



CC/92/10

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DATE: September 15, 2016

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

CONSULTATIVE COMMITTEE**Ninety-Second Session
Geneva, October 27, 2016****INTERNATIONAL SYSTEM OF COOPERATION***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 present a draft mandate and terms of reference for a possible working group to explore the issues concerning a possible international system of cooperation (WG-ISC), issues to be considered and proposed members of the WG-ISC.
2. The Consultative Committee will be invited to consider the draft mandate and terms of reference for a possible WG-ISC, issues to be considered and proposed members of the WG-ISC, as set out in paragraphs 8 and 9 and, subject to agreement on those matters, to approve a meeting of the WG-ISC immediately following the ninety-second session of the Consultative Committee.

BACKGROUND

3. The Consultative Committee, at its ninety-first session, held in Geneva on March 17, 2016, considered document CC/91/5 "International System of Cooperation (ISC)" and the presentation made by the Vice Secretary-General (see document CC/91/10 "Report on the Conclusions", paragraphs 27 to 29).
4. The Consultative Committee agreed that members of the Union be given until May 20, 2016, to:
 - (a) provide additional issues concerning a possible ISC;
 - (b) comment on the draft mandate and terms of reference presented in document CC/91/5, paragraphs 8 and 9; and
 - (c) indicate their wish to participate in a working group to explore the issues concerning a possible ISC.
5. The Consultative Committee agreed that, on the basis of the information provided above, the Office of the Union would prepare a document for consideration at its ninety-second session, to be held in Geneva on October 27, 2016, containing a draft mandate and terms of reference for a possible WG-ISC, issues to be considered and proposed members of the WG-ISC. Subject to agreement on those matters, the WG-ISC would meet immediately following the ninety-second session of the Consultative Committee.

DEVELOPMENTS SINCE THE NINETY-FIRST SESSION OF THE CONSULTATIVE COMMITTEE

6. On April 4, 2016, the Office of the Union issued UPOV Circular E-16/084 "Comments invited concerning a possible ISC (International System of Cooperation)" to the designated persons of the Consultative Committee and participants of members of the Union at the ninety-first session of the Consultative Committee, held in Geneva on March 17, 2016.

7. Circular E-16/084 recalled that the Consultative Committee had agreed that members of the Union be given until May 20, 2016, to:

- (a) provide additional issues concerning a possible ISC;
- (b) comment on the draft mandate and terms of reference presented in document CC/91/5, paragraphs 8 and 9; and
- (c) indicate their wish to participate in a working group [WG-ISC] to explore the issues concerning a possible ISC;

and invited contributions to be sent to the Office of the Union.

8. The Office of the Union received the following responses:

Bolivia (Plurinational State of):	reproduced as Annex I to this document
Brazil:	reproduced as Annex II to this document
Canada:	reproduced as Annex III to this document
Chile:	reproduced as Annex IV to this document
Colombia:	reproduced as Annex V to this document
Denmark:	reproduced as Annex VI to this document
Ecuador:	reproduced as Annex VII to this document
European Union:	reproduced as Annex VIII to this document
Japan:	reproduced as Annex IX to this document
Norway:	reproduced as Annex X to this document
Panama:	reproduced as Annex XI to this document
Russian Federation:	reproduced as Annex XII to this document
Switzerland:	reproduced as Annex XIII to this document
United States of America:	reproduced as Annex XIV to this document

PROPOSAL FOR CONSIDERATION

9. On the basis of the contributions received in response to Circular E-16/084, the following proposals have been developed for consideration by the Consultative Committee:

Draft mandate and terms of reference of a possible WG-ISC*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;
 - (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) not affect the right of UPOV members to implement measures necessary for achieving the objectives of the Convention on Biological Diversity;
 - (m) 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) advantages and disadvantages of the proposals, compared to existing arrangements;
 - (b) existence of a legal basis under the Acts of the UPOV Convention;
 - (c) 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;
 - (d) 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) UPOV.

Composition

- (a) to be composed of the following members of the Union:
- Bolivia (Plurinational State of)
 - Brazil
 - Canada
 - Chile
 - Colombia
 - Ecuador
 - European Union
 - 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) [Option 1: the WG-ISC would agree whether, and on what basis, to invite observers in the Council to participate in meetings, or parts of meetings.]
[Option 2: the WG-ISC would be open to observers in the Council.]
[Option 3: the WG-ISC would be restricted to members of the Union.]
- (d) meetings to be chaired by the Vice Secretary-General.

Modus operandi

- (a) to meet, as far as possible, [in conjunction with] / [immediately before] 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:
- (i) International system of administration
 - (ii) Preliminary observation on novelty and denomination
 - (iii) DUS examination
 - (iv) 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;
- (f) [funding for participation in the WG-ISC to be provided by UPOV]¹

¹ No provision for funding such participation was made in the Program and Budget for the 2016-2017 Biennium (document C/49/4Rev.)

Summary of possible issues concerning an International System of Cooperation (ISC)

10. The following table provides a summary of the possible issues concerning an ISC, as set out in document CC/89/6, Annex II, as amended on the basis of comments received in response to UPOV Circular E-16/084.

Issue 1	(a) to clarify that the an ISC would not affect the responsibility of the members of the Union in relation to the grant and protection of breeders' rights.
	(b) to clarify that: <ul style="list-style-type: none"> i. applications would not be filed with the Office of the Union; ii. applications would continue to be filed with individual members of the Union iii. examination of applications would not be conducted by the Office of the Union; iv. an ISC would be based on existing forms of voluntary cooperation in examination between members of the Union; v. non-participation in an ISC would not affect cooperation in examination between members of the Union vi. that an ISC would not affect the sovereign decision of the members of the Union in relation to the grant and protection of breeders' rights, including decisions on the conditions for the grant of breeders' rights
	(c) to clarify that an ISC would not affect leeway 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) to take into account the standards and legislation of the various members of the Union in order to devise a framework that would benefit all members
	(e) to clarify that members of the Union could choose to participate in selected elements of an ISC
	(f) to analyze: <ul style="list-style-type: none"> i. the representation of breeders in each member of the Union; ii. online / face-to-face payments; iii. publication in newspapers or the official gazette; iv. committees established by law, which decide on the registration of a variety; v. termination of a breeder's right if it occurred in another territory (availability of information); vi. obligation to submit representative samples, even if the DUS testing is not conducted; and vii. obligation to present legalized documents (powers of attorney, assignments, etc.).
Issue 2	(a) to clarify that it would be a matter for each member of the Union to decide whether to participate in an ISC and, if appropriate, what measures it would need to take in order to participate.
	(b) to utilize software and technical specifications that would make it possible for all members of the Union to participate in an ISC without prejudice to national standards
Issue 3	(a) to consider the possible impact on the number of PBR applications as a result of an ISC.
	(b) to consider whether an increase in PBR applications would translate into benefits for UPOV members.
	(c) to explore the demand from breeders for an ISC through a set of dedicated questions in order to obtain more reliable data on the benefits and the potential use of such system by breeders
Issue 4	(a) to clarify that that it would remain a matter for each member of the Union to decide on its arrangements for DUS examination, including cooperation with other members of the Union.
	(b) to clarify that UPOV members would continue to be responsible for determining their own fees.
	(c) to consider the consequences of an ISC for DUS testing in individual UPOV members and for impact on breeders, particularly small and medium-sized enterprises (SME's)

Issue 5	to clarify that an ISC should not be expected to result in a single DUS examination being sufficient for all members of the Union for all species, whilst recognizing the benefits of facilitating greater cooperation between members of the Union.
Issue 6	to consider whether arrangements between members of the Union for DUS examination might be integrated in an ISC.
Issue 7	to note that information on arrangements between members of the Union for DUS examination is already included in the GENIE database.
Issue 8	(a) to consider whether the establishment of an accreditation system, or other means of conveying objective information on DUS examination capacity, might facilitate cooperation in DUS examination and the features of such a system.
	(b) to consider the functioning of an accreditation system including: <ul style="list-style-type: none"> the accrediting entity, the accreditation period, the costs associated with the offices and the entity that determines the examination rates how the system would function for native varieties of each country and what would happen if these varieties need to be registered with the ISC and the Office is not accredited
Issue 9	(a) to consider other measures that might facilitate cooperation in DUS examination between members of the Union.
	(b) to consider how plant material would be obtained in cases where the DUS examination was conducted by another member of the Union
	(c) to consider differences of geographic conditions and test conditions in terms of agricultural practices
Issue 10	to consider how an ISC could be used to support capacity in DUS examination with a view to facilitating cooperation, including the development of capacity that would facilitate cooperation.
Issue 11	(a) to clarify that preliminary observations on novelty and denomination would not affect the sovereign decision of the members of the Union in relation to the grant and protection of breeders' rights
	(b) to consider the basis on which a preliminary observation office(s) would be selected to conduct the preliminary observation.
Issue 12	(a) to clarify that that a preliminary observation should, as far as possible, aim to assess the acceptability of a proposed variety denomination for all members of the Union.
	(b) to consider how to take into consideration marks, geographical indications and designations of origin
	(c) to consider how to take into consideration members of the Union that do not have national catalogs and those that do not file their data in the PLUTO database.
	(d) to consider how to address variety denominations in different alphabets
Issue 13	to consider, in the case that a member of the Union subsequently considered the proposed denomination unsuitable within its territory, the procedure for the breeder to submit another denomination.
Issue 14	to note the value of a UPOV similarity search tool for variety denomination purposes and to consider extending such a tool include words or elements that are considered to be unsuitable by members of the Union.
Issue 15	to consider the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union.
Issue 16	to recall that the UPOV Model Form for the Application for Plant Breeders' Rights (document TGP/5 "Experience and Cooperation in DUS Testing" Section 2), Item 8, provides a request for relevant information concerning novelty.
Issue 17	(a) to recall that the PLUTO database includes an item to allow for information to be provided on dates on which a variety was commercialized for the first time in the territory of application and other territories.

