

Administrative and Legal Committee**CAJ/78/3****Seventy-Eighth Session
Geneva, October 27, 2021****Original:** English
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to be considered by correspondence

DEVELOPMENT OF GUIDANCE AND INFORMATION MATERIALS*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 on developments concerning guidance and information materials and to present proposals for consideration by the Administrative and Legal Committee (CAJ) by correspondence¹.

2. The CAJ is invited to:

(a) approve the proposed revision of document UPOV/INF/16/9 “Exchangeable Software”, on the basis of document UPOV/INF/16/10 Draft 1;

(b) note that, subject to agreement by the TC and CAJ, an agreed draft of document UPOV/INF/16/10 will be presented for adoption by the Council in 2021;

(c) approve the proposed revision of document UPOV/INF/17/1 “Guidelines for DNA Profiling: Molecular Marker Selection and Database Construction (‘BMT Guidelines’)", on the basis of document UPOV/INF/17/2 Draft 6;

(d) note that, subject to agreement by the TC and the CAJ, an agreed draft of document UPOV/INF/17/2 will be presented for adoption by the Council in 2021;

(e) approve the proposed revision of document UPOV/INF/22/7 “Software and equipment used by members of the Union”, on the basis of document UPOV/INF/22/8 Draft 1;

(f) note that, subject to agreement by the TC and the CAJ, an agreed draft of document UPOV/INF/22/8 will be presented for adoption by the Council in 2021;

(g) approve document UPOV/INF/23 “UPOV Code System”, on the basis of document UPOV/INF/23/1 Draft 3;

(h) note that, subject to agreement by the TC and the CAJ, an agreed draft of document UPOV/INF/23 will be presented for adoption by the Council in 2021;

(i) note that matters concerning variety denominations are considered in document CAJ/78/11 “Explanatory Notes on Variety Denominations under the UPOV Convention”;

(j) note that matters concerning essentially derived varieties are considered in documents CAJ/78/4 and CAJ/78/4 Add. “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”;

(k) note that matters concerning harvested material are considered in document CAJ/78/5; and

(l) approve the program for the development of information materials, as proposed in the Annex to this document, subject to its conclusions on the matters above.

¹ 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](#) and [C/55](#) webpages).

3. The structure of this document is as follows:

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4. The following abbreviations are used in this document:

CAJ:	Administrative and Legal Committee
TC:	Technical Committee
TWPs:	Technical Working Parties
TWC:	Technical Working Party on Automation and Computer Programs

BACKGROUND

5. The TC, at its fifty-sixth session², and the CAJ, at its seventy-seventh session³, approved the program for the development of TGP documents, as set out in the Annex to documents TC/56/14 and CAJ/77/2, respectively, subject to the conclusions at their sessions (see document TC/56/23 “Report”, paragraph 43, and document CAJ/77/10 “Report”, paragraph 17).

6. The approved guidance and information materials are published on the UPOV website at http://www.upov.int/upov_collection/en/.

² Held via electronic means on October 26 and 27, 2020.

³ Held via electronic means on October 28, 2020.

MATTERS PROPOSED FOR ADOPTION BY THE COUNCIL IN 2021

INFORMATION MATERIALS

Revision of document UPOV/INF/16 “Exchangeable Software” (document UPOV/INF/16/10 Draft 1)

Invitation to provide information on the use of the software included in document UPOV/INF/16

7. Section 4 of document UPOV/INF/16 “Exchangeable Software” provides the following:

“4. Information on use by members of the Union

“4.1 A 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.

“4.2 The information on software use by members of the Union is indicated in the columns ‘Member(s) of the Union using the software’ and ‘Application by user(s)’. With regard to the indication of ‘Application by user(s)’, members of the Union can indicate, for example, crops or types of crop for which the software is used.”

8. On April 8, 2021, the Office of the Union issued Circular E-21/030 to the designated persons of the members of the Union in the TC, inviting them to provide or update information regarding the use of the software included in document UPOV/INF/16.

9. The information received from Slovakia in response to circular E-20/031 is included in document UPOV/INF/16/10 Draft 1.

10. Subject to agreement of a draft of document UPOV/INF/16/10 by the TC and the CAJ, on the basis of document UPOV/INF/16/10 Draft 1, an agreed draft of document UPOV/INF/16/10 “Exchangeable Software” will be presented for adoption by the Council in 2021.

