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GUIDANCE FOR MEMBERS OF UPOV
ON ONGOING OBLIGATIONS AND RELATED NOTIFICATIONS
AND ON THE PROVISION OF INFORMATION TO FACILITATE COOPERATION

Document prepared by the Office of the Union

*to be considered by the Administrative and Legal Committee
at its sixty-sixth session to be held in Geneva on October 29, 2012*

Note for Draft version

Strikethrough (highlighted) indicates deletion from the previous version
(document UPOV/INF/15/1)

Underlining (highlighted) indicates insertion to the previous version
(document UPOV/INF/15/1)

Footnotes will be retained in published document.

Endnotes are background information to help in the consideration of this draft
and will not appear in the final, published document.

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GUIDANCE FOR MEMBERS OF UPOV
ON ONGOING OBLIGATIONS AND
RELATED NOTIFICATIONS

PREAMBLE

1. The purpose of this document is to provide guidance for members of the International Union for the Protection of New Varieties of Plants (members of the Union) on ongoing obligations and related notifications and on the provision of information to facilitate cooperation. The only binding obligations on members of the Union are those contained in the text of the UPOV Convention itself, and these guidance notes must not be interpreted in a way that is inconsistent with the relevant Act for the member of the Union concerned.

2. While guidance notes in this document relate to certain provisions of the 1991 Act of the UPOV Convention, they are also relevant for the corresponding provisions of the 1978 Act of the UPOV Convention, unless indicated otherwise.

~~3. Guidance is provided as follows:~~

~~Part I: explains the Notifications concerning the representatives and alternates to the Council and designated persons to the relevant UPOV bodies;~~

~~Part II: explains the Notifications concerning the legislation governing breeders' rights and, if appropriate, any extension of the application of the legislation to additional plant genera and species; and~~

~~Part III: provides information on the Financial obligations concerning the payment of contributions.~~

PART I. NOTIFICATIONS CONCERNING THE REPRESENTATIVES AND ALTERNATES TO THE COUNCIL

*Relevant article*¹

Article 26
The Council

(1) [Composition] The Council shall consist of the representatives of the members of the Union. Each member of the Union shall appoint one representative to the Council and one alternate. Representatives or alternates may be accompanied by assistants or advisers.

A.—Initial notification of the representative

4. Members of the Union are required to notify the Office of the Union of the names, titles and contact details of the representative and alternate to the Council.

5. On becoming a UPOV member, that notification can be made either by a letter from the Minister for Foreign Affairs, a Note from the Ministry of Foreign Affairs, a letter from the Permanent Representative or a Note from the Permanent Mission in Geneva or from the competent authority(ies) for external relations of intergovernmental organizations (example text for the above notification is available upon request).

B.—Subsequent notifications of any changes concerning the representative

6. Members of the Union are requested to communicate to the Office of the Union, as soon as possible, any changes concerning the representative.

7. After the initial notification, subsequent changes of the representative do not require a notification via the Ministry for Foreign Affairs. If the new representative holds the same title as the predecessor, a communication to the Office of the Union from the new representative or the supervisor will be sufficient. In exceptional cases (e.g. different communications from the same Government), the Office of the Union will request the Permanent Mission of the member of the Union concerned to coordinate the communication concerning the appointment of the new representative.

C.—Responsibilities of the representative

8. One of the responsibilities of the representative to the Council is to appoint persons to the relevant UPOV bodies and to decide on persons to be given access to UPOV documents in the ~~first and second~~ restricted areas of the UPOV website (see Rules Governing ~~the~~ Access to UPOV Documents: http://www.upov.int/members/en/pdf/rules_observer_status.pdf).