	(b) to take into account that the concept of “first commercialization” differs among the UPOV members
Issue 18	to clarify that it would not be appropriate to include the checking of the completeness of the application, preparation for publication and inserting the relevant information about the application in a centralized application database.
Issue 19	to consider that the EAF Project, and/or ISC, might provide a basis for members of the Union to move towards greater harmonization in their application forms, thereby creating possibilities at a later stage for an ISC to include the checking of the completeness of the application, preparation for publication and inserting the relevant information about the application in a centralized application database.
Issue 20	(a) to clarify that, in addition to an “ISC fee”, there would be fees for DUS examination and fees for individual members of the Union.
	(b) to make an economic analysis to assess the impact for plant breeders
Issue 21	subject to agreement on the relevant issues, to consider the EAF Project, with an appropriate extension of the remit, as a starting point for the international service to be provided by an ISC
Issue 22	(a) to clarify that an ISC should not: <ul style="list-style-type: none"> i. monitor the status of the DUS examination; ii. receive and maintain reports of decisions on granting of PBR; iii. address objections concerning conduct of the DUS examination; iv. maintain and publish all relevant “bibliographic” information concerning PBR applications; v. maintain standard UPOV variety descriptions, information on varieties of common knowledge included in the DUS examination, status and disposition of any propagating material provided by the breeder and information relating to pedigree and parental lines of hybrids (to be maintained as confidential); and vi. include a search for relevant varieties of common knowledge against which the application variety may be compared.
	(b) to consider whether information in Issue 22 (i) to (vi) should be monitored and maintained by members of the Union and made available at a general level via the PLUTO database
Issue 23	to consider a suitable legal basis for an ISC, in accordance with the UPOV Convention, including Article 21 of the 1978 Act [Tasks of the Council] and Articles 10 [Filing of Applications] and 26 [The Council] of the 1991 Act.
Issue 24	to consider whether the examination by members of the Union using the ISC would be resourced by the members of the Union under their current arrangements for examination of applications and whether the collection of fees to cover that work might be organized as a part of the international system of administration of an ISC.
Issue 25	[deleted]
Issue 26	[deleted]
Issue 27	to note that the extent of resources for an ISC would be determined by the extent of the international system of administration.
Issue 28	to consider whether the development and maintenance of an ISC should be fully financed by income from fees paid by breeders.
Issue 29	to consider whether the EAF Project, as funded through the Program and Budget for the 2016-2017 Biennium, should provide the core of the international system of administration.
Issue 30	to consider how additional elements to be incorporated in the EAF Project, e.g. the receipt of applications from receiving UPOV member offices, information on accredited DUS centers and information on [choice of] preliminary observation offices, should be funded.
Issue 31	to examine and describe the relation between the ISC and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Convention on Biological Diversity (CBD) Nagoya protocol, and any effect a possible ISC could have in this regard.

11. For the purposes of transparency, a version of the above table showing the changes to the issues set out in document CC/89/6, Annex II, is provided as Annex XV to this document.

12. The Consultative Committee is invited to consider the draft mandate and terms of reference for a possible WG-ISC, issues to be considered and proposed members of the WG-ISC, as set out in paragraphs 8 and 9 and, subject to agreement on those matters, to approve a meeting of the WG-ISC immediately following the ninety-second session of the Consultative Committee.

[Annexes follow]

ANNEX I

RESPONSE FROM BOLIVIA (PLURINATIONAL STATE OF) TO UPOV CIRCULAR E-16/084
(Original: Spanish)

Comments from the Plurinational State of Bolivia
on the proposal of a possible International System of Cooperation
(Circular UPOV E-16084)

Comments from the Plurinational State of Bolivia concerning the proposal for a possible International System of Cooperation (ISC) that requires further analysis:

1. The need for an ISC has not been clearly established. Accordingly, we agree with the Russian Federation that a centralized system like the ISC is not necessary, because effective bilateral and voluntary cooperation currently exists between the Member States of UPOV. The information submitted to the Consultative Committee (CC / 90/10) on the relevance of an ISC was vague and unconvincing.
2. Even the main concerns about the legality of an ISC were not properly addressed. So far, the topics that have mainly been treated in the UPOV working documents relate to the possibility of having a working group to analyze the relevance of a possible ISC. However, there are concerns about the legal basis of the ISC, specifically regarding how the ISC (which is a system with additional UPOV provisions) could be justified under UPOV Conventions.
3. The supposed benefits afforded by the seed industry to the ISC are not clear. The industry assumes that a system of this nature will increase PBR applications, whereas this in itself does not automatically translate into benefits for the members of UPOV.
4. The ISC would allegedly bring greater harmonization among UPOV Member States. We are concerned about the possible effects that this proposal could have on Member States' leeway to formulate policy and on the rights they currently enjoy under the relevant UPOV Acts that allow each Member State to address its own specific needs and circumstances. Furthermore, cooperation mechanisms founded on reciprocity needs already exist among members of the Union and are operational. This is to say that cooperation mechanisms have already been established for specific varieties. Alternatively, a Member State has the option to buy a DUS for a given variety if it lacks the capacity or experience to conduct one.
5. The ISC would negatively affect the role and sustainability of national offices. For example, standardized fees come with implications for national offices as they would no longer be able to determine their own fees, and this would take a toll on their revenue. Preliminary DUS testing that centralizes the tasks currently performed by UPOV members could harm national capacity within a Member State. In the case of Bolivia, national capacity would not be developed if we were to resort to a single reference center. As a result, the processing of PBR applications could be delayed or the dissemination of new national varieties could slow down. There is also the concern that some members of UPOV would not be able to continue conducting DUS testing of varieties of species for which they have greater aptitude or a comparative advantage.

Another issue to consider is that an ISC would be prejudicial to small businesses, institutions, organizations or persons conducting research to breed new plant varieties for the agricultural and climatic conditions of a Member State. To conduct DUS testing, such researchers and entities would have to send samples of their bred varieties to the reference ISC entailing additional costs and cumbersome procedures to export the samples, such as phytosanitary certificates for export and customs formalities.

6. The proposed ISC is based on the assumption that the generated DUS test report can be applied to different climatic conditions. Bolivian territory has high mountains (30%) and rainforests (60%). This has implications for the DUS testing of new varieties. Similarly, by virtue of its geographical location and latitudinal difference with other regions, the phenological behavior of some varieties cannot be replicated. For example, a precocious variety in one region of the world could bloom late in another region or vice versa, since life cycle changes with genotype and climatic factors. In other words, when plants of the same genotype are grown under different climatic conditions, they may go through different stages of development within the same chronological timeframe.
7. Given the lack of clarity on these fundamental issues and, especially, on the relevance of an ISC, it would be premature to convene a working group to discuss details and formulate proposals for the possible ISC. These fundamental issues should be discussed in the Consultative Committee.

Mandate of a possible Working Group (ISC-WG)

If a working group is eventually formed, it must then focus on addressing the key issues mentioned above instead of preparing proposals for a possible ISC. Consequently, the objective of the Working Group should be modified as follows:

“To examine the relevance of the ISC in light of the cooperation currently existing among members of UPOV, the impact of the ISC on national PVP offices, the legal implications under UPOV Conventions and the flexibility that UPOV Member States enjoy under UPOV Conventions, which will be reported to the Consultative Committee”, the role of the Office of UPOV would be to help prepare the information and evidence requested for the Working Group for consideration by the Consultative Committee.

8. If the Working Group is established, it should meet at the same time as the Consultative Committee. The Working Group must take account of the written comments of Member States of UPOV.

10. With regard to paragraph 9, given the concerns expressed by UPOV members about the possible ISC and the uncertainty about its scope, impact and legal basis, it would be premature to include subparagraphs (iii), (iv), (v), (vi) and (vii) in the terms of reference.

11. Paragraph 9(i) does not reflect the rights and flexibilities that UPOV members enjoy under the Conventions. This should be amended as follows: “It should be consistent with the rights and obligations of each Member State of the Union and should not limit the flexibilities that each Member State of the Union enjoys under the relevant rules of UPOV”.

12. Furthermore, the decisions of an ISC working group must be based on empirical evidence and rigorous legal analysis.

In conclusion, we wish to emphasize that discussions on the ISC should be inclusive and not hasty. The concerns of all UPOV Member States must be taken into consideration. If a decision is made to establish a Working Group, Bolivia is fully ready to participate.

Finally, it is important to mention that we are also concerned about the impacts and effects that the proposal to establish an ISC has on the relevance, jurisdiction and sustainability of national PVP offices.

[Annex II follows]

RESPONSE FROM BRAZIL TO UPOV CIRCULAR E-16/084
(Original: English)



REPÚBLICA FEDERATIVA DO BRASIL
MINISTÉRIO DA AGRICULTURA, PECUÁRIA E ABASTECIMENTO
Secretaria de Mobilidade Social, do Produtor Rural e do Cooperativismo
Departamento de Desenvolvimento das Cadeias Produtivas e da Produção Sustentável
Coordenação-Geral de Qualidade
Serviço Nacional de Proteção de Cultivares
Esplanada dos Ministérios, Bl. D, 2º andar, sala 252 CEP 70043-900, Brasília DF
Tel: (61) 3218-2549 snpc@agricultura.gov.br

Ofício nº 135/2016/SNPC

Brasília-DF, May 19th, 2016.

