 16, 2021 were identified in document C/55/1 (Draft Agenda) with one asterisk (\*) as documents for the procedure by correspondence with an opportunity for comments by July 15, 2021, prior to requests for approval of the proposed decisions in the documents:

### Adoption of documents (document C/55/3)\*

UPOV/INF/6:	Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (Annex to document C/55/3)*
UPOV/INF/16:	Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 1)*
UPOV/INF/17:	Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines") (Revision) (document UPOV/INF/17/2 Draft 6)*
UPOV/INF/22:	Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 1)*
UPOV/INF/23:	UPOV Code System (document UPOV/INF/23/1 Draft 3)*
UPOV/INF-EXN:	List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)*

- TGP/5: Experience and Cooperation in DUS Testing, Section 2: UPOV Model Form for the Application for Plant Breeders' Rights (Revision) (document TGP/5: Section 2/4 Draft 1)\*
- TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)\*

8. By July 15, 2021, comments of a straightforward nature were received on the following documents in Circular E-21/089 of June 16, 2021. The Office of the Union addressed the comments in a revised version of the following documents, with endnote explanations:

Adoption of documents (document C/55/3 Rev.)

- UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)
- UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 2)

9. Circular E-21/125 of August 23, 2021, invited the Council to approve the proposed decision(s) contained in the document C/55/3 Rev. "Adoption of documents" within 30 days (i.e. September 21, 2021).

10. Circular E-21/125 of August 23, 2021, also included documents identified in document C/55/1 (Draft Agenda) with two asterisks (\*\*) to be considered by correspondence in accordance with the specific procedure agreed by the relevant UPOV body. The Council was invited to approve the proposed decision(s) contained in the following documents within 30 days (i.e. September 21, 2021):

Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document C/55/10)\*\*

Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)\*\*

Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/EXN/DEN/1 Draft 6)\*\*

Financial statements for 2020 (document C/55/5)\*\*

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4)\*\*

11. As no objections were received by September 21, 2021, relevant decisions in the following documents are considered to have been taken by correspondence:

Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document C/55/10)\*\*

Adoption of documents (document C/55/3 Rev.)\*

UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (Annex to document C/55/3 Rev.)\*

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)\*

UPOV/INF/17: Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines") (Revision) (document UPOV/INF/17/2 Draft 6)\*

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 2)\*

UPOV/INF/23: UPOV Code System (document UPOV/INF/23/1 Draft 3)\*

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)\*

TGP/5: Experience and Cooperation in DUS Testing, Section 2: UPOV Model Form for the Application for Plant Breeders' Rights (Revision) (document TGP/5: Section 2/4 Draft 1)\*

TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)\*

Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)\*\*

UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/EXN/DEN/1 Draft 6) \*\*

Financial statements for 2020 (document C/55/5)\*\*

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4)\*\*

12. The decisions taken by the Council by correspondence on September 21, 2021 are reproduced in this document according to the items in the Revised Draft Agenda (document C/55/1 Rev.2).

AGENDA ITEM 4: EXTENSION OF THE APPOINTMENT OF THE VICE SECRETARY-GENERAL AND PROCEDURE FOR THE APPOINTMENT OF A NEW VICE SECRETARY-GENERAL (DOCUMENT C/55/10)

13. The Council considered document C/55/10.

14. The Council extended the appointment of the Vice Secretary-General from December 1, 2022, until October 22, 2023.

15. The Council approved the procedure and timetable for the appointment of the new Vice Secretary-General, including:

(a) the circular announcing the vacancy and the general description of the post and an outline of the conditions of employment of the post, as provided in the Annex to document C/55/10;

(b) announcing the appointment of the Vice Secretary-General at the Assistant Secretary General (ASG) grade of the United Nations common system, thereby avoiding the need for a consideration of a promotion after the Vice Secretary-General has been in post for one year; and

(c) the following course of action and timetable

(i) to approve a circular, announcing the vacancy and the general description of the post and an outline of the conditions of employment of the post, as provided in the Annex to document C/55/10;

(ii) to request the Secretary-General to announce the vacancy by the end of May 2022;

(iii) to establish a deadline for the receipt of applications by August 31, 2022;

(iv) to send to each member of the Union, as soon as possible after August 31, 2022, a copy of the applications received;

(v) to add an agenda item for the ninety-ninth session of the Consultative Committee, to be held on October 27, 2022, to consider applications received for the post of Vice Secretary-General, to establish an Ad hoc Sub-Committee based on previous practice on the appointment of Vice Secretary-Generals, charged with interviewing the selected candidates at the beginning of 2023 and to decide on the topic for a presentation to be made by the candidates selected for interview;

(vi) by end of January/beginning of February 2023, to arrange an informal meeting of members of the Union to listen to 10 to 15 minute presentations by the candidates selected for interview in the morning and to arrange for the selected candidates to meet with the Ad hoc Sub Committee in the afternoon;

(vii) by the end of February 2023, to send a report of the meeting of the Ad hoc Sub Committee to the members of the Union;

(viii) to convene the one hundredth session of the Consultative Committee and an extraordinary session of the Council on March 23, 2023, and after seeking the agreement of the Secretary-General, to make a recommendation on the appointment of the new Vice Secretary-General to the Council.