9. Upon receipt of the notification, the Office of the Union will:

(a) communicate to the representative that has been officially appointed the User Id and passwords corresponding to that member of the Union. The User Id and passwords will enable access to both the ~~first and second~~ restricted areas of the UPOV website in order to download documents (<http://www.upov.int/en/documents/restrict.html>);

(b) draw the attention to the UPOV structure diagram of the UPOV bodies (<http://www.upov.int/about/en/organigram.html>) and will ask the representative to provide the names and contact details of the “designated persons” to the Council, the Consultative Committee, the Administrative and Legal Committee (CAJ), Technical Committee (TC) and Technical Working Parties (TWPs). The Office of the Union will, if appropriate, attach the existing list for the relevant member of the Union, for confirmation or updating. The designated persons by the representative will receive copies of the invitations to the

¹ The corresponding provision of the 1978 Act of the UPOV Convention can be found in Article 16(1).

sessions of the relevant UPOV bodies and the corresponding notifications of the posting of documents for those sessions;

(c) send a copy of the Rules Governing ~~the~~ Access to UPOV Documents (http://www.upov.int/members/en/pdf/rules_observer_status.pdf) to guide the representative in the distribution of the User Id and passwords. Any person from the member of the Union making a request to the Office of the Union for access to documents in the ~~first and second~~ⁱⁱⁱ restricted areas of the UPOV website will be invited to contact the representative; and

(d) request the representative to provide the contact details of the authority entrusted with the task of granting breeders' rights in accordance with Article 30(1)(ii) of the 1991 Act of the UPOV Convention, for publication under the section "Directory of PVP Offices" of the UPOV website (http://www.upov.int/members/en/pvp_offices.html)

10. Another important role of the representative is in relation to the approval by correspondence of UPOV policy and guidance. Members of the Union agreed that, unless otherwise agreed by the Council, documents which set out UPOV policies or guidance, once approved by the relevant UPOV Committees, as appropriate, must be adopted by the Council. In cases where a rapid presentation of a UPOV policy or guidance is required, such that adoption could not be achieved by presentation of a document to the Council, approval would be sought by correspondence from the representatives to the Council of the members of the Union (see document C/43/17 "Report", paragraph 13(i)).

11. The representative is also responsible of the notifications concerning changes in the legislation governing breeders' rights and, if appropriate, any extension of the application of the UPOV Convention to additional plant genera and species (see Part II of this document).

PART II. NOTIFICATIONS CONCERNING THE LEGISLATION GOVERNING BREEDERS' RIGHTS AND, IF APPROPRIATE, ANY EXTENSION OF THE APPLICATION OF THE CONVENTION TO ADDITIONAL PLANT GENERA AND SPECIES

A. — Notifications concerning changes in the legislation governing breeders' rights

*Relevant article*²

Article 36

**Communications Concerning Legislation and the Genera
and Species Protected; Information to be Published**

[...]

(2) [**Notification of changes**] Each Contracting Party shall promptly notify the Secretary-General of

(i) any changes in its legislation governing breeders' rights and

[...]

(3) [**Publication of the information**] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

(i) the legislation governing breeders' rights and any changes in that legislation, and

[...]

12. The adopted law governing breeders' rights giving effect to the provisions of the UPOV Convention is notified at the time of the deposit of the instrument of ratification or accession.³ Any changes to that legislation governing breeders' rights shall be notified promptly to the Secretary-General in one of the UPOV languages (English, French, German or Spanish). ~~The English version of~~ Those changes in the legislation and/or the relevant consolidated text will then be published in the UPOV Gazette and Newsletter and in the UPOV Lex (<http://www.upov.int/upovlex/en/>) ~~"legal resources" section of the UPOV website~~ at the earliest opportunity.

13. Members of the Union are invited to contact the Office of the Union if they require assistance in the translation into English of the changes in their legislation governing breeders' rights.

B. — Notification of any extension of the application of the UPOV Convention to additional plant genera and species

*Relevant articles*⁴

Article 36

**Communications Concerning Legislation and the Genera
and Species Protected; Information to be Published**

[...]

(2) [**Notification of changes**] Each Contracting Party shall promptly notify the Secretary-General of

[...]

(ii) any extension of the application of this Convention to additional plant genera and species.