Mr. Petter Button
Vice Secretary-General
UPOV

Dear Vice Secretary -General

1. As agreed in the 91st meeting of the Consultative Committee, which was held in Geneva, on March 17, 2016, please find below some concerns, comments and suggestions regarding a possible International System of Cooperation (ISC), its mandate and terms of reference.
2. Being a country that relies in a breeding testing system, initiatives related to the cooperation for facilitating DUS examination are important for our country.
3. Nevertheless, Brazil has some concerns that we understand should be addressed by the Working Group in order to clarify matters which may influence our decision to participate or not in this system of cooperation.
4. Firstly, it should be made clear that participation in an eventual ISC will be optional. Therefore, countries not wishing to be part of it cannot have their activities and existing bilateral cooperation arrangements harmed by this option. Discussions in the Working Group should keep this in mind when considering ways of proceeding.
5. Other important point is that countries participating in the ISC should be free to require that applications for particular species - or under special situations – will have the DUS test carried out in its territory or in a similar environment, as the national plant variety authority decides.
6. Additionally, the eventual ISC should be flexible enough to allow a participating country to make use of only one of the cooperation procedures. For instance, considering the characteristics of our national law, a “preliminary observation office” can show itself to be problematic for Brazil. Therefore, the ISC should provide an option clarifying that a country can establish that it will only participate in the mechanism for cooperation on DUS test, but not with regard to the preliminary examination. These flexibilities should be complemented by other aspects to be considered by the Working Group.

A handwritten signature in blue ink, appearing to be 'SNPC' or similar, located below the list of points.



REPÚBLICA FEDERATIVA DO BRASIL
MINISTÉRIO DA AGRICULTURA, PECUÁRIA E ABASTECIMENTO
Secretaria de Mobilidade Social, do Produtor Rural e do Cooperativismo
Departamento de Desenvolvimento das Cadeias Produtivas e da Produção Sustentável
Coordenação-Geral de Qualidade
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Ofício nº 135/2016/SNPC

(page 2/2)

7. On the Working Group itself, our first suggestion is that it should be open to the participation of all Members. While the goal of the efficiency of the discussions should not be out of sight, such a relevant change to the UPOV system must be carefully followed by Members, including those who do not intend to become part of it.
8. We also consider that the ISC-WG's purpose should clearly state that the group will (i) analyze the impact of the ISC on domestic legislations; (ii) assess the needs of such system, its costs and benefits; and (iii) examine the legal aspects involved in the possible creation of an ISC, including the eventual need of an international agreement in order to provide its legal basis.
9. Further, Brazil would like the addition of two items to this list. The first one would be item (iv), under which the role and activities of the UPOV Office will be addressed. This question is directly linked to the scope of the proposed ISC and should be given due care, taking into account the limited capacity of the UPOV Secretariat for the additional workload of the ISC. The second suggestion to the purpose of the Working Group would be the addition of item (v), where the issues of fees under the ISC will be examined, considering that nothing in an eventual ISC will affect the collection of national fees as defined by each Member.
10. Lastly, Brazil considers that item (ii) of paragraph 9, document CC/91/5, should contain the caveat that the ISC will not only be consistent with rights and obligations of UPOV Members, but will also preserve the flexibilities that each Member enjoys under its relevant UPOV Act.
11. To conclude, regarding paragraph 28, item (c) of document CC/91/10, we would like to express our wish to participate in the working group that will discuss the possible ISC, subject to the incorporations of our suggestions in the list of issues in the Working Group's mandate, purpose and terms of reference.

Sincerely yours,


RICARDO ZANATTA MACHADO
Coordinator of Plant Variety Protection Office

[Annex III follows]

ANNEX III

RESPONSE FROM CANADA TO UPOV CIRCULAR E-16/084
(Original: English)



Canadian Food Inspection Agency Agence canadienne
d'inspection des aliments

Plant Breeders' Rights Office
59 Camelot Drive
Ottawa, Ontario
K1A 0Y9
Tel.: 613-773-7188
FAX: 613-773-7115

April 13th, 2016

Mr. Peter Button
Vice Secretary-General
UPOV
34, chemin des Colombettes
CH-1211 Geneva 20

Dear Mr. Button;

Re: Circular E-16/084 – Possible International System of Cooperation (ISC)

Thank you for the opportunity to comment on the UPOV Circular E-16/084 and the possible development of an International System of Cooperation (ISC). Canada is strongly supportive of a system that would further encourage the use of plant breeders' rights intellectual property protection in UPOV member countries, and thereby facilitate greater distribution and access to protected varieties internationally. We are of the opinion that such a system could benefit plant breeders, producers, and the agriculture/horticulture/ornamental value chains. As such, we wish to express our willingness to participate in the International System of Cooperation (ISC) Working Group (WG) with the aim of further advancing and refining the concept.

We are in agreement with the draft mandate and terms of reference presented in the document CC/91/5, paragraphs 8 and 9.

However, we do wish to identify additional issues in relation to the possible development of the ISC model. Specifically, Issues 11 - 13 and the proposed role of the "Preliminary Observation Office" contained within the document CC/91/5, Annexes I and II respectively. Under subsection 27. (1) of Canada's *Plant Breeders' Rights (PBR) Act* it is the Commissioner that decides if the proposed variety denomination is appropriate, and whether the PBR application conforms to all the requirements of the legislation, including the condition of "novelty". In order to ensure that the development of any ISC model is consistent with our own domestic PBR legislation, we request clarification on the proposed role of the "Preliminary Observation Office". Under Canada's current *PBR Act*, the Commissioner could receive a recommendation that a variety proposed for PBR filing has an acceptable denomination and may meet the conditions of "novelty". However, ultimately the determination as to whether an application fulfills the requirements of Canada's *PBR Act*, including the condition of "novelty" of the variety and the appropriateness of the proposed denomination, is a sovereign decision and rests with the PBR Commissioner.

Thank you again for the opportunity to provide commentary, and we look forward to progress on this important initiative.

Yours sincerely,

Anthony Parker
Commissioner, Plant Breeders' Rights
e-mail: anthony.parker@inspection.gc.ca

Canada

ANNEX IV

RESPONSE FROM CHILE TO UPOV CIRCULAR E-16/084
(Original: Spanish)

SAG
Ministry of Agriculture
Government of Chile

Dear Mr. Button,

We appreciate the opportunity afforded us to send our comments on UPOV Circular E-16/084 of April 4, 2016, inviting UPOV members to comment on a possible International System of Cooperation (ISC), provide additional issues concerning an envisaged ISC and indicate their wish to participate in a working group to explore the issues concerning the ISC.

After an analysis of the documents presenting the ISC, our country wishes to make the following comments:

- A more in-depth study is needed to provide us with further information, especially on the possible impact of the ISC on the Offices. The study should not focus solely on the viewpoints of plant breeders. To that end, we propose that a study be conducted to determine the concrete impact on some offices (large, medium and small) in terms of applications received and revenue collected. We are still in the dark as to the entity that would receive the fees paid for new applications.

(a) *provide additional issues concerning a possible ISC*

- The ISC WG should start by reviewing and presenting the relative legal framework of the ISC, as well as its legal basis, in particular Article 21 of the 1978 Act [Tasks of the Council] and Article 26 of the 1991 Act [The Council] of the UPOV Convention. In this regard, we believe that Issue 23 in Document CC/91/5 still needs to be analyzed since it states the need “To consider an agreement as a suitable legal basis for an ISC, to be adopted by the Council of UPOV and open for signature only by members of the Union”. Hence, we suggest that it should be replaced by another issue, which is “to consider what the appropriate legal basis for an ISC should be, given its objectives and functions.”
- Issue 3: The ISF/CIOPORA/CropLife International contribution anticipates more PBR applications as a result of an ISC. We would like to be provided with the basis for such a conclusion.
- Issue 8: Whether the establishment of an accreditation system, or other means of conveying objective information on DUS examination capacity, might facilitate cooperation in DUS examination and the features of such a system. In this regard, it would be necessary to understand the functioning of an accreditation system, specifically the accrediting entity, the accreditation period, the costs associated with the offices and the entity that determines the examination rates. Besides, how would the system function for the native varieties of each country? What would happen if these varieties need to be registered with the ISC and the Office is not accredited?
- Issue 12: A preliminary examination should, as far as possible, aim to assess the acceptability of a proposed variety denomination for all members of the Union. In this regard, it is necessary to consider what would happen to the marks, geographical indications and designations of origin. It is also important to consider what would happen to countries which do not have national catalogs and those which do not file their data in the PLUTO database.
- Issue 20: Clarify that, in addition to an “ISC fee”, there would be fees for DUS examination and fees for individual members of the Union. Given that, in addition to an “ISC fee”, there would be fees for DUS examination as well as annual or maintenance fees for the various members of the Union, we suggest that an economic analysis be carried out to examine this possibility and its real impact on plant breeders. Will it really be cheaper?

Lastly, we deem it necessary to raise an additional issue relating to the ISC's compatibility with national laws. On this point, it would be necessary to analyze:

- The representation of breeders in each country;
- Online / face-to-face payments;
- Publication in newspapers or the official gazette;
- Committees established by law, which decide on the registration of a variety;
- Cancellation/nullity if it occurred in another country (availability of information);
- Obligation to submit representative samples, even if the DUS testing is not conducted; and
- Obligation to present legalized documents (powers of attorney, assignments, etc.).

Finally, it would be important for the list of issues to be updated in accordance with definitions of the mandate and terms of reference.

(b) *comment on the draft mandate and terms of reference presented in document CC/91/5, paragraphs 8 and 9*

On the proposed terms of reference, we believe that these should reflect the need to first analyze the studies, and on that basis, evaluate the need for an international system of cooperation, its advantages and disadvantages. Proposals should only be presented after that analysis.

Similarly, from informal discussions with the Secretariat, we understand that the idea is apparently to base the mechanism on current bilateral cooperation and the tools currently provided by UPOV, and we consider that it would be important for the Secretariat to be explicit on the objective of the working group.

Proposed wording:

Objective

Assist the Office of the Union in preparing information; analyzing the relevance, advantages and disadvantages of a possible ISC; and preparing any proposals on a possible ISC to be submitted for consideration by the Consultative Committee.

The resulting mechanism should be based on bilateral cooperation agreements and currently existing UPOV tools.

The terms of reference should clearly state that an ISC shall not affect the responsibility of members of the Union regarding the granting and protection of breeders' rights.

The terms of reference must specify that each member of the Union shall individually decide to participate in an ISC and, where appropriate, determine the measures it would take to ensure such participation.

