



UPOV/WG-ISC/1/2

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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

Geneva

**WORKING GROUP ON A POSSIBLE  
INTERNATIONAL SYSTEM OF COOPERATION****First Meeting  
Geneva, October 27, 2016**

## REPORT

*adopted by the Working Group on a Possible International System of Cooperation**Disclaimer: this document does not represent UPOV policies or guidance*

## OPENING OF THE MEETING

1. The Working Group on a Possible International System of Cooperation (WG-ISC) held its first meeting in Geneva on October 27, 2016, under the chairmanship of the Vice Secretary-General of UPOV. The list of participants is reproduced in the Annex to this report.
2. The meeting was opened by the Chair, who welcomed the participants.

## ADOPTION OF THE AGENDA

3. The WG-ISC adopted the agenda as presented in document UPOV/WG-ISC/1/1.

## WORKPLAN

4. The WG-ISC agreed to base its discussions on documents CC/92/10 "International system of cooperation" and the conclusions of the Consultative Committee, at its ninety-second session, held in Geneva on October 27, 2016. In particular, it recalled that the Consultative Committee had agreed the draft mandate and terms of reference for a Working Group on a Possible International System of Cooperation (WG-ISC), as follows (see document CC/92/20 "Report on the Conclusions", paragraph 59):

*Purpose*

1. To prepare proposals for consideration by the Consultative Committee concerning a possible ISC that would:
  - (a) not affect the responsibility of the members of the Union in relation to the grant and protection of breeders' rights, or other international obligations;
  - (b) be relevant for all members of the Union, irrespective of the Act of the UPOV Convention by which they are bound;
  - (c) would not affect the existing flexibility of members of the Union to formulate policy and to address their own specific needs and circumstances according to the relevant Act of the UPOV Convention;

- (d) be based on voluntary participation by members of the Union according to their measures for participation;
  - (e) allow members of the Union to choose to participate in selected elements of an ISC;
  - (f) be based on voluntary cooperation between members of the Union;
  - (g) not affect cooperation with, and between, members of the Union that did not participate in an ISC;
  - (h) be based on filing of applications with individual members of the Union and not with the Office of the Union;
  - (i) not be based on examination of applications by the Office of the Union;
  - (j) not affect the determination and payment of fees by individual members of the Union;
  - (k) not affect the right of each member of the Union to conduct its own examination for the granting of breeders' rights;
  - (l) be based as far as possible on existing UPOV initiatives and materials, including in particular: the GENIE database; the Electronic Application Form (EAF) project; the UPOV similarity search tool for variety denomination purposes; and UPOV information materials.
2. For the above proposals, to provide the Consultative Committee with an analysis of the:
- (a) the need for an ISC;
  - (b) advantages and disadvantages of the proposals, compared to existing arrangements;
  - (c) existence of a legal basis under the Acts of the UPOV Convention;
  - (d) impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members;
  - (e) potential advantages and disadvantages for:
    - i) society in the members of the Union;
    - ii) PVP Offices of members of the Union, including:
      - costs and income
      - number of applications and income received for applications;
    - iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);
    - iv) farmers; and
    - v) UPOV.

#### *Composition*

- (a) to be composed of the following members of the Union:
  - Bolivia (Plurinational State of)
  - Brazil
  - Canada
  - Chile
  - Colombia
  - Ecuador
  - European Union (European Commission, Community Plant Variety Office of the European Union (CPVO), Estonia, France, Germany, Netherlands and United Kingdom)
  - Japan
  - Norway
  - United States of America
- (b) other members of the Union would be free to participate at any meeting of the WG-ISC and make comments, where so desired;
- (c) the WG-ISC would be restricted to members of the Union and the WG-ISC would revert back to the Consultative Committee if the WG-ISC recommends to invite observers or experts to any of its meetings;
- (d) meetings to be chaired by the Vice Secretary-General.

*Modus operandi*

- (a) to meet, as far as possible, in conjunction with the sessions of the Consultative Committee at a time and frequency to address the requests of the Consultative Committee;
- (b) in the first instance, to prepare a document presenting the issues for consideration according to the following structure:
  - vi) International system of administration
  - vii) Preliminary observation on novelty and denomination
  - viii) DUS examination
  - ix) Examination by members of the Union using the ISC;
- (c) to prepare a document containing proposals, analysis and information according to the purpose specified above, for consideration by the Consultative Committee, according to a timetable to be specified by the Consultative Committee;
- (d) to report on progress to the Consultative Committee after each meeting of the WG-ISC;
- (e) WG-ISC documents to be made available to the Consultative Committee.

