

Council**C/56/13 Corr.****Fifty-Sixth Ordinary Session
Geneva, October 28, 2022****Original:** English
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**REPORT BY THE PRESIDENT ON THE WORK OF THE NINETY-NINTH 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-ninth session in Geneva on October 27, 2022, and on the morning of October 28, 2022.
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/56/1 Rev.):
 - (a) Preliminary examination of the conformity of the Draft Law on the Protection of Varieties of Plants of Armenia with the 1991 Act of the UPOV Convention (document C/56/14) (see paragraph 9)
 - (b) Procedure for the appointment of the External Auditor (document C/56/12) (see paragraph 11)
 - (c) Documents proposed for adoption by the Council (documents C/56/3 and C/56/9) (see paragraphs 13 to 16, and 22 to 25)
 - (d) Financial statements for 2021 (document C/56/4) (see paragraph 26)
 - (e) UPOV Performance Report 2020-2021 (document C/56/2) (see paragraph 27)
 - (f) Procedure for the appointment of the External Auditor (document C/56/12) (see paragraph 31)
 - (g) Strategic Business Plan 2023-2027 (document C/56/10) (see paragraph 34)
 - (h) Press release (document C/56/11) (see paragraph 56)
3. The Council is invited to:
 - (a) consider the recommendation of the Consultative Committee that provision be made for an exclusively physical meeting of the thirty-fifth extraordinary session of the UPOV Council, to be held on March 23, 2023, as set out in paragraph 11;
 - (b) note the work of the Consultative Committee at its ninety-ninth session, as reported in this document.
4. The work of the Consultative Committee at its ninety-ninth session is summarized in the following paragraphs.

Preliminary examination of the conformity of the Draft Law on the Protection of Varieties of Plants of Armenia with the 1991 Act of the UPOV Convention

5. The Delegation of the United States of America requested clarification in relation to the scope and cross references in Article 14 (3) of the Draft Law (reproduced below):

“(3) acts done for the purpose of breeding other varieties, and, except where the provisions of part 4 of Article 13 apply, acts provided for by parts 1 to 3 of Article 13 in respect of such other varieties.”

6. The Office of the Union explained the provision and confirmed that it was in accordance with the scope of the exception under Article 15(1)(iii) of the 1991 Act of the UPOV Convention.
7. The Delegation of Belarus expressed its support to Armenia in the procedure of becoming a UPOV member.
8. The Delegation of Armenia expressed its appreciation for the preliminary examination of its Draft Law.
9. The Consultative Committee recommended to the Council to:
 - (a) note the analysis in document C/56/14;
 - (b) take a positive decision on the conformity of the Draft Law of Armenia on the Protection of Varieties of Plants with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Armenia 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; and
 - (c) authorize the Secretary-General to inform the Government of Armenia of the above decision.

Procedure for the appointment of a new Vice Secretary-General

10. The Consultative Committee selected the following candidates, listed in alphabetical order, to be interviewed for the post of VSG:

Mr. Martin Ake EKVAD (Sweden)

Ms. Yolanda HUERTA-CASADO (Spain)

Mr. Leontino REZENDE TAVEIRA (Brazil)

11. The Consultative Committee agreed to recommend to the Council that provision be made for an exclusively physical meeting of the thirty-fifth extraordinary session of the UPOV Council, to be held on March 23, 2023.

Documents proposed for adoption by the Council

Information Materials

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/11 Draft 1)

12. The Consultative Committee noted that the TC and the CAJ had approved the inclusion of the PATHOSTAT application in document UPOV/INF/16.

(d) DUS trial design and data analysis

Date added	Program name	Programming language	Function (brief summary)	Source & contact details	Condition for supply	UPOV member(s) using the software	Application by user(s)
	PATHOSTAT	Excel	Decision support tool to integrate statistics for the analysis of pest resistance test results for vegetable species	France: Ms. Sophie Perrot e-mail: sophie.perrot@geves.fr and (geves.fr)	Available as a web service / not for download	FR	Vegetable species

13. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/16/10 “Exchangeable Software”, on the basis of document UPOV/INF/16/11 Draft 1 with the inclusion of the PATHOSTAT application.

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision)
(document UPOV/INF/22/9 Draft 1)

14. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/22/8 "Software and equipment used by members of the Union", on the basis of document UPOV/INF/22/9 Draft 1.

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision)
(document UPOV/INF-EXN/16 Draft 1)

15. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF-EXN/16 "List of INF-EXN Documents and Latest Issue Dates", on the basis of document UPOV/INF-EXN/16 Draft 1.

Explanatory Notes

UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention
(document C/56/3, Annex I)

16. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/EXN/DEN/1 "Explanatory Notes on Variety Denominations under the UPOV Convention", on the basis of the proposed amendments presented in Annex I to document C/56/3.