(c) *indicate their wish to participate in a working group [WG-ISC] to explore the issues concerning a possible ISC*

Having approved its constitution, our country wishes to participate in the working group (WG-ISC).

Thank you for your attention.

Yours sincerely

Marcela Paiva
Chilean Mission

Manuel Toro Ugalde
Agriculture and Livestock Service

[Annex V follows]

RESPONSE FROM COLOMBIA TO UPOV CIRCULAR E-16/084
(Original: Spanish)

ICA
Colombian Institute of Agriculture

I.C.A.
Our Ref: 20162108836
From: Technical Seed Directorate
To: UPOV
Annexes: p.:2

11.2.9.3
Bogota

Mr. Peter Button
Secretary General of UPOV
UPOV
upov.mail@upov.int
Switzerland

Re: UPOV Circular E-16/084

Dear Peter,

In response to UPOV Circular E-16/084, we believe it may be interesting for breeders to use more expeditious mechanisms to submit their applications in several countries, as it can increase the volume of applications and give breeders access to a wider area by allowing them to attain greater geographical coverage efficiently. However, we believe that from a practical standpoint, we should consider how the mechanism would function in order to be able to determine whether it is worth joining the system. Accordingly, we are setting out a few concerns in that regard, for examination by the working group.

Although the few issues we raise below can be found in general terms in paragraphs 8 and 9 of document CC/91/5, we find it worth stating them more specifically as follows:

- Is the intention to work on a proposal for a system that allows several countries to be covered through a single application? Or is the intention to work for a system of cooperation for technical examinations?
- What would happen to countries that do not wish to join the system, in terms of cooperation for examinations which are currently being conducted without this international system?
- Would countries still have the discretion to decide whether to accept the test chosen by the system?
- What is the legal nature of the agreement? Would it be an international treaty?
- Will the variety be afforded provisional protection in all countries that have adopted the agreement, as from the filing of the application at the receiving office?
- Should there be a single office in the cooperation system for receiving initial applications? What requirements would this office need to meet to be chosen?
- What are the guidelines for choosing the members of the working group?
- Will the substantive examination be performed independently by each state? Or will there be a common examination for all countries?
- Will fees for granting and maintaining protection have to be paid in all countries of the system that are of interest to the breeder?
- How will the system of challenges to applications operate in the ISC countries? Will they be dealt with by national offices or by the office receiving the first application?

Finally I would like to repeat that we are willing and interested in being part of the working group (WG-ISC) which will allow us to actively participate in the analysis of a possible ISC.

Best regards,

Ana Luisa Diaz Jimenez
Technical Director of Seeds

[Annex VI follows]

CC/92/10

ANNEX VI

RESPONSE FROM DENMARK TO UPOV CIRCULAR E-16/084
(Original: English)



**Ministry of Environment
and Food of Denmark**
The Danish Agrifish Agency

(Dokument, Modtager) Navn 1
(Dokument, Modtager) adresse 1
(Dokument, Modtager) Postnr. (tekst)

Our ref: 16-30390-000024
Date: 17. maj 2016
12016688

Comments from the Danish AgriFish Agency regarding the possible International System of Cooperation (ISC)

Regarding UPOV Circular E-16/084: ISC – Comments invited until May 20, 2016 to:

- a) provide additional issues concerning a possible ISC;
- b) comment on the draft mandate and terms of reference presented in document CC/91/5, paragraphs 8 and 9; and
- c) indicate their wish to participate in a working group [WG-ISC] to explore the issues concerning a possible ISC

oooOooo

The Danish AgriFish Agency represents Denmark and the Danish plant breeding stakeholders on a governmental level as an UPOV Member State of the Consultative Committee (CC). The Danish delegation, *Maria Lillie Sonne, Head of Legal*, participated in the ninety-first session of the CC, held in Geneva on March 17, 2016. Document CC/91/5 “International System of Cooperation” and the presentation made by the Vice Secretary-General was considered during the session.

The CC agreed that, on the basis of the information provided above, the Office of the Union would prepare a document for consideration at its ninety-second session, to be held in Geneva on October 27, 2016, containing a draft mandate and terms of reference for a possible WG-ISC, issues to be considered and proposed members of the WG-ISC. Subject to agreement on those matters, the WG-ISC would meet immediately following the ninety-second session of the Consultative Committee.

oooOooo

In cooperation with the Danish stakeholders from the plant breeding industry, represented in *the Danish Committee for Plants and Seeds* (in Danish called “*Udvalget for Planter og Udsæd*”), the Danish AgriFish Agency has considered document CC/91/5 “International System of Cooperation” and the additional information regarding ISC that have been developed over time since first proposal of the ISC was launched.

We hereby provide our comments to be considered as a common Danish position regarding ISC:

Ad a) Provide additional issues concerning a possible ISC

For the time being, Denmark do not have additional issues to be provided. However, we think that all issues should be welcomed in order to promote a thoughtful and transparent process.

Further harmonization of DUS-testing is not desirable

Over and all, the Danish plant breeding industry has a good international reputation and competitive advantages due to the high standard and restricted testing requirements in Denmark regarding the DUS examination of new plant varieties.

As a consequence, it is important for us to emphasize that for the time being further harmonization of the DUS-testing is not desirable. The reasoning for this position is that we fear that further DUS-harmonization may result in a declining quality of the plant varieties that is subject to protection, i.e. a decrease in the standard of the protected plant variety *per se*, as the DUS-approach defers considerably throughout the UPOV Member States due to various factors, e.g. climate, soil conditions, environment and market demand on a national level.

Ad b) Comment on the draft mandate and terms of reference presented in document CC/91/5, paragraphs 8 and 9

Denmark supports the said draft mandate and terms of references to be considered by the CC.

Is the ISC comparable with the PCT?

Additionally, we would like to ask the UPOV Office whether it is suitable to consider the ISC project to be comparable with the system regarding the Patent Cooperation Treaty (PCT), managed by WIPO. If so, we point out that the main intend of the ISC is to:

- (i) assist applicants in seeking internationally intellectual property protection on new plant varieties,
- (ii) help national Examination Offices with their plant variety rights granting decisions, and
- (iii) facilitate public access to technical information and guidelines relating to those new plant varieties, i.e. DUS-guidelines, explanatory notes etc. as provided by the UPOV system.

So, if comparable with the PCT, by filing one international plant variety rights application under the ISC, applicants can simultaneously seek protection for a new plant variety throughout the UPOV-Member States. However, the mere geographical scope and jurisdiction of the granted protection will depend on the verification of the plant variety right in question on a national level.

If the ISC is comparable with the PCT, it might be appropriated to investigate the convergence between the PCT and the ISC based on a comparative analysis, and additionally conduct a study of the advantages and disadvantages (e.g. issues) of PCT, in order to take the right precautions in respect of the ISC. Such investigation might be a suitable task for the ISC working group (ISC-WG) and to be carried out in cooperation with WIPO.

Ad c) Indicate their wish to participate in a working group [WG-ISC] to explore the issues concerning a possible ISC

According to the composition of the WG-ISC as set out in document CC/91/5, paragraph 8 (b), it is possible for *other members of the Union freely to participate at any meeting of the ISC-WG where so desired.*

To that extent, Denmark would like to participate in the WG-ISC provided that the Danish AgriFish Agency in future is able to send a delegated team member for the participation in a WG-ISC meeting, in respect of staffing resources etc.

In all circumstances, the documents and information developed by the WG-ISC should be regularly circulated to all UPOV Member States in order to give comments, irrespectively whether an UPOV Member State in fact is participating in a specific WG-ISC meeting.

oooOooo

On behalf of the Danish AgriFish Agency and our Danish plant breeder stakeholders, I am looking forward to continue these discussions regarding the possible ISC and WG-ISC during the upcoming CC meetings on October 27, 2016, and possibly to participate in the first meeting of the WG-ISC by that time.

Please do not hesitate to contact me if you have further questions regarding our comments as provided in this document.

Yours sincerely

Maria Lillie Sonne
Plants & Agricultural Holdings Act
The Danish AgriFish Agency
maliso@naturerhverv.dk

[Annex VII follows]

ANNEX VII

RESPONSE FROM ECUADOR TO UPOV CIRCULAR E-16/084
(Original: Spanish)

Ecuadorian Institute of Intellectual Property

Document No. IEPI-DNOV-2016-0020-OF
Quito, D.M., May 18, 2016

Subject: DRAFT INTERNATIONAL SYSTEM OF COOPERATION (ISC)

Ms. Alicia Maldonado Ñusta Saravino, Engineer
Third Secretary, Permanent Mission to the WTO, Geneva
MINISTRY OF FOREIGN AFFAIRS AND HUMAN MOBILITY

Dr. Juan Carlos Castrillon Jaramillo
Minister, Permanent Mission to the WTO, Geneva
MINISTRY OF FOREIGN AFFAIRS AND HUMAN MOBILITY

With reference to memorandum no. MREMH-GOMCGINEBRA-2016-0104-M of March 24 2016, requesting questions, comments or observations on the project to establish an International System of Cooperation for Plant Varieties, please find herewith an analysis of specific points.

Objective of the International System of Cooperation (ISC)

In its current form, the draft ISC seeks to create an international system for processing plant breeder's right (PBR) applications, which would involve systematization as from the filing of the application and initial processing, while reserving the final decisions to grant the right and the attendant conditions to UPOV members. In addition, it suggests that the proposals would not involve a change in the responsibility of the members of the Union to grant and protect breeders' rights.