5. The Chair noted that the *Modus operandi* agreed by the Consultative Committee specified “in the first instance, to prepare a document presenting the issues for consideration according to the following structure: (i) International system of administration; (ii) Preliminary observation on novelty and denomination; (iii) DUS examination; and (iv) Examination by members of the Union using the ISC”. On that basis, he suggested that the WG-ISC might wish to consider organizing the issues in document CC/92/10, paragraph 10, according to such a structure.

6. The Delegation of Bolivia (Plurinational State of) sought clarification on the stage at which the WG-ISC would consider the purpose of any possible ISC and, in particular, the problems that would need to be solved by such an approach. In its opinion, it would be premature to consider specific elements of an ISC before the aims and purpose had been agreed. It recalled that UPOV already constituted an international system of cooperation and suggested that any new approach should build on the existing UPOV system, because the development of a new system would result in certain difficulties, e.g. legal issues.

7. The Delegation of Ecuador supported the request of the Delegation of Bolivia (Plurinational State of) for clarification of whether there was a need for a possible ISC before considering the structure of a document.

8. The Delegation of Argentina observed that UPOV had been informed of the problems faced by breeders, but agreed with the Delegation of Bolivia (Plurinational State of) that it was necessary for the WG-ISC to consider if there were aspects that members of the Union wanted to improve. In the case of Argentina, as an example, it suggested that it would like to improve the information available on variety denominations within UPOV and to have greater information on matters affecting novelty from members of the Union. It also proposed that it would be helpful to consider needs in the first instance, before discussing tools that might offer solutions.

9. The Delegation of Brazil agreed that it would be useful to start with a “brainstorm” of the needs of members of the Union.

10. The Chair concluded that there was consensus that the WG-ISC should, in the first instance, identify the needs of the PVP Offices of the members of the Union. He recalled that, according to the terms of reference of the WG-ISC, a need of one member of the Union must not translate into an obligation for any other member of the Union. On that basis, members of the Union could identify their needs without raising concerns that those could create obligations for other members of the Union.

Needs identified*DUS Examination*

11. The Delegation of Argentina considered that there was a need to improve cooperation in order to improve the quality and completeness of variety collections, taking into account the geographical diversity in breeding.

12. The Delegation of the Netherlands suggested that there could be a need to accept DUS reports from any member of the Union without further consideration. It noted that the obstacles to acceptance of DUS reports from other members of the Union were: the quality of the variety collection; the relevance of variety descriptions, because of geo-climatic effects; and the choice of characteristics.

13. The Delegation of New Zealand highlighted the need for information on varieties that were considered by members of the Union to be a matter of common knowledge and the varieties that had been included in the DUS examination.

14. The Delegation of the Netherlands noted that the trade in varieties had become more global and wondered if the variety collections of members of the Union had evolved in the same way. The problem of the influence of the environment on variety descriptions reduced the value of centralized databases. However, it observed that such problems would be less for molecular data and, furthermore, it would not be efficient for all members of the Union to build their own databases for such data.

15. The Delegation of Canada reported that it had introduced a new, more open, policy on taking-over DUS reports from other members of the Union; however, it still had some concerns about the use of national guidelines that were not consistent with the UPOV Test Guidelines.

Summary of needs (DUS Examination):

- (i) to improve cooperation in order to improve the quality and completeness of variety collections;
- (ii) to accept DUS reports from any member of the Union without further consideration;
- (iii) information on varieties that were considered by members of the Union to be a matter of common knowledge;
- (iv) information on varieties that had been included in the DUS examination; and
- (v) centralized database(s) of variety descriptions, particularly for molecular data.

*Novelty*

16. The Delegation of Argentina expressed the need for PVP Offices to have access to more timely and accurate information on novelty from members of the Union.

17. The Delegation of the European Union reported that there was a need to have more information on novelty-breaking criteria for individual members of the Union.

18. The Delegations of New Zealand and Australia supported the need to have more information on novelty-breaking acts, rather than just dates, and noted that such information would need to be provided by applicants.

Summary of needs (Novelty):

- (i) to have access to more timely and accurate information on novelty from members of the Union;
- (ii) to have more information on novelty-breaking criteria for individual members of the Union; and
- (iii) to have more information on novelty-breaking acts, rather than just dates, from applicants.

*Priority*

19. The Delegation of the Netherlands observed the need to improve the timeliness and quality of data available within UPOV in relation to priority, particularly dates of applications.

Summary of needs (Priority):

- (i) to improve the timeliness and quality of data available within UPOV in relation to priority, particularly dates of applications.

*Denomination*

20. The Delegation of Argentina expressed a need for easier access to variety denomination information, a tool for searching for similar denominations and information on reasons for rejection of denominations by members of the Union that had previously been proposed to, or registered by, another member of the Union.