UPOV/EXN/EDV: Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (Revision) (documents C/56/9 and UPOV/EXN/EDV/3 Draft 3)

17. Some delegations were in favor of adopting document UPOV/EXN/EDV/3 Draft 3, while some other delegations were not in favor of adopting the document UPOV/EXN/EDV/3 Draft 3.

18. The Consultative Committee agreed to establish the Consultative Committee Working Group on Essentially Derived Varieties (CC/WG-EDV) with the following terms of reference:

PURPOSE:

The purpose of the CC/WG-EDV is to draft a revision of the "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention" for consideration by the Consultative Committee and the Council in October 2023.

COMPOSITION:

- (a) members of the Union that express an interest to be part of the CC/WG-EDV in reply to a Circular to be issued after the ninety-ninth session of the Consultative Committee;
- (b) other members of the Union would be free to participate at any meeting of the CC/WG-EDV; and
- (c) meetings to be chaired by the Vice secretary-General.

MODUS OPERANDI:

- (a) The CC/WG-EDV to:
 - (i) use document UPOV/EXN/EDV/3 Draft 3 as the basis for preparing an agreed draft revision of the "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention";
 - (ii) consider the concerns that have been raised (policy, legal or technical) with regard to document UPOV/EXN/EDV/3 Draft 3 (see document C/56/9) and, as appropriate, invite members, relevant stakeholders and/or experts to elaborate their perspectives on the matters raised; and
 - (iii) prepare an agreed draft revision of the "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention" (document UPOV/EXN/EDV/3 Draft 4) by July 31, 2023.

- (b) the CC/WG-EDV to meet at a time and frequency to address its mandate, by physical and/or virtual means, as agreed by the CC/WG-EDV; and
- (c) the documents of the CC/WG-EDV to be made available to members of the Union.

19. The Consultative Committee agreed to propose to the Council to organize a “Seminar on the interaction between plant variety protection and the use of plant breeding technologies” in hybrid format, to be held on March 22, 2023.

20. The Consultative Committee agreed to consider at its one hundred and first session the outcome of the CC/WG-EDV and a recommendation to the Council, at its fifty-seventh ordinary session, on replacing or repealing the 2017 version of the “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”.

21. The members of the Consultative Committee were committed to work expeditiously on a new explanatory note to be recommended to the Council.

TGP Documents

Document TGP/5: Experience and Cooperation in DUS Testing, Section 6: UPOV Report on Technical Examination and UPOV Variety Description (Revision) (document TGP/5 Section 6/4 Draft 1)

22. The Consultative Committee recommended to the Council to adopt a revision of document TGP/5 “Experience and Cooperation in DUS Testing”, Section 6/3 “UPOV Report on Technical Examination and UPOV Variety Description”, on the basis of document TGP/5: Section 6/4 Draft 1.

Document TGP/8: Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability (Revision) (document C/56/3, Annex II)

23. The Consultative Committee recommended to the Council to adopt a revision of document TGP/8/4 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”, as presented in Annex II to document C/56/3.

Document TGP/12: Guidance on Certain Physiological Characteristics (Revision) (document C/56/3, Annex III)

24. The Consultative Committee recommended to the Council to adopt a revision of document TGP/12/2 “Guidance on certain physiological characteristics”, as presented in Annex III to document C/56/3.

Document TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/14 Draft 1)

25. The Consultative Committee recommended to the Council to adopt a revision of document TGP/0 “List of TGP documents and latest issue dates”, on the basis of document TGP/0/14 Draft 1.

Financial statements for 2021

26. The Consultative Committee recommended to the Council to approve the Financial Statements for 2021.

UPOV Performance Report 2020-2021

27. The Consultative Committee noted the UPOV Performance Report 2020-2021.

Report of the External Auditor

28. The Delegation of the European Union requested the Office of the Union to explain its planned response to the recommendation that UPOV regularly consult with its members on the costs and benefits of continued alignment with the full provisions of the Staff Regulations and Staff Rules of WIPO and the associated UN common system entitlements to ensure that it provides best value for the Union.

29. The Vice Secretary-General explained that a document would be prepared for consideration by the Consultative Committee at its one hundred and first session. However, in order to indicate the nature of the likely response, he recalled that the recommendation had arisen because of concerns about UPOV's ASHI liability. In response to that, he pointed to the explanation in document "Financing of Long-Term Employee Benefits" that the long-term employee benefits were projected to be fully covered within approximately 16 years. Furthermore, a loss of alignment with WIPO staff terms and conditions would generate significant additional administrative charges from WIPO because of the need to introduce separate measures for UPOV.

Procedure for the appointment of the External Auditor

30. The Consultative Committee noted the developments with regard to the procedure for the appointment of the External Auditor of WIPO reported in document C/56/12.