In order to have a clear picture of the issues raised, the analysis has been structured into four components:

Components of the ISC

1. International System of Administration

1. receive an application from any receiving UPOV member office or through a UPOV electronic application system
2. application information to be distributed to UPOV members designated by the breeder
3. application form in language of breeder's choice with automatic translation into language of relevant UPOV members
4. universally applicable fee schedule
5. provide information on accredited DUS centers
6. provide information on [choice of] preliminary examination office(s)
7. monitor DUS examination
8. receive and maintain reports of decisions on granting of PBR
9. address objections concerning conduct of the DUS examination
10. maintain and publish all relevant "bibliographic" information concerning PBR applications
11. maintain standard UPOV variety descriptions, information on varieties of common knowledge included in the DUS examination, status and disposition of any propagating material provided by the breeder and information relating to pedigree and parental lines of hybrids (to be maintained as confidential)
12. [could include a search for relevant varieties of common knowledge against which the application variety may be compared]

2. Preliminary examination

1. preparing the application's content for publication
2. completeness of the application
3. payment of the fee

4. determination of novelty
 5. searching and evaluation of the proposed denomination
3. DUS examination
1. coordinated between members of the Union
 2. accreditation system
4. Examination by members of the Union using the ISC
1. receive an application directly or via UPOV electronic application system
 2. review preliminary examination information
 3. review DUS examination report
 4. take decision on the granting of the PBR
 5. report decision on granting of PBR to ISC

Comments on the creation of the International System of Cooperation (ISC)

Establishing the central office for receiving and processing PBR applications would deprive national offices of autonomy; the "preliminary examination" analysis withdraws some functions from national offices. This means that a significant part of the process currently undertaken in the country would be undertaken by others. This would limit information because there would be no access in the absence of regulation and information would be kept confidential. Therefore, how can research be generated if the important information on genealogy and processes for breeding new varieties is not disclosed?

The aim is to maintain a technical report for all countries, produced by a single examining authority. This is not consistent with the system and public policy regarding innovation not only in Ecuador, but in the other developing countries, as we would be bound by that technical report without the ability to generate our own with due regard for the situation on the ground in each country.

Custody of plant material will no longer be the responsibility of each country, but would be concentrated in the new office, from which it would not be possible to obtain plant material for experimental purposes or for national academic or scientific research. This presents an obstacle and would create a monopoly, sending genetic material to a germplasm bank abroad to which we would not have access.

A universally applicable fee schedule, by which income would be centralized into a single entity, is proposed. This would deprive the other members of the Union of resources. The parameters to be taken into consideration to establish and fix the fee are unclear; the manner and percentage of distribution of these resources obtained from applications and other processes that this office performs for other countries have not been set out. No economic benefit for each member of the Union is specified.

UPOV member countries would be obliged implement and apply the system's procedures and standards uniformly and consistently, to accord full faith and credit to the administrative actions of the other participants in the system (including receiving offices, reviewing offices and examining authorities).

There would be an obligation to maintain confidentiality of application information prior to publication and to appropriately safeguard the security of propagating material provided by breeders in connection with applications.

Submissions

It is necessary to have a clear and forward-looking position on the pros and cons of joining a project which from inception only seeks to regulate the filing of PBR applications and place them on an equal footing, however, this does not follow from what has been stated in the paragraphs above.

Given the disparate circumstances of member countries and national offices, together with differing levels of agricultural innovation, the project as it currently stands would benefit a minority group of countries that are well advanced in plant breeding.

This system goes beyond unifying the submission of applications covered under the umbrella concept that "the only beneficiary is the breeder because he/she pays less and files more applications in several countries with a single payment."

Ecuador is beginning to harness the PBR system for its development. The ISC, as it is proposed, would be at odds with the objectives of this process.

General recommendations

1. A working group to restructure the initial draft ISC should be established. This working group should be congruent and participatory in relation to all member countries.
2. In view of with the documents and claims of the ISC analyzed above, supporting the initial proposal is not recommended.
3. It is appropriate that the scope of competition and the potential effects of the cooperation mechanisms be specified. For example, if one of the mechanisms is included in the development of software to facilitate plant variety publication, it will be necessary to make it possible for all countries to fall within the scope of this measure, without prejudice to national standards.
4. Since the purpose of the ISC is to standardize a system of international registration, it must meet the specific needs of each Member State concerning the application process and the relevant technical requirements.
5. Finally, it is important to clearly define the type of protection that will ensue from the registration of a plant variety, i.e., whether the registration grants only a priority right for territorial registration in each country, or whether the registration confers a right to international protection that may be recognized and accepted in each country.

Recommendations to UPOV

(a) Raise other issues regarding a possible ISC

Given the disparate circumstances of member countries and national offices, together with differing levels of agricultural innovation, the project as it currently stands would benefit a minority group of countries that are well advanced in plant breeding.

Since the purpose of the ISC is to standardize a system of international registration, it must meet the specific needs of each Member State concerning the application process and the relevant technical requirements.

Individual countries will no longer be responsible for custody of plant material, which will be in the hands of the envisaged new office. The question then arises as to how we would obtain plant material for experimental or scientific and academic research purposes if we no longer have it. How would we obtain plant material from this office if we are not members? In sending genetic material to a foreign germplasm bank to which we would not have access, we would be creating a monopoly.

Applying a universal fee schedule would centralize income in the hands of a single entity, reducing resources for other members of the Union. It is not clear what parameters are to be taken into consideration to establish and set the fee. There is no statement as to the manner and percentage of distribution to other countries of proceeds from the filing of applications and other processes that this office will undertake. Will distribution be fair and equitable?

Regarding the mandatory clauses governing membership in this system, the following should be analyzed: the conditions of each country, the acts it has adhered to and its domestic laws and regulations. This is because membership would grant more power to breeders, neglecting the rights of farmers (1978 Act).

(b) Existence and mandate of the Working Group.

The existence of a working group is important; however, this importance would be diminished if its powers and prerogatives were restricted to the study and analysis of the draft ISC. On the contrary, the Working Group should have the power to restructure the draft ISC in light of the recommendations of the members of the Union, in a democratic manner.

The composition of the Working Group should equitably represent Member States of the Union and reflect similar percentages of participation among least developed, developing and developed countries, and not leave the choice to the Consultative Committee.

Member States that are not part of the Working Group should be entitled to participate in the ISC if they choose and provide feedback to the Working Group.

Whenever possible, the meetings of the Working Group should precede the meetings of the Consultative Committee.

Members of the Working Group should be funded by the office of the Secretary General of UPOV, for actual attendance at meetings.

(c) Participation in the Working Group.

Given the importance of the establishment of an ISC for a Member State, owing to the potential effects on each country, it is necessary that Ecuador be part of the Working Group, in light of the above.

Regards,

[Electronic signature]

Dr. Wilson Armando Usina Reina
NATIONAL DIRECTOR OF PLANT VARIETIES

Cc:
Mr. Andres Latorre Javier Vaca
Director, Negotiations for Productive Complementarity and Public Procurement
Ministry of Foreign Trade

Mr. Andres Latorre Javier Vaca
Director of Negotiations of Economic and Social Affairs, Manager
Ministry of Foreign Trade

Ms. Emmanuelle Tamet
Senior Expert in International Relations

Mr. Rarniro Rodriguez Medina, MSc.
Deputy Executive Director

Mr. Edwin Javier Vasquez of Chavez Flag
Undersecretary of Trade Negotiations and Economic Integration
Ministry of Foreign Trade

[Annex VIII follows]

ANNEX VIII

RESPONSE FROM THE EUROPEAN UNION TO UPOV CIRCULAR E-16/084
(Original: English)

 Ref. Ares(2016)2049692 - 29/04/2016



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Deputy-Director-General for Food Safety

Brussels,
SANTE/G1/PM/lav (2016) 2430560

Dear Mr Button,

Subject: Comments invited concerning a possible ISC (International System of Cooperation)

I wish to inform you that the EU and its Member States can agree to the draft mandate and terms of reference for a working group on International System of Cooperation (ISC-WG) as presented by the UPOV office (document CC/91/5) and the establishment of the working group to explore the possibilities to set up such a system.

The EU wishes to participate in the working group and our delegation will consist of representatives from both the European Commission and the Community Plant Variety Office. The names will be communicated at a later stage.

I apologize for the late presentation of the EU comments on the UPOV document on the Issues 1 to 30 as identified in the UPOV document CC/89/6. You will now find them in the Annex to this letter.

At a more general level, I wish to convey to you the following statements. The EU and its Member States can agree to engage actively on this issue and to further discuss the concept of an International System of Cooperation (ISC) on the basis of the issues 1 to 30 as identified in the UPOV document CC/89/6. The development of such ISC should be based on the mission of UPOV, 'to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society'. In addition, I wish to recall that the EU has already developed an accreditation system in the framework of the EU system in order to ensure the quality of the DUS examination and to promote EU as a center of excellence for DUS examination. Taking into account the elements in relation to the current cooperation in examination, the EU and its Member States will pay due consideration to the fact that a well-functioning EU system is managed by CPVO and the EU Member States. The EU offers to share its experience of running the system including an accreditation system of examination offices.

Mr Peter Button
Vice Secretary General of UPOV
34 Chemin des Colombettes
CH-2111 – Genève 20
SWITZERLAND

At this stage it is naturally clear that it is premature to recommend to the Council to consider the development of an International System of Cooperation.

Yours sincerely,

Mr Bernard Van Goethem
Director
DG Health and Food Safety
for the DG absent



Ladislav Miko

C.c. : Mr B. Van Goethem, Mr A. Brouw, Ms D. André,
Ms P. Mannerkorpi, Ms D. Charels (DG SANTE)

Enclosure: Summary of possible issues concerning an International System of
Cooperation (ISC) (Annex I of document CC/91/5)

Annex
Summary of possible issues concerning an International System of Cooperation (ISC) (Annex I of document CC/91/5)

Issue 1 OK	<i>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.</i> <i>For consideration by CC</i>
Issue 2 OK	<i>to clarify that it would be a matter for each member of the Union to decide whether to participate in an ISC and, if appropriate, what measures it would need to take in order to participate.</i> <i>For consideration by CC</i>
Issue 3	<i>to note that the ISF/CIOPORA/CropLife International contribution anticipates more PBR applications as a result of an ISC.</i> <i>For consideration by CC</i>

Regarding the issue 3, it could be reflected to redraft the question as follows: 'to explore the demand from breeders for such ISC through a set of dedicated questions in order to obtain more reliable data on the benefits and the potential use of such system by breeders and to report back to the Consultative Committee'.