11. *The CAJ is invited to:*

(a) approve the proposed revision of document UPOV/INF/16/9 “Exchangeable Software”, on the basis of document UPOV/INF/16/10 Draft 1; and

(b) note that, subject to agreement by the TC and CAJ, an agreed draft of document UPOV/INF/16/10 will be presented for adoption by the Council in 2021.

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

12. The TC, at its fifty-sixth session², agreed to request the TWPs to consider a draft revision of document UPOV/INF/17/1 “Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (‘BMT Guidelines’)” (document UPOV/INF/17/2 Draft 5) at their sessions in 2021 (see document [TC/56/23](#) “Report”, paragraph 36).

13. Subject to agreement of a draft of document UPOV/INF/17/2 by the TC and the CAJ, on the basis of document UPOV/INF/17/2 Draft 6, an agreed draft of document UPOV/INF/17/2 “Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (‘BMT Guidelines’)” will be presented for adoption by the Council in 2021.

14. *The CAJ is invited to:*

(a) approve the proposed revision of document UPOV/INF/17/1 “Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (‘BMT Guidelines’)”, on the basis of document UPOV/INF/17/2 Draft 6; and

(b) note that, subject to agreement by the TC and the CAJ, an agreed draft of document UPOV/INF/17/2 will be presented for adoption by the Council in 2021.

Revision of document UPOV/INF/22 “Software and equipment used by members of the Union” (document UPOV/INF/22/8 Draft 1)

15. The Council, at its fifty-fourth ordinary session, adopted in the procedure by correspondence, on October 25, 2020, a revision of document UPOV/INF/22 “Software and equipment used by members of the Union” (document UPOV/INF/22/7), on the basis of document UPOV/INF/22/7 Draft 1 (see document [C/54/17](#) “Outcome of consideration of documents by correspondence”, paragraph 18).

Software for inclusion

16. The procedure for considering software and equipment proposed for inclusion in document UPOV/INF/22 is set out in document UPOV/INF/22/7, as follows:

“2.1 Software/equipment proposed for inclusion in this document by members of the Union is, in the first instance, presented to the Technical Committee (TC).

“2.2 The TC will decide whether to:

- (a) propose to include the information in the document;
- (b) request further guidance from other relevant bodies (e.g. the Administrative and Legal Committee (CAJ) and the Technical Working Parties (TWPs)); or
- (c) propose not to include the information in the document.

“2.3 In the case of a positive recommendation by the TC and, subsequently by the CAJ, the software/equipment will be listed in a draft of the document, to be considered for adoption by the Council.

[...]

“4.1 A circular is issued to members of the Union on an annual basis, inviting them to provide information on their use of the software/equipment included in this document.”

17. On April 8, 2021, the Office of the Union issued Circular E-21/030 to the designated persons of the members of the Union in the TC, inviting them to provide or update information for document UPOV/INF/22.

18. The information received from Germany, Slovakia and Uruguay in response to Circular E-20/031 is included in document UPOV/INF/22/8 Draft 1.

19. Subject to agreement of a draft of document UPOV/INF/22/8 by the TC and the CAJ, on the basis of document UPOV/INF/22/8 Draft 1, an agreed draft of document UPOV/INF/22/8 “Software and Equipment Used by Members of the Union” will be presented for adoption by the Council in 2021.

20. *The CAJ is invited to:*

(a) approve the proposed revision of document UPOV/INF/22/7 “Software and equipment used by members of the Union”, on the basis of document UPOV/INF/22/8 Draft 1; and

(b) note that, subject to agreement by the TC and the CAJ, an agreed draft of document UPOV/INF/22/8 will be presented for adoption by the Council in 2021.

Document UPOV/INF/23 “Guide to the UPOV Code System” (document UPOV/INF/23/1 Draft 3)

21. The CAJ, at its seventy-seventh session, approved in the procedure by correspondence, on October 25, 2020, the “Guide to the UPOV Code System”, on the basis of document UPOV/INF/23/1 Draft 1, and proposed that the TC consider a new draft of document UPOV/INF/23 “Guide to the UPOV Code System” in 2021 (see document CAJ/77/9 “Outcome of consideration of documents by correspondence”, paragraphs 26 and 27).