AGENDA ITEM 8: DOCUMENTS PROPOSED FOR ADOPTION BY THE COUNCIL (DOCUMENT C/55/3 REV.)

Documents proposed for adoption by the Council (document C/55/3 Rev.)

16. The Council considered document C/55/3 Rev., UPOV/INF/6/6 (Annex to document C/55/3 Rev.), UPOV/INF/16/10 Draft 2, UPOV/INF/17/2 Draft 6, UPOV/INF/22/8 Draft 2, UPOV/INF/23/1 Draft 3, UPOV/INF-EXN/15 Draft 12, UPOV/EXN/DEN/1 Draft 6 and C/55/11, TGP/5: Section 2/4 Draft 1, and TGP/0/13 Draft 1.

*Information documents*

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)

17. The Council adopted a revision of document UPOV/INF/16 “Exchangeable Software” (document UPOV/INF/16/10), on the basis of document UPOV/INF/16/10 Draft 2.

UPOV/INF/17: Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (“BMT Guidelines”) (Revision) (document UPOV/INF/17/2 Draft 6)

18. The Council adopted a revision of document UPOV/INF/17 “Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (“BMT Guidelines”)” (document UPOV/INF/17/2), on the basis of document UPOV/INF/17/2 Draft 6.

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 2)

19. The Council adopted a revision of document UPOV/INF/22 “Software and equipment used by members of the Union” (document UPOV/INF/22/8), on the basis of document UPOV/INF/22/8 Draft 2.

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)

20. The Council adopted a revision of document UPOV/INF-EXN “List of INF-EXN Documents and Latest Issue Dates” (document UPOV/INF-EXN/15), on the basis of document UPOV/INF-EXN/15 Draft 1.

*Explanatory Notes*

UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/EXN/DEN/1 Draft 6)

21. The Council noted that matters concerning variety denominations were considered in document C/55/11.

*Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)*

22. The Council adopted a revision of document UPOV/EXN/DEN “Explanatory notes on variety denominations under the UPOV Convention” document UPOV/EXN/DEN/1), on the basis of document UPOV/EXN/DEN/1 Draft 6.

*TGP documents*

TGP/5: Experience and Cooperation in DUS Testing: Section 2: UPOV Model Form for the Application for Plant Breeders’ Rights (Revision) (document TGP/5: Section 2/4 Draft 1)

23. The Council adopted a revision of document TGP/5: “Experience and Cooperation in DUS Testing: Section 2: UPOV Model Form for the Application for Plant Breeders’ Rights” (document TGP/5: Section 2/4), on the basis of document TGP/5: Section 2/4 Draft 1.

TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)

24. The Council adopted a revision of document TGP/0 “List of TGP documents and latest issue dates” (document TGP/0/13), on the basis of document TGP/0/13 Draft 1.

AGENDA ITEM 9: FINANCIAL STATEMENTS FOR 2020 (DOCUMENT C/55/5)

25. The Council approved the Financial Statements for 2020, as presented in document C/55/5.

AGENDA ITEM 11: REPORT OF THE EXTERNAL AUDITOR (DOCUMENT C/55/6)

26. The posting of document C/55/6 "Report of the External Auditor" was mentioned in Circular E-21/125 of August 23, 2021, but was not part of the procedure by correspondence. However, the following comments on document C/55/6 were received:

Comments from the European Union

"The EU and its Member States take note of the report of the External Auditor and ask the UPOV Office to follow the two recommendations as regards to after-service health insurance and consultation of staff in relation to costs and benefits of alignment with WIPO Staff Regulations and Rules UN common system."

Comments from Switzerland

"Thank you for your Circulars E-21/124 and E21/125, dated August 23, 2021, regarding the procedure for the consideration and approval of the proposed decisions by correspondence.

"We have the following comments on the External Auditor's report (document C/55/6):

"Under point 5, it is mentioned that the employee benefits liability for health insurance has increased by CHF 1 million to a total of CHF 3 million. The amount seems to us to be exorbitant given the size of the Organization. We would like to request more detailed information on the subject. In particular, we would like to know whether the adjustment was a one-off or rather that such increases are likely to be a regular occurrence in the coming years.

"The financial situation of UPOV could take a significant turn for the worse in the absence of measures to make savings or increase the employees' share of the cost of the insurance. Recommendations to that effect have been made in the Report. However, in our view, concrete solutions for implementation are lacking.

As regards all other documents marked with two asterisks (\*\*) in the two circulars, we have no comments at this stage."