(3) [**Publication of the information**] The Secretary-General shall, on the basis of communications received from each Contracting Party concerned, publish information on

² See Article 35(2)(d)(e)(f) and (g) of the 1978 Act of the UPOV Convention.

³ Document [UPOV/INF/13](#) provides "Guidance on How to Become a Member of UPOV" and document [UPOV/INF/14](#) provides "Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention".

⁴ See Article 35(2)(a)(b) and (c) of the 1978 Act of the UPOV Convention.

[...]

(ii) the list of plant genera and species referred to in paragraph (1)(ii) and any extension referred to in paragraph (2)(ii).

Article 3

Genera and Species to be Protected

(1) [*States already members of the Union*] Each Contracting Party which is bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to all plant genera and species to which it applies, on the said date, the provisions of the Act of 1961/1972 or the Act of 1978 and,

(ii) at the latest by the expiration of a period of five years after the said date, to all plant genera and species.

(2) [*New members of the Union*] Each Contracting Party which is not bound by the Act of 1961/1972 or the Act of 1978 shall apply the provisions of this Convention,

(i) at the date on which it becomes bound by this Convention, to at least 15 plant genera or species and,

(ii) at the latest by the expiration of a period of 10 years from the said date, to all plant genera and species.

14. Where the State or Intergovernmental Organization concerned does not, in the first instance, apply the UPOV Convention to all plant genera and species, any extension of the application of the UPOV Convention to additional plant genera and species shall be notified to the Secretary-General.⁵ That notification shall be made promptly to the Office of the Union and should include the relevant legal source for such an extension (Regulations, decision of the Minister, etc.). The notification will then be published in the UPOV Gazette and Newsletter (http://www.upov.int/en/publications/gazette_newsletter.htm) and the UPOV Lex (<http://www.upov.int/upovlex/en/>) at the earliest opportunity.

15. In the preparation of the notification concerning the extension of the application of the UPOV Convention to additional plant genera and species, members of the Union are invited to consult the "Explanatory Notes on Genera and Species to be Protected under the 1991 Act of the UPOV Convention" (document [UPOV/EXN/GEN/1](#)) and the GENIE database (<http://www.upov.int/genie/en/>).

16. The above notifications, on changes in the legislation governing breeders' rights and on any extension of the application of the UPOV Convention to additional plant genera and species should be made by the representative.

⁵ Document [UPOV/INF/13](#) provides "Guidance on How to Become a Member of UPOV" and document [UPOV/INF/14](#) provides "Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention".

PART III. FINANCIAL OBLIGATIONS CONCERNING THE PAYMENT OF CONTRIBUTIONS

17. In accordance with the UPOV Convention,⁶ the Secretary-General shall communicate, each year, to the members of the Union the amount of their annual contributions for the forthcoming year on the basis of the applicable number of contribution units. The amount corresponding to the annual contribution is due in January (document [UPOV/INF/4](#) "Financial Regulations and Rules of UPOV"). The communication by the Secretary-General is addressed to the Ministry of Foreign Affairs with copy to the authority entrusted with the task of granting breeders' rights, in accordance with Article 30(1)(i) of the 1991 Act of the UPOV Convention (see information provided by the representative under paragraph 9(d) above), and the Permanent Mission in Geneva.

18. More information on financial matters can be found in document [UPOV/INF/13](#) "Guidance on How to Become a Member of UPOV" and in document [UPOV/INF/14](#) "Guidance for Members of UPOV on How to Ratify, or Accede to, the 1991 Act of the UPOV Convention".

PART IV. INFORMATION TO FACILITATE COOPERATION

^{iv}19. Cooperation between members of the Union is an important benefit of the UPOV system and supports an efficient system covering all plant genera and species. Such efficiency is an important means of ensuring that the UPOV system is accessible and affordable for all types of breeders. Information about developments in members of the Union is also an important means of sharing experience within UPOV. This Part explains the information that is provided by members of the Union and the procedures by which that information is collected.