22. On the above basis, the CAJ is invited to consider document UPOV/INF/23 “Guide to the UPOV Code System”, on the basis of document UPOV/INF/23/1 Draft 3.

23. Subject to agreement of a draft of document UPOV/INF/23 by the TC and the CAJ, on the basis of document UPOV/INF/23/1 Draft 3, an agreed draft of document UPOV/INF/23/1 “Guide to the UPOV Code System” will be presented for adoption by the Council in 2021.

24. *The CAJ is invited to:*

(a) *approve document UPOV/INF/23 “Guide to the UPOV Code System”, on the basis of document UPOV/INF/23/1 Draft 3; and*

(b) *note that, subject to agreement by the TC and the CAJ, an agreed draft of document UPOV/INF/23 will be presented for adoption by the Council in 2021.*

EXPLANATORY NOTES

Explanatory Notes on Variety Denominations under the UPOV Convention” (documents CAJ/78/11 and UPOV/EXN/DEN/1 Draft 6)

25. Matters concerning variety denominations are considered in document CAJ/78/11 “Explanatory Notes on Variety Denominations under the UPOV Convention”.

26. *The CAJ is invited to note that matters concerning variety denominations are considered in document CAJ/78/11 “Explanatory Notes on Variety Denominations under the UPOV Convention”.*

Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention (documents CAJ/78/4, CAJ/78/4 Add. and UPOV/EXN/EDV/3 Draft 2)

27. Matters concerning essentially derived varieties are considered in documents CAJ/78/4 and CAJ/78/4 Add. “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”.

28. *The CAJ is invited to note that matters concerning essentially derived varieties are considered in documents CAJ/78/4 and CAJ/78/4 Add. “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”.*

HARVESTED MATERIAL

29. Matters concerning harvested material are considered in document CAJ/78/5 “Harvested Material”.

30. *The CAJ is invited to note that matters concerning harvested material are considered in document CAJ/78/5.*

TENTATIVE PROGRAM FOR THE DEVELOPMENT OF GUIDANCE AND INFORMATION MATERIALS

31. An overview of information materials is provided in the Annex to this document.

32. *The CAJ is invited to approve the program for the development of information materials, as proposed in the Annex to this document, subject to its conclusions on the matters above.*

33. A report on the conclusions of the TC will be presented in document CAJ/78/2 “Report on developments in the Technical Committee”.

[Annex follows]

OVERVIEW OF INFORMATION MATERIALS

EXPLANATORY NOTES

Reference	Explanatory Notes on:	Status
UPOV/EXN/BRD	Definition of Breeder under the 1991 Act of the UPOV Convention	UPOV/EXN/BRD/1 adopted in October 2013
UPOV/EXN/CAL	Conditions and Limitations Concerning the Breeder's Authorization in Respect of Propagating Material under the UPOV Convention	UPOV/EXN/CAL/1 adopted in October 2010
UPOV/EXN/CAN	Cancellation of the Breeder's Right under the UPOV Convention	UPOV/EXN/CAN/2 adopted in October 2015
UPOV/EXN/EDV	Essentially Derived Varieties under the 1991 Act of the UPOV Convention	UPOV/EXN/EDV/2 adopted in April 2017 <i>UPOV/EXN/EDV/3 Draft 2 to be considered by the CAJ in 2021</i>
UPOV/EXN/ENF	Enforcement of Breeders' Rights under the UPOV Convention	UPOV/EXN/ENF/1 adopted in October 2009
UPOV/EXN/EXC	Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention	UPOV/EXN/EXC/1 adopted in October 2009
UPOV/EXN/GEN	Genera and Species to be Protected under the 1991 Act of the UPOV Convention	UPOV/EXN/GEN/1 adopted in October 2009
UPOV/EXN/HRV	Acts in Respect of Harvested Material under the 1991 Act of the UPOV Convention	UPOV/EXN/HRV/1 adopted in October 2013 <i>(see document CAJ/78/5)</i>
UPOV/EXN/NAT	National Treatment under the 1991 Act of the UPOV Convention	UPOV/EXN/NAT/1 adopted in October 2009
UPOV/EXN/NOV	Novelty under the UPOV Convention	UPOV/EXN/NOV/1 adopted in October 2009 <i>The need for a revision will be considered by the CAJ in 2021</i>
UPOV/EXN/NUL	Nullity of the Breeder's Right under the UPOV Convention	UPOV/EXN/NUL/2 adopted in October 2015
UPOV/EXN/PPM	Propagating Material under the 1991 Act of the UPOV Convention	UPOV/EXN/PPM/1 adopted in April 2017 <i>(see document CAJ/78/5)</i>
UPOV/EXN/PRI	Right of Priority under the UPOV Convention	UPOV/EXN/PRI/1 adopted in October 2009
UPOV/EXN/PRP	Provisional Protection under the UPOV Convention	UPOV/EXN/PRP/2 adopted in October 2015 <i>(see document CAJ/78/5)</i>
UPOV/EXN/VAR	Definition of Variety under the 1991 Act of the UPOV Convention	UPOV/EXN/VAR/1 adopted in October 2010