21. The Delegation of the Netherlands expressed a need for a network of denomination contact persons and for the data on denominations in the PLUTO database to be more complete and up-to-date.

22. The Delegation of the European Union identified a need for a common tool/service for harmonized decisions on variety denominations.

Summary of needs (Denomination):

- (i) easier access to variety denomination information;
- (ii) access to complete and up-to-date information on variety denominations;
- (iii) a common tool/service to facilitate harmonized decisions on variety denominations;
- (iv) information on reasons for rejection of denominations by members of the Union that had previously been proposed to, or registered by, another member of the Union; and
- (v) a network of denomination contact persons.

*Cooperation in administrative matters*

23. The Delegation of Uruguay expressed the need for a means of mutually recognizing documents produced by other members of the Union, e.g. a digital signature.

24. The Delegation of the Netherlands reported the need for a mechanism to receive payments for the take-over of DUS reports from other members of the Union.

Summary of needs (Cooperation in administrative matters):

- (i) a means of mutually recognizing documents produced by other members of the Union, e.g. a digital signature; and
- (ii) a mechanism to receive payments for the take-over of DUS reports from other members of the Union.

*Facilitating applications*

25. The Delegation of Argentina supported the need to facilitate applications in order to increase the number of varieties available in members of the Union. That need was also linked to a need to have a more efficient arrangement for processing applications in order to avoid delays resulting from an increased number of applications.

26. The WG-ISC agreed that the need to facilitate applications related to residents and non-residents, including in particular applications by individuals and small- and medium-sized enterprises/organizations, in order to increase the number of varieties available in members of the Union.

Summary of needs (Facilitating applications):

- (i) to facilitate applications by residents and non-residents, including in particular applications by individuals and small- and medium-sized enterprises/organizations, in order to increase the number of varieties available in members of the Union; and
- (ii) to have a more efficient arrangement for processing applications in order to avoid delays resulting from an increased number of applications.

Next steps

27. The WG-ISC agreed that, having identified needs of PVP Offices, the next step would be to analyze the issues in document CC/92/10, paragraph 10, in relation to those needs. The document should be structured on the basis of the following elements, within which the specific needs would be presented and the issues related to those needs identified:

- (a) DUS Examination
- (b) Novelty
- (c) Priority
- (d) Denomination
- (e) Cooperation in administrative matters
- (f) Facilitating applications.

28. The WG-ISC noted that a number of issues in document CC/92/10, paragraph 10, were already addressed in the WG-ISC terms of reference, e.g. Issue 1 (a) “to clarify that an ISC would not affect the responsibility of the members of the Union in relation to the grant and protection of breeders’ rights” was covered by the WG-ISC terms of reference, Purpose 1. “To prepare proposals for consideration by the Consultative Committee concerning a possible ISC that would: (a) not affect the responsibility of the members of the Union in relation to the grant and protection of breeders’ rights, or other international obligations; [...]”. On that basis, the WG-ISC agreed that the document should not include issues that were specifically addressed in the WG-ISC terms of reference. For transparency purposes, it was agreed that the issues that had been omitted would be reported in an annex to the document.

29. The Delegation of the Netherlands noted that the title “International System of Cooperation” had been introduced by the International Seed Federation (ISF), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants (CIOPORA) and CropLife International to describe their proposal and wondered whether it would be appropriate to choose a different name to reflect the nature of cooperation between members of the Union; for example, UPOV Cooperation Network.

30. The WG-ISC noted the advantage of using a name that reflected the nature of cooperation within UPOV. However, it agreed that it would be advisable to avoid proposing a new name until agreement had been reached on what form the cooperation, if any, might take.

31. The Chair informed the WG-ISC that the work of the Technical Committee (TC) in relation to cooperation in DUS examination might be relevant for the future work of the WG-ISC. In particular, at its fifty-second session, held in Geneva, from March 14 to 16, 2016, the TC had noted that there may be obstacles to cooperation in examination, including exchange of DUS reports, and agreed to explore the situation further. As a starting point for discussion, the TC had agreed that it would be useful for the Office of the Union to conduct a survey of the current situation of members of the Union and to report the results to the TC at its fifty-third session, to be held in Geneva, from April 3 to 5, 2017. If appropriate, the outcomes of that work could be reported to the WG-ISC.

## DATE OF THE NEXT MEETING

32. The WG-ISC agreed to meet on the afternoon of April 5, 2017, subject to approval by the Council.

33. *This report was adopted by correspondence.*

[Annex follows]

ANNEX

LIST OF PARTICIPANTS

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