27. The Office of the Union explained to the European Union and Switzerland that an intervention by the Controller on this point would be reported at the session.

AGENDA ITEM 13: DRAFT PROGRAM AND BUDGET FOR THE 2022-2023 BIENNIUM (DOCUMENT C/55/4)

28. The Council considered document C/55/4.

29. The Council approved the Draft Program and Budget of the Union for the 2022 2023 Biennium, as presented in the Annex to document C/55/4, including:

- (i) the amount of contributions from members of the Union;
- (ii) the proposed maximum ceiling of expenditure in the regular budget being 7,634,500 Swiss francs or the income received in the biennium, whichever is the lower; and
- (iii) the total number of posts.

Comments from the European Union

30. In reply to Circular E-21/124 of August 23, 2021, the following comments on document C/55/4 were received from the European Union:

“The EU and its Member States can consider to approve the Draft Program and Budget of the Union for the 2022-2023 Biennium with following comments:

“We note the intention to develop new IT tools to support a better and more efficient implementation of the UPOV system.

“We would like to ask UPOV to clarify the input and resources they need, also from its members. Working groups may need to be organised and more information about the timing would be welcome.

“Concerning communication and in particular awareness raising we suggest, as under agenda point 16 on the Communication Strategy, that the UPOV Office will support the OECD Seed Schemes Secretariat on a proposal on International Year of Seed in the next meeting of the World Seed Partnership. This would allow and give space to a communication exercise in various forms, and to raising awareness of the UPOV system and importance of plant breeding.

“For the communication on the benefits of the UPOV system it would be highly important to have factual, preferably quantitative data. An update of the earlier impact assessment and cooperation with the members of the Union on impact assessments should be pursued. In particular, it would be beneficial to gather data in relation to plant breeding and impacts on the UN Sustainable Development Goals.”

31. The Office of the Union provided the following explanations to the European Union:

“The resources that would be needed from the regular UPOV budget are included in the Draft Program and Budget of the Union for the 2022-2023 Biennium.

“The e-PVP modules (see document C/55/INF/2 Developments in UPOV and accompanying video [https://www.upov.int/meetings/en/details.jsp?meeting\\_id=60600](https://www.upov.int/meetings/en/details.jsp?meeting_id=60600)) are already well advanced as part of the e-PVP Asia project, with relevant parts of the costs having been covered by the Japan FIT. E-PVP Asia, which is built on the e-PVP modules, will be finalized in early 2022. The modules have been developed in consultation with PVP offices, including CPVO, via an experienced ICS contract coordinator (Kees van Ettekoven). UPOV members will be able to use the e-PVP modules with minimal cost (e.g. for maintenance and cloud hosting costs). However, if a UPOV member wishes to customize the e-PVP modules, for example because they wish to have a more complex workflow and/or do not use the UPOV model application form and standard UPOV Test Guidelines Technical Questionnaires, the UPOV member would need to cover the costs involved. In the case of EAPVP Forum countries that are UPOV members, the Japan FIT may cover certain of these costs in relation to the e-PVP Asia project. In the case of other UPOV members, other sources of support might be available, for example, via EU funded programs implemented by the EUIPO.

“UPOV is already in discussion with some UPOV members that have expressed an interest to use the e-PVP modules.

“The proposal of the European Union to gather data in relation to plant breeding and impacts on the UN Sustainable Development Goals could be raised for consideration by the Council.

The proposal of the European Union for UPOV to support the OECD Seed Schemes proposal on International Year of Seed in the next meeting of the World Seed Partnership could be raised for consideration by the Council.”

32. *The Council is invited to note the approval of the Council by correspondence on September 21, 2021, of the decisions contained in the following documents:*

*Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document C/55/10)*

*Adoption of documents (document C/55/3 Rev.);*

*UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (Annex to document C/55/3 Rev.)*

*UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)*

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*UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)*

*TGP/5: Experience and Cooperation in DUS Testing, Section 2: UPOV Model Form for the Application for Plant Breeders’ Rights (Revision) (document TGP/5: Section 2/4 Draft 1)*

*TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)*

*Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)*

*UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/EXN/DEN/1 Draft 6)*

*Financial statements for 2020 (document C/55/5)*

*Draft Program and Budget for the 2022-2023 Biennium (document C/55/4).*

33. *The Council is invited to note the comments received in response to Circular E-21/125 of August 23, 2021, on document C/55/4 “Draft Program and Budget for the 2022-2023 Biennium” that have not resulted in a revision of document C/55/4 (see paragraph 30).*

34. *The Council is invited to:*

*(a) note that the responses received to Circular E-21/125 of August 23, 2021, also included comments on document C/55/6 “Report of the External Auditor” which was not part of the procedure for approval by correspondence, and will be considered at the virtual session of the Council in October 2021; and*

*(b) note that the comments received concerning document C/55/6 are presented in this document for information of the Council (see paragraph 26).*

[End of document]