INFORMATION DOCUMENTS

Reference	INF documents	Status
UPOV/INF-EXN	List of UPOV/INF-EXN Documents and Latest Issue Dates	UPOV/INF-EXN/13 adopted in November 2019 <i>UPOV/INF-EXN/14 Draft 1 to be considered by the Council in October 2021</i>
UPOV/INF/4	Financial Regulations and Rules of UPOV	UPOV/INF/4/5 adopted in November 2018
UPOV/INF/5	UPOV model plant breeders' rights gazette	UPOV/INF/5/2 adopted in November 2019
UPOV/INF/6	Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention	UPOV/INF/6/5 adopted in April 2017 <i>A revision of UPOV/INF/6 to be considered by the Council in 2021</i>
UPOV/INF/7	Rules of Procedure of the Council	UPOV/INF/7 adopted in October 1982
UPOV/INF/8	Agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants	UPOV/INF/8 signed in November 1982
UPOV/INF/9	Agreement between the International Union for the Protection of New Varieties of Plants and the Swiss Federal Council to Determine the Legal Status in Switzerland of that Union (Headquarters Agreement)	UPOV/INF/9 signed in November 1983
UPOV/INF/10	Internal Audit	UPOV/INF/10/1 adopted in October 2010
UPOV/INF/12	Explanatory Notes on Variety Denominations under the UPOV Convention	UPOV/INF/12/5 adopted in October 2015 <i>UPOV/EXN/DEN/1 Draft 6 to be considered by the CAJ and the Council in 2021</i>
UPOV/INF/13	Guidance on how to become a member of UPOV	UPOV/INF/13/2 adopted in October 2017
UPOV/INF/14	Guidance for members of UPOV on how to ratify, or accede to, the 1991 Act of the UPOV Convention	UPOV/INF/14/1 adopted in October 2009
UPOV/INF/15	Guidance for Members of UPOV	UPOV/INF/15/3 adopted in March 2015
UPOV/INF/16	Exchangeable Software	UPOV/INF/16/9 adopted in October , 2020 <i>UPOV/INF/16/10 Draft 1 to be considered by the CAJ and the Council in 2021</i>
UPOV/INF/17	Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines")	UPOV/INF/17/1 adopted in October 2010 <i>UPOV/INF/17/2 Draft 6 to be considered by the CAJ and the Council in 2021</i>
UPOV/INF/18	Possible use of Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS)	UPOV/INF/18/1 adopted in October 2011
UPOV/INF/19	Rules governing the granting of observer status to States, intergovernmental organizations and international non-governmental organizations in UPOV bodies	UPOV/INF/19/1 adopted in November 2012
UPOV/INF/20	Rules governing access to UPOV documents	UPOV/INF/20/1 adopted in November 2012
UPOV/INF/21	Alternative Dispute Settlement Mechanisms	UPOV/INF/21/1 adopted in November 2012
UPOV/INF/22	Software and Equipment Used by Members of the Union	UPOV/INF/22/7 adopted in October , 2020 <i>UPOV/INF/22/8 Draft 1 to be considered by the CAJ and the Council in 2021</i>
UPOV/INF/23	Guide to the UPOV Code System	<i>UPOV/INF/23/1 Draft 3 to be considered by the CAJ and the Council in 2021</i>

[End of Annex and of document]