31. The Consultative Committee recommended to the Council the following procedure for the appointment of the External Auditor of UPOV for a term of office of six years starting from January 2024, to December 2029, as set out in paragraph 8 of document C/56/12:

Considering that from the five nominations received from WIPO member States, two of them are not from UPOV members, the following steps are suggested:

- (1) the Office of the Union to start consultations with UPOV members that have, in the past, audited the UPOV accounts or are members of the UN Board of Auditors;
- (2) if the General Assembly of WIPO, in 2023, appoints the Comptroller and Auditor General of a WIPO member State that
 - i. is also a UPOV member, then the Council shall designate as External Auditor, with its agreement, the WIPO External Auditor;
 - ii. is not a UPOV member, then the Office of the Union would make a proposal to the Council, to appoint with its agreement, a UPOV member that has, in the past, audited the UPOV accounts or is a member of the UN Board of Auditors.

Arrears in contributions as of September 30, 2022

32. The Consultative Committee noted the status of payment of contributions as of September 30, 2022, and noted that due to a recent payment, Belgium had no arrears.

Strategic Business Plan

33. The Consultative Committee agreed to include a section on "Horizon scanning" in the version of the Strategic Business Plan to be considered by the Consultative Committee in 2024.

34. The Consultative Committee approved the Draft Strategic Business Plan 2023-2027, with the following changes in Pillar 1:

"Bring together stakeholders to ~~oversee and~~ help shape the UPOV system."

"15. This Strategic Pillar focuses on UPOV's role as convener to bring together members of the Union ~~and stakeholders~~ to oversee and coordinate UPOV's work and to engage with stakeholders to help shape the future of the UPOV system."

35. The Consultative Committee agreed that the Strategic Business Plan 2023-2027, as approved by the Consultative Committee, be presented for adoption by the Council at its fifty-sixth ordinary session.

UPOV PRISMA financing

36. The Consultative Committee:

- (a) noted the information provided in document "UPOV PRISMA financing" concerning:
 - (i) latest revenue and costs relating to UPOV PRISMA;
 - (ii) funding sources other than the regular budget;
 - (iii) latest and projected coverage of UPOV PRISMA (capacity);
 - (iv) projected revenue and costs of UPOV PRISMA;
 - (v) anticipated funding sources other than the regular budget;
 - (vi) incentives by members of the Union for the use of UPOV PRISMA;
- (b) noted that revenue from UPOV PRISMA covered the cost of operating the service in 2021;
- (c) noted that, from 2024, revenue from UPOV PRISMA was projected to generate a positive balance beyond the operating and development costs of the service;
- (d) agreed to propose to the Council to maintain the UPOV PRISMA fee unchanged in the Program and Budget for the 2024-2025 Biennium i.e. 90 Swiss francs, and where the same variety is submitted for both plant breeders' rights and national listing in the same participating member of the Union, a single fee would be charged at the time of the first submission for the variety.

Financing of long-term employee benefits

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

Preparation of the Program and Budget for the 2024-2025 Biennium

38. The Consultative Committee noted the following steps to ensure sufficient opportunity for the Consultative Committee to consider the Draft Program and Budget for 2024-2025 before presentation to the Council in October 2023:

- (a) preparation of a complete, preliminary Draft Program and Budget for 2024-2025, to be circulated to members of the Union by February 28, 2023, with 6 weeks for comments, on the basis of:
 - (i) document "Draft Strategic Business Plan 2023-2027", in conjunction with the conclusions of the Consultative Committee at its ninety-ninth session;
 - (ii) document "UPOV PRISMA Financing", in conjunction with the conclusions of the Consultative Committee at its ninety-ninth session;
 - (iii) any subsequent developments; and
- (b) presentation of a Draft Program and Budget for 2024-2025 by September 1, 2023, in accordance with the Financial Regulations and Rules of UPOV (document UPOV/INF/4), for consideration by the Consultative Committee on October 26, 2023 and by the Council on October 27, 2023.

Communication strategy

39. The Consultative Committee noted:

- (a) the developments reported in document "Communication strategy";
- (b) the developments concerning the consideration of the draft FAQ by the CBD and ITPGRFA;

(c) that a report of developments concerning the redesign of the UPOV website would be made at the one hundred and first session of the Consultative Committee;

(d) that results related to the Communication Strategy were presented in the Performance Report for 2021-2022 (document C/56/2); and

(e) that the Office of the Union would develop the FAQs on the basis of existing UPOV information and guidance, and welcome inputs from UPOV members. In the case of FAQs where the answers would require new information or a new position to be developed by UPOV, the draft FAQ would be presented to the Consultative Committee and Council for approval.

40. The Consultative Committee agreed to consider planning a symposium on interrelations between the Convention on Biological Diversity (CBD), 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) in 2024.