Issues for DUS examination

Issue 4 OK	<i>to clarify that that it would remain a matter for each member of the Union to decide on its arrangements for DUS examination, including cooperation with other members of the Union.</i> <i>For consideration by CC</i>
Issue 5 OK (b)	<i>to consider whether:</i> <i>(a) an ISC should be expected to result in a single DUS examination being sufficient for all members of the Union for all species, or</i> <i>(b) an ISC should not be expected to result in a single DUS examination being sufficient for all members of the Union for all species, whilst recognizing the benefits of facilitating greater cooperation between UPOV members.</i> <i>For consideration by CC</i>
Issue 6 premature	<i>to consider whether arrangements between members of the Union for DUS examination might be integrated in an ISC.</i> <i>For consideration by CC</i>

Issue 7 OK	<i>to note that information on arrangements between members of the Union for DUS examination is already included in the GENIE database.</i> <i>For consideration by CC</i>
Issue 8 premature	<i>to consider whether the establishment of an accreditation system, or other means of conveying objective information on DUS examination capacity, might facilitate cooperation in DUS examination and the features of such a system.</i> <i>For consideration by an ad-hoc ISC Working Group</i>
Issue 9 OK	<i>to consider other measures that might facilitate cooperation in DUS examination between members of the Union.</i> <i>For consideration by an ad-hoc ISC Working Group</i>
Issue 10 OK	<i>to consider how an ISC could be used to support capacity in DUS examination with a view to facilitating cooperation, including the development of new capacity that would facilitate cooperation.</i> <i>For consideration by an ad-hoc ISC Working Group</i>

Regarding the issue 5, the EU and its Member States can indicate their preference for the second option (b), taking into account the current situation in the EU:

- (a) requirement of the EU Regulation on Community Plant Variety Rights and the Regulation on Proceeding before CPVO which state that a report from a third country member of UPOV may be considered by the CPVO to constitute a sufficient basis for decision, provided that the technical examination complies with certain technical conditions laid down in a written agreement between the Office and the Competent Authority of such third country,
- (b) full harmonisation of DUS testing within UPOV members is not in place,
- (c) accreditation system of competent authorities within UPOV members is not in place.

Regarding the issue 6, at this stage, the EU and its Member States can indicate that the EU Regulation on Proceedings before CPVO provides the possibility for such written agreement on an ad-hoc basis between the CPVO and the competent authority of a third country. The meaning, the legal analysis and the consequence of the 'integration of such arrangements' between members of the Union for DUS examination might be further explored. It can be noted that information on arrangements between UPOV members is already included in the Genie database for information (issue 7).

Regarding the issue 8, the EU and its Member States can share their experience with regard to the establishment of an 'accreditation' (entrustment) system with the EU examination offices, in order to ensure that the technical examination is compliant with the requirements of the EU legislation. The EU entrustment system is supervised by the Administrative Council of CPVO. It is more than an objective information system on DUS examination capacity because it requires audits of examination offices every 3 years. Therefore, in the short term, it might be difficult and require too much time to apply such similar system at international level, however, it could be a long term goal. It can be considered to prepare a roadmap concerning the necessary steps to set in place in order to achieve this goal.

Regarding the issues 9 and 10, the EU and its Member States can agree that further work is needed before taking any decision in the Consultative Committee.

Issues for preliminary examination

Issue 11	<i>to consider the basis on which a preliminary examination office(s) would be selected to conduct the preliminary examination.</i> <i>For consideration by an ad-hoc ISC Working Group</i>
Issue 12 OK	<i>to clarify that that a preliminary examination should, as far as possible, aim to assess the acceptability of a proposed variety denomination for all members of the Union.</i> <i>For consideration by CC</i>
Issue 13 OK	<i>to consider, in the case that a member of the Union subsequently considered the proposed denomination unsuitable within its territory, the procedure for the breeder to submit another denomination.</i> <i>For consideration by an ad-hoc ISC Working Group</i>
Issue 14 OK	<i>to note the value of a UPOV similarity search tool for variety denomination purposes and to consider extending such a tool include words or elements that are considered to be unsuitable by members of the Union.</i> <i>For consideration by an ad-hoc ISC Working Group</i>
Issue 15	<i>to consider the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union.</i> <i>For consideration by an ad-hoc ISC Working Group</i>

Regarding the issue 11, the EU and its Member States can indicate that the role of checking variety denomination is assigned to the CPVO within EU for variety protection and that the CPVO provides also the service to national Examination Offices with regard to national plant variety protection and national variety registration. The rules on variety denomination applied for Community Plant Variety Rights and national registration are the same. Before requesting the ad-hoc ISC working group to consider the basis on which a preliminary examination office(s) would be selected to conduct the preliminary examination, the UPOV Members should agree on the principle that an office will assess the acceptability of a proposed variety denomination for all members of the Union. That will also depend on the development of the similarity search tool.

Regarding the issue 15, the EU and its Member States can indicate that Article 20.2 of the UPOV 1991 Convention states that the variety denomination must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species. It is not limited to protected varieties. When assessing variety denomination, the CPVO takes into consideration existing denominations, including those included in the EU common catalogues.

Issues for novelty

Issue 16 OK	<p><i>to recall that the UPOV Model Form for the Application for Plant Breeders' Rights (document TGP/5 "Experience and Cooperation in DUS Testing" Section 2), Item 8, provides a request for relevant information concerning novelty.</i></p> <p><i>For consideration by CC</i></p>
Issue 17 OK	<p><i>to recall that the PLUTO database includes an item to allow for information to be provided on dates on which a variety was commercialized for the first time in the territory of application and other territories.</i></p> <p><i>For consideration by CC</i></p>

Regarding the issues 16 and 17, the EU and its Member States can note that the concept of 'first commercialisation' differs among the UPOV members. This could be a point for consideration by an ad-hoc ISC Working Group if greater harmonisation is foreseen.

The EU and its Member States can propose a 2 steps approach, where variety denomination will be checked firstly and then novelty based on the declaration of the breeder or his representative. UPOV members should be encouraged to proactively provide such data.

Issues for the preparation of application's content for publication /completeness of application / payment of fees.

Issue 18	<p><i>to consider, in a first phase, that it might not be appropriate to include the checking of the completeness of the application, preparation for publication and inserting the relevant information about the application in a centralized application database.</i></p> <p><i>For consideration by CC</i></p>
Issue 19 OK	<p><i>to consider that the EAS (electronic application system) Project, and/or ISC, might provide a basis for members of the Union to move towards greater harmonization in their application forms, thereby creating possibilities at a later stage for an ISC to include the checking of the completeness of the application, preparation for publication and inserting the relevant information about the application in a centralized application database.</i></p> <p><i>For consideration by CC</i></p>
Issue 20 OK	<p><i>to clarify that, in addition to an "ISC fee", there would be fees for DUS examination and fees for individual members of the Union.</i></p> <p><i>For consideration by CC</i></p>

Regarding the issue 18, the EU and its Member States can agree that, in a first phase, it might be premature to include the checking of the completeness of the application, preparation for publication and inserting the relevant information about the application in a centralized application database. Nevertheless there is a need to have a clear commitment to include the checking of the completeness of the application in the ISC.

Issues for the international system of administration

Issue 21	<p><i>To consider the EAS Project, with an appropriate extension of the remit, as a starting point for the international service to be provided by an ISC in relation to:</i></p> <ul style="list-style-type: none"> <i>a) receiving an application from through a UPOV electronic application system and, at a later stage, any receiving UPOV member office;</i> <i>b) application information to be distributed to UPOV members designated by the breeder;</i> <i>c) application in a language of the breeder's choice with automatic translation into languages of relevant UPOV members;</i> <i>d) collection and distribution of fees;</i> <i>e) information on arrangements for cooperation in DUS examination between members of the Union; and</i> <i>f) information on [choice of] preliminary examination office(s).</i> <p><i>For consideration by CC</i></p>
Issue 22	<p><i>To consider whether an international service to be provided by an ISC should:</i></p> <ul style="list-style-type: none"> <i>g) monitor the status of the DUS examination;</i> <i>h) receive and maintain reports of decisions on granting of PBR;</i> <i>i) address objections concerning conduct of the DUS examination;</i> <i>j) maintain and publish all relevant "bibliographic" information concerning PBR applications;</i> <i>k) maintain standard UPOV variety descriptions, information on varieties of common knowledge included in the DUS examination, status and disposition of any propagating material provided by the breeder and information relating to pedigree and parental lines of hybrids (to be maintained as confidential); and</i> <i>l) include a search for relevant varieties of common knowledge against which the application variety may be compared;</i> <p><i>or, whether such information should be monitored and maintained by members of the Union and made available at a general level via the PLUTO database.</i></p> <p><i>For consideration by CC</i></p>

Regarding the issue 21, the EU and its Member States can agree with points a), b), c) and e). Regarding point d) it would require an assessment on the possibility for UPOV to collect and distribute such fees. Article 29 of UPOV 1991 establishes the possibility for UPOV to receive payments for services rendered. Regarding point f) it will depend on the decision of the CC with regard to the issue 11.

Regarding point e) there is a difference between the main text and the text in the annex where the word 'accredited' is present. This would need to be clarified.

Regarding the issue 22, the EU and its Member States can indicate their preference for the second alternative, where the information is monitored and maintained by UPOV members and made available at a general level via the PLUTO database.

Issue for the legal basis

Issue 23 <i>premature</i>	<i>To consider an agreement as a suitable legal basis for an ISC, to be adopted by the Council of UPOV and open for signature only by members of the Union.</i> <i>For consideration by CC</i>
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Regarding the issue 23, the EU and its Member States request a further analysis of the options before taking any decisions.