DUS Examination (GENIE database)

^{iv}20. The cooperation within UPOV relies to a major extent on the input of members of the Union. In particular, cooperation in the examination of Distinctness, Uniformity and Stability ("DUS") relies on experts from members of the Union in the development of Test Guidelines (http://www.upov.int/test_guidelines/en/) and on the willingness of members of the Union to share their practical experience with particular plant genera and species and to cooperate in DUS examination. Information on this cooperation is provided in the GENIE database (<http://www.upov.int/genie/en/>).

21. The procedures for members of the Union to provide the information that is included in the GENIE database are as follows:

(a) Genera and Species for which Authorities have Practical Experience in the DUS Examination

Members of the Union receive a Technical Committee (TC) circular inviting them to provide information for the updating of document TC/[session]/4 "List of Genera and Species for which Authorities have Practical Experience in the Examination of Distinctness, Uniformity and Stability". The information provided is used to update the GENIE database.

(b) Cooperation in DUS Examination

Members of the Union receive a Council circular inviting them to provide information for the updating of document C/[session]/5 "Cooperation in Examination". Information is invited on agreements between members of the Union for cooperation in DUS examination and on the utilization of existing DUS reports. The information provided is used to update the GENIE database.

Variety Denominations (PLUTO database)

22. The contribution of data by members of the Union to the [PLUTO Plant Variety Database](#) provides support in particular for the examination of variety denominations.

⁶ See Article 29 of the 1991 Act of the UPOV Convention and Article 26 of the 1978 Act of the UPOV Convention.

23. Members of the Union are invited to contribute data for each new update of the PLUTO Plant Variety Database [currently 6 updates per annum].

Exchangeable Software

24. The sharing of software applications by members of the Union provides an important means of support for the examination of varieties. Information on the sharing of software is provided in document UPOV/INF/16 "Exchangeable Software".

^v25. Software proposed for inclusion in document UPOV/INF/16 by members of the Union is, in the first instance, presented for review by the Technical Working Party on Automation and Computer Programs (TWC). On the basis of such presentations and the experience of members of the Union, the TWC makes a recommendation to the TC on whether to include that software in document UPOV/INF/16. In the case of a positive recommendation by the TC and by the CAJ, the software will be listed in a draft of document UPOV/INF/16, to be adopted by the Council.

^{vi}26. A TC circular is issued to members of the Union on an annual basis, inviting them to provide information on their use of the software included in document UPOV/INF/16.

Plant Variety Protection Statistics

27. Members of the Union are requested to provide annual statistics on:

- (a) plant variety protection applications by origin;
- (b) plant variety protection titles granted by origin; and
- (c) plant variety protection titles in force.

28. Members of the Union receive a Council circular inviting them to provide information for the updating of document C/[session]/7 "Statistics on Plant Variety Protection for the period [5-year period]".

Other Developments in members of the Union

29. Members of the Union are invited, by means of a Council circular, to report on any other relevant developments in a Council document "Reports by representatives of members and observers".

[End of document]

ⁱ The proposed change of title reflects the inclusion of new Part IV: "Information to facilitate cooperation".

ⁱⁱ The Table of Contents provides the overview of the content of the document

ⁱⁱⁱ On the basis of the recommendation of the Consultative Committee, at its eighty-second session, the Council, at its forty-fifth ordinary session, held in Geneva on October 20, 2011, agreed that documents that were in the first restricted area of the UPOV website be made publicly accessible, by removal of the password requirement (see document C/45/17 "Report on the Decisions", paragraph 9(c)).

^{iv} This explanation is based on the text of the Program and Budget for the 2012-2013 Biennium, adopted by the Council (see document C/45/4 Rev.2, Section 2.2: Sub-program UV.2 "Services to the Union for Enhancing the Effectiveness of the UPOV System", paragraphs 2.2.2.3 and 2.2.2.4)

^v Text reproduced from document UPOV/INF/16/2, Section 2.

^{vi} Text reproduced from document UPOV/INF/16/2, Section 4.1.