Program for the use of the Russian language in UPOV

41. The Consultative Committee noted the developments reported in document "Program for the use of the Russian language in UPOV".

42. The Consultative Committee noted that the Office of the Union would prepare a document with an analysis on the impact on resources and benefits of the programs in UPOV for the Russian language for consideration by the Consultative Committee, at its one hundred and first session, to be held on October 26, 2023.

Program for the use of the Chinese language in UPOV

43. The Consultative Committee noted the developments reported in document "Program for the use of the Chinese language in UPOV".

44. The Consultative Committee noted that the Office of the Union would prepare a document with an analysis on the impact on resources and benefits of the programs in UPOV for the Chinese language for consideration by the Consultative Committee, at its one hundred and first session, to be held on October 26, 2023.

New developments in members of the Union

45. The Consultative Committee:

(a) noted that the presentations, proceedings and a video recording of the seminar on strategies that address policies involving plant breeding and plant variety protection were available on the UPOV website;

(b) noted the program for the seminar on the role of plant breeding and plant variety protection in enabling agriculture to mitigate and adapt to climate change;

(c) noted the report on the seminar and the following concluding remarks presented by Mr. Marien Valstar, President of the Council:

- Climate change is increasingly affecting everyone around the world: farmers, breeders and consumers. Effects are biotic (new pests and diseases) and abiotic (heat, drought, rain, seasonal changes).
- A range of strategies is needed to respond to the challenges. Plant breeding has a vital role to play in these strategies; farmers need new plant varieties to adapt to climate change but also to sustainably increase productivity in order to minimize climate change.
- Plant breeding is a long-term process that requires long-term investment from public institutions and from private companies. Plant breeders need a regulatory environment that promotes innovation and supports the conservation and utilization of genetic resources.

- The UPOV system enables plant breeders to provide farmers with the varieties they will need to feed the world in the face of climate change.

46. The Consultative Committee noted that the Office of the Union did not receive an offer from any member of the Union to make a presentation on new developments at the ninety-ninth session of the Consultative Committee.

47. The Consultative Committee agreed to invite members of the Union to present new developments at the one hundred and first session of the Consultative Committee.

Report on the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF)

48. The Consultative Committee noted the developments on possible guidance concerning smallholder farmers in relation to private and non-commercial use.

49. The Delegation of Japan expressed that selling of a protected variety cannot be read in the exception of Article 15 section 1, and therefore Japan commented that it should discontinue the WG-SHF.

50. The Delegation of Kenya expressed its wish to join the WG-SHF.

51. The Consultative Committee considered the conclusions of the Chair of the WG SHF on the work of the WG-SHF and next steps. The Consultative Committee noted that the WG-SHF had not yet completed the objectives in its terms of reference (ToRs) and, therefore, agreed that the WG-SHF should continue its work in accordance with its ToRs and, in particular to seek to provide guidance for drafting the revision of document UPOV/EXN/EXC, to be prepared by the Administrative and Legal Committee, and the revision of the FAQs on exceptions to the breeder's right, to be prepared by the Office of the Union (ToRs "Modus Operandi" item (c)).

52. The Consultative Committee agreed the following:

(a) to invite the Office of the Union to prepare a document for the third meeting of the WG-SHF to assist the WG-SHF in providing the requested guidance, based on the discussions at the first and second meetings of the WG-SHF; and

(b) to invite the WG-SHF, at its third meeting, on the basis of the discussions at the first and second meetings, to provide guidance for the Consultative Committee at its one hundred and first session on options to:

- (i) draft a revision of document UPOV/EXN/EXC, to be prepared by the Administrative and Legal Committee; and
- (ii) draft a revision of the FAQs on exceptions to the breeder's right.

Developments of relevance to UPOV in other international fora

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

54. The Delegation of Norway noted that document "Developments of relevance to UPOV in other international fora" contained a copy of a statement that was made by the Office of the Union at the eighteenth regular session of the Commission on Genetic Resources for Food and Agriculture, held from 27 September to 1 October 2021 (CGRFA/18) and suggested that copies of such statements made in other international fora be included in the document in future. The Vice Secretary-General recalled that that was standard practice and would be continued.

Matters for information:

55. The Consultative Committee noted the following documents under item 21 "Matters for information":

- (a) Internal oversight and the WIPO Independent Advisory Oversight Committee (IAOC)
- (b) Observers in UPOV bodies
- (c) 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
- (d) UPOV Training and assistance strategy

Draft press release

56. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the draft press release contained in the Annex to document C/56/11.

57. *The Council is invited to:*

(a) consider the recommendation of the Consultative Committee that provision be made for an exclusively physical meeting of the thirty-fifth extraordinary session of the UPOV Council, to be held on March 23, 2023, as set out in paragraph 8; and

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

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