Issues on resources and financing

Issue 24 premature	<i>To consider that the examination by members of the Union using the ISC would be resourced by the members of the Union under their current arrangements for examination of applications. However, the collection of fees to cover that work might be organized as a part of the international system of administration of an ISC.</i> <i>For consideration by CC</i>
Issue 25 premature	<i>It would be necessary to agree on a basis for DUS examination fees, probably varying by species.</i> <i>For consideration by an ad-hoc ISC Working Group</i>
Issue 26 premature	<i>In the case of preliminary examination office(s), it would be necessary to agree a basis for a fee, including whether there would be a universal fee for all members of the Union for all species.</i> <i>For consideration by an ad-hoc ISC Working Group</i>
Issue 27 OK	<i>To note that the extent of resources for an ISC would be determined by the extent of the international system of administration.</i> <i>For consideration by CC</i>
Issue 28 OK	<i>To consider whether the development and maintenance of an ISC should be fully financed by income from fees paid by breeders.</i> <i>For consideration by CC</i>
Issue 29 OK	<i>To consider whether the EAS Project, as funded through the Program and Budget for the 2016-2017 Biennium, should provide the core of the international system of administration.</i> <i>For consideration by CC</i>
Issue 30 premature	<i>To consider how additional elements to be incorporated in the EAS Project, e.g. the receipt of applications from receiving UPOV member offices, information on accredited DUS centers and information on [choice of] preliminary examination offices, should be funded.</i> <i>For consideration by CC</i>

Regarding the issue 24, further analysis would be needed.

Regarding the issues 25-26 and 30, it is premature to give such mandate to the ad-hoc ISC working group.

The EU and its Member States can agree to request the Office of the Union to organize a business analysis of the international administration elements of an ISC, built on the EAS Project, as a basis to estimate the cost; and on the first elements agreed by the Consultative Committee, at its 90th session.

[Annex IX follows]

CC/92/10

ANNEX IX

RESPONSE FROM JAPAN TO UPOV CIRCULAR E-16/084
(Original: English)

From: 三宅 晃 [mailto:akira_miyake630@maff.go.jp]
Sent: Thursday, May 26, 2016 10:28 AM
To: mail, Upov
Subject: [JAPAN] RE: Circular E-16/084: ISC - Comments invited

Dear Sirs/Madams,

I am sorry that I could not reply to your Circular E-16/084 last week.

1 Japan believes that it is desirable to promote international cooperation under the UPOV system. In this regard, we hope that discussions will make progress on a possible international system of cooperation (ISC). Japan thinks, it would be necessary to consider the following in discussions on ISC;

- (1) there are some diversities among Contracting Parties within the UPOV Convention permits. How to treat these diversities;
- (2) with respect to preliminary examination, how to treat variety denominations of the Contracting Parties which do not use the Roman alphabets;
- (3) with respect to DUS examination, how to treat differences of geographic conditions and test conditions in terms of agricultural practices.

2 Japan wishes to participate in a working group to explore the issues concerning a possible international system of cooperation (WG-ISC).

Best regards,

Akira MIYAKE
Ministry of Agriculture, Forestry and Fisheries
JAPAN

[Annex X follows]

CC/92/10

ANNEX X

RESPONSE FROM NORWAY TO UPOV CIRCULAR E-16/084
(Original: English)

From: Marianne.Smith@lmd.dep.no [mailto:Marianne.Smith@lmd.dep.no]
Sent: Friday, May 20, 2016 2:39 PM
To: mail, Upov
Subject: SV: Circular E-16/084: ISC - Comments invited

Dear Peter

Please, find enclosed the Norwegian comments concerning a possible ISC.

Kind regards

Marianne Smith

Senior advisor
Norwegian Ministry of Agriculture and Food
Department of Forest- and Natural Resource Policy

International System of Cooperation

Norway has some comments on the term of reference in paragraph 8 in document CC/91/5.

It is proposed that the purpose of ISC Working Group should be to assist the Office of the Union in the preparation of information and proposals, for consideration by the Consultative Committee, concerning a possible ISC. We understood that CC/90 agreed that the ISC Working Group should advice CC directly, and not the Office of the Union. We believe that this should be a country driven process in order to best address the needs and concerns of member states.

Under letter a) it is suggested that the ISC Working Group should be composed of members of the Union agreed by the Consultative Committee. Under letter b) it is also suggested that other members of the Union would be free to participate at any meeting of the ISC Working Group where so desired. The difference between letter a and b is unclear.

However, the ISC Working Group should follow the principles of transparency and openness. Therefore, observers should be able to participate in the process to secure a broad fundament for the ISC Working Group's assessments.

Norway also propose that the CC should set a tentative timeframe for the ISC Working Group indicating when their final analysis and recommendation should be finalised, and, if appropriate, the ISC Working Group should report to CC along the way. The ISC Working Group should then decide how to proceed. However, we do agree (with the proposal in letter c) under composition,) that the ISC Working Group should meet, as far as possible, in conjunction with the sessions of the Consultative Committee.

Finally, Norway would like to take part in the ISC Working Group.

[Annex XI follows]

CC/92/10

ANNEX XI

RESPONSE FROM PANAMA TO UPOV CIRCULAR E-16/084
(Original: Spanish)

From: Jacinto Navarro [mailto:jacinto.navarro@mici.gob.pa]
Sent: Tuesday, April 05, 2016 3:00 PM
To: mail, Upov
Subject: Comment

From my point of view, yes it is necessary and it would be very helpful to have an organized mechanism that promotes cooperation between members of the Union. But we should also take into account the standards and legislation of the various members of the Union in order to devise a framework that would benefit all members. Thank you for taking our views into account.

[Annex XII follows]

RESPONSE FROM THE RUSSIAN FEDERATION TO UPOV CIRCULAR E-16/084
(Original: English)

MINISTRY OF AGRICULTURE OF THE RUSSIAN FEDERATION

STATE COMMISSION OF THE RUSSIAN FEDERATION
FOR SELECTION ACHIEVEMENTS TEST AND PROTECTION
(State Commission)

1/11 Orlikov per., Moscow, 107139, Russia

tel.: (7 495) 607 49 44

fax: (7 495) 411 83 66

e-mail: gossort@gossort.com

www.gossort.com

To: UPOV Office
e-mail: upov.mail@upov.int
Attention: Ms. P. Button, Vice Secretary-General

May 18, 2016.

Subj: In reply to UPOV Circular E-16/084 of April 4, 2016: Comments of the Russian Federation concerning International System of Cooperation (ISC) (document CC/91/5)

Dear Vice Secretary-General,

Thank you for another opportunity to present our position regarding the initiative to create a so-called "International System of cooperation" (ISC), presented in document CC/91/5.

The Russian Federation considers that the initiated structure for international cooperation (ISC) when UPOV, in fact, would constitute another special Union of (individual States) within the UPOV for administration of applications, with its "legal basis" (see Issue 23), with its powers (see Issues 22, 27) and financing (see Issues 20, 24, 25, 26, 28, 29, 30).

We hereby confirm the opinions in relation to the ISC expressed in our comments of December 23, 2015 in reply to the UPOV Circular E-15/263.

We believe that application for the breeder's right granting, as before, should be filed to the Russian Federation authority directly from the breeder, including the electronic application form. Preliminary examination of the application materials, examination of a variety denomination, publication of applications, examination of novelty and DUS examination are the powers of the authority of the Russian Federation.

The initiated ISC structure intermediation between applicant and national authority would keep long the receipt of application by the authority at least a year, what could in turn be the cause of the loss of novelty of the given variety and, in accordance with national legislation, the grounds for rejection of the application for PBR granting.

Thank you for your attention.

Yours sincerely,



V. Voloshchenko,
Chairman

ANNEX XIII

RESPONSE FROM SWITZERLAND TO UPOV CIRCULAR E-16/084
(Original: German)

From: eva.tscharland@blw.admin.ch [mailto:eva.tscharland@blw.admin.ch]
Sent: Friday, May 20, 2016 2:20 PM
To: mail, Upov
Subject: AW: REMINDER: Circular E-16/084: ISC - Comments invited

Madam,
Sir,

We refer to UPOV Circular E-16/084 concerning a potential International System of Cooperation (ISC), in respect of which we submit the following comments:

- a. The Electronic Application System project has been in operation for some time, with a great deal of resources invested in it. The purpose of this system is to reduce the application filing costs for breeders of filing applications. It remains to be shown what further benefits an ISC would bring and whether these benefits would outweigh the costs of setting up and operating the ISC.
- b. Like Norway, we are unconvinced that an agreement concluded by the Council would constitute sufficient legal basis for an ISC. Furthermore, there would need to be clarification of how this relates to Article 10 of UPOV 1991.
- c. As regards the proposed ISC-WG, we fear that a WG would become inefficient if all UPOV members were able to take part at any time. A parallel structure could then arise alongside the Consultative Committee (CC) (as is already the case with the CAJ-AG and the CAJ). Our preference would be for a small but efficient group to report back to the CC as soon as possible with its findings on the issues raised.

Yours sincerely,

Eva Tscharland

Federal Department of Economic Affairs,
Education and Research
Federal Office for Agriculture
Legal Affairs

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www.blw.admin.ch

[Annex XIV follows]

CC/92/10

ANNEX XIV

RESPONSE FROM THE UNITED STATES OF AMERICA TO UPOV CIRCULAR E-16/084
(Original: English)

From: Sukhapinda, Kitisri [mailto:Kitisri.Sukhapinda@USPTO.GOV]
Sent: Friday, April 15, 2016 8:37 PM
To: mail, Upov
Cc: Wu, Elaine
Subject: RE: Circular E-16/084: ISC - Comments invited

Dear Sir/Madam,

Responding to the UPOV Circular E-16/084: Invited Comments on possible International System of Cooperation (ISC), the U.S. delegation submits the following:

The purpose of this circular is to recall that the Consultative Committee agreed that members of the Union be given until May 20, 2016, to:

(a) provide additional issues concerning a possible ISC;

The U.S. delegation has no additional issues.

(b) comment on the draft mandate and terms of reference presented in document CC/91/5, paragraphs 8 and 9; and

The U.S. delegation proposes adding in paragraph 9 of document CC/91/5 the following:

(VIII) be based on voluntary participation.

(c) indicate their wish to participate in a working group [WG-ISC] to explore the issues concerning a possible ISC.

The U.S. delegation wishes to participate in the WG-ISC.

Best regards,

Kitisri Sukhapinda
USPTO
Office of Policy and International Affairs
Kitisri.Sukhapinda@uspto.gov
571-272-8047

[Annex XV follows]

ANNEX XV

TABLE SHOWING THE CHANGES TO THE POSSIBLE ISSUES CONCERNING AN ISC,
AS SET OUT IN DOCUMENT CC/89/6, ANNEX II, ON THE BASIS OF COMMENTS RECEIVED
IN RESPONSE TO UPOV CIRCULAR E-16/084

Issue 1	(a) to clarify that the an ISC would not affect the responsibility of the members of the Union in relation to the grant and protection of breeders' rights.
	(b) to clarify that: <ul style="list-style-type: none"> i. applications would not be filed with the Office of the Union; ii. applications would continue to be filed with individual members of the Union; iii. examination of applications would not be conducted by the Office of the Union; iv. an ISC would be based on existing forms of voluntary cooperation in examination between members of the Union; v. non-participation in an ISC would not affect cooperation in examination between members of the Union; vi. that an ISC would not affect the sovereign decision of the members of the Union in relation to the grant and protection of breeders' rights, including decisions on the conditions for the grant of breeders' rights.
	(c) to clarify that an ISC would not affect leeway 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) to take into account the standards and legislation of the various members of the Union in order to devise a framework that would benefit all members.
	(e) to clarify that members of the Union could choose to participate in selected elements of an ISC.
	(f) to analyze: <ul style="list-style-type: none"> i. the representation of breeders in each country member of the Union; ii. online / face-to-face payments; iii. publication in newspapers or the official gazette; iv. committees established by law, which decide on the registration of a variety; v. [termination of a breeder's right if it occurred in another territory (availability of information)] / [cancellation/nullity/early termination/expiry if it occurred in another country territory (availability of information)]; vi. obligation to submit representative samples, even if the DUS testing is not conducted; and vii. obligation to present legalized documents (powers of attorney, assignments, etc.).
Issue 2	(a) to clarify that it would be a matter for each member of the Union to decide whether to participate in an ISC and, if appropriate, what measures it would need to take in order to participate.
	(b) to utilize software and technical specifications that would make it possible for all members of the Union to participate in an ISC without prejudice to national standards.
Issue 3	(a) to note that the ISF/CIOPORA/CropLife International contribution anticipates more consider the possible impact on the number of PBR applications as a result of an ISC.
	(b) to consider whether an increase in PBR applications would translate into benefits for UPOV members.
	(c) to explore the demand from breeders for an ISC through a set of dedicated questions in order to obtain more reliable data on the benefits and the potential use of such system by breeders.
Issue 4	(a) to clarify that that it would remain a matter for each member of the Union to decide on its arrangements for DUS examination, including cooperation with other members of the Union.
	(b) to clarify that UPOV members would continue to be responsible for determining their own fees.
	(c) to consider the consequences of an ISC for DUS testing in individual UPOV members and for impact on breeders, particularly small and medium-sized enterprises (SME's).

Issue 5	<p>to consider whether</p> <p>(a) an ISC should be expected to result in a single DUS examination being sufficient for all members of the Union for all species, or</p> <p>(b) to clarify that an ISC should <u>not</u> be expected to result in a single DUS examination being sufficient for all members of the Union for all species, whilst recognizing the benefits of facilitating greater cooperation between members of the Union.</p>
Issue 6	to consider whether arrangements between members of the Union for DUS examination might be integrated in an ISC.
Issue 7	to note that information on arrangements between members of the Union for DUS examination is already included in the GENIE database.
Issue 8	<p>(a) to consider whether the establishment of an accreditation system, or other means of conveying objective information on DUS examination capacity, might facilitate cooperation in DUS examination and the features of such a system.</p> <p>(b) to consider the functioning of an accreditation system including:</p> <ul style="list-style-type: none"> the accrediting entity, the accreditation period, the costs associated with the offices and the entity that determines the examination rates; how the system would function for native varieties of each country and what would happen if these varieties need to be registered with the ISC and the Office is not accredited.
Issue 9	<p>(a) to consider other measures that might facilitate cooperation in DUS examination between members of the Union.</p> <p>(b) to consider how plant material would be obtained in cases where the DUS examination was conducted by another member of the Union.</p> <p>(c) to consider differences of geographic conditions and test conditions in terms of agricultural practices.</p>
Issue 10	to consider how an ISC could be used to support capacity in DUS examination with a view to facilitating cooperation, including the development of capacity that would facilitate cooperation.
Issue 11	<p>(a) to clarify that preliminary observations on novelty and denomination would not affect the sovereign decision of the members of the Union in relation to the grant and protection of breeders' rights.</p> <p>(b) to consider the basis on which a preliminary examinationobservation office(s) would be selected to conduct the preliminary examinationobservation.</p>
Issue 12	<p>(a) to clarify that that a preliminary examinationobservation should, as far as possible, aim to assess the acceptability of a proposed variety denomination for all members of the Union.</p> <p>(b) to consider how to take into consideration marks, geographical indications and designations of origin.</p> <p>(c) to consider how to take into consideration members of the Union that do not have national catalogs and those that do not file their data in the PLUTO database.</p> <p>(d) to consider how to address variety denominations in different alphabets.</p>
Issue 13	to consider, in the case that a member of the Union subsequently considered the proposed denomination unsuitable within its territory, the procedure for the breeder to submit another denomination.
Issue 14	to note the value of a UPOV similarity search tool for variety denomination purposes and to consider extending such a tool include words or elements that are considered to be unsuitable by members of the Union.
Issue 15	to consider the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union.
Issue 16	to recall that the UPOV Model Form for the Application for Plant Breeders' Rights (document TGP/5 "Experience and Cooperation in DUS Testing" Section 2), Item 8, provides a request for relevant information concerning novelty.
Issue 17	(a) to recall that the PLUTO database includes an item to allow for information to be provided on dates on which a variety was commercialized for the first time in the territory of application and other territories.

	<u>(b) to take into account that the concept of “first commercialization” differs among the UPOV members.</u>
Issue 18	to consider, in a first phase, that it might clarify that it would not be appropriate to include the checking of the completeness of the application, preparation for publication and inserting the relevant information about the application in a centralized application database.
Issue 19	to consider that the <u>EASEAF</u> Project, and/or ISC, might provide a basis for members of the Union to move towards greater harmonization in their application forms, thereby creating possibilities at a later stage for an ISC to include the checking of the completeness of the application, preparation for publication and inserting the relevant information about the application in a centralized application database.
Issue 20	<u>(a) to clarify that, in addition to an “ISC fee”, there would be fees for DUS examination and fees for individual members of the Union.</u>
	<u>(b) to make an economic analysis to assess the impact for plant breeders.</u>
Issue 21	<u>Subject to agreement on the relevant issues,</u> to consider the <u>EASEAF</u> Project, with an appropriate extension of the remit, as a starting point for the international service to be provided by an ISC in relation to: (a) receiving an application from any receiving UPOV member office or through a UPOV electronic application system; (b) application information to be distributed to UPOV members designated by the breeder; (c) application in a language of the breeder’s choice with automatic translation into languages of relevant UPOV members; (d) collection and distribution of fees; (e) information on accredited DUS centers; and (f) information on [choice of] preliminary examination office(s).
Issue 22	To consider whether an international service to be provided by <u>clarify that</u> an ISC should <u>not</u> : (g) monitor the status of the DUS examination; (h) receive and maintain reports of decisions on granting of PBR; (i) address objections concerning conduct of the DUS examination; (j) maintain and publish all relevant “bibliographic” information concerning PBR applications; (k) maintain standard UPOV variety descriptions, information on varieties of common knowledge included in the DUS examination, status and disposition of any propagating material provided by the breeder and information relating to pedigree and parental lines of hybrids (to be maintained as confidential); and (l) include a search for relevant varieties of common knowledge against which the application variety may be compared; or, whether such information should be monitored and maintained by members of the Union and made available at a general level via the PLUTO database.
	<u>To consider whether information in Issue 22 (g) to (l) should be monitored and maintained by members of the Union and made available at a general level via the PLUTO database.</u>
Issue 23	To consider an agreement as a suitable legal basis for an ISC, to be adopted by the Council of UPOV and open for signature only by members of the Union, in accordance with the UPOV Convention, including Article 21 of the 1978 Act [Tasks of the Council] and Articles 10 [Filing of Applications] and 26 [The Council] of the 1991 Act.
Issue 24	To consider that whether the examination by members of the Union using the ISC would be resourced by the members of the Union under their current arrangements for examination of applications <u>and whether</u> . However, the collection of fees to cover that work might be organized as a part of the international system of administration of an ISC.
Issue 25	It would be necessary to agree on a basis for DUS examination fees, probably varying by species.
Issue 26	In the case of preliminary observation office(s), it would be necessary to agree a basis for a fee, including whether there would be a universal fee for all members of the Union for all species.
Issue 27	To note that the extent of resources for an ISC would be determined by the extent of the international system of administration.
Issue 28	To consider whether the development and maintenance of an ISC should be fully financed by income from fees paid by breeders.

Issue 29	To consider whether the EASEAF Project, as funded through the Program and Budget for the 2016-2017 Biennium, should provide the core of the international system of administration.
Issue 30	To consider how additional elements to be incorporated in the EASEAF Project, e.g. the receipt of applications from receiving UPOV member offices, information on accredited DUS centers and information on [choice of] preliminary examination <u>observation</u> offices, should be funded.
Issue 31	<u>To examine and describe the relation between the ISC the Treaty and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Convention on Biological Diversity (CBD) Nagoya protocol, and which any effect a possible ISC will could have in this regard.</u>

[End of Annex XV and of document]