

**Consultative Committee****CC/94/12****Ninety-Fourth Session  
Geneva, October 25, 2017****Original:** English  
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**ORGANIZATION OF THE UPOV SESSIONS***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 invite the Consultative Committee to consider a procedure for examination of laws by correspondence that replicates the preliminary examination of laws by the Consultative Committee.

2. The Consultative Committee will be invited to:

(a) consider the proposals to amend document UPOV/INF/13/1, in order to introduce a procedure for examination of laws by correspondence, as set out in paragraph 10 of this document;

(b) recommend to the Council to adopt a revision of document UPOV/INF/13/1 "Guidance on how to become a member of UPOV" (document UPOV/INF/13/2), on the basis of the proposed amendments approved by the Consultative Committee, as it would be presented in document C/51/18 "Report by the President on the work of the ninety-fourth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee".

**BACKGROUND**

3. The Council, at its thirty-fourth extraordinary session, held in Geneva on April 6, 2017, decided to organize only one annual session of the Council, Consultative Committee, Administrative and Legal Committee (CAJ) and Technical Committee (TC) from 2018, with the sessions being held during one week at the end of October / beginning of November (see document C(Extr.)/34/6 "Report on the Decisions", paragraph 13).

4. In the context of the organization of a single set of sessions from 2018, and in order to facilitate the examination of laws of future members, the Consultative Committee agreed to consider at its ninety-fourth session a procedure for examination of laws by correspondence that replicates the preliminary examination of laws by the Consultative Committee (see document CC/93/9 "Report on the Conclusions", paragraph 30).

5. The background to the topic "Examination of laws of future members" is provided in document CC/93/6 "Organization of the UPOV sessions", paragraphs 17 to 32.

## EXAMINATION OF LAWS BY CORRESPONDENCE

6. The procedure for the examination of laws of future members is contained in document UPOV/INF/13/1 "Guidance on how to become a member of UPOV". Document UPOV/INF/13/1 is available at the CC/94 section [http://www.upov.int/restrict/meetings/en/details.jsp?meeting\\_id=44406](http://www.upov.int/restrict/meetings/en/details.jsp?meeting_id=44406) Document UPOV/INF/13, paragraph 10, states as follows:

"10. Requests for examination of laws by the Council are required to reach the Office of the Union at least four weeks prior to the week of the relevant Council session. In general, requests received after that date would be considered at the subsequent session of the Council. The Council holds its ordinary session in October and, where necessary, holds an extraordinary session in March/April. The dates of the sessions can be found at <http://www.upov.int/meetings/en/calendar.html>."

7. The Consultative Committee noted, at its ninety-third session, held in Geneva on April 6, 2017, that a procedure for examination of laws by correspondence might be used if:

(a) the request is received less than four weeks prior to the week of the earliest ordinary session of the Council and more than six months before the date of the subsequent ordinary session of the Council; and

(b) the analysis of the Office of the Union anticipates a positive decision and does not identify any significant issues concerning the conformity of the legislation with the UPOV Convention (see documents CC/93/6 "Organization of the UPOV sessions", paragraph 26 and CC/93/9 "Report on the Conclusions", paragraph 25).

8. The Consultative Committee noted that any changes to the procedure for the examination of laws would need to be reflected in a revision of document UPOV/INF/13 "Guidance on how to become a member of UPOV" (see documents CC/93/6 "Organization of the UPOV sessions", paragraph 28 and CC/93/9 "Report on the Conclusions", paragraph 25).

9. The Consultative Committee agreed to consider at its ninety-fourth session a procedure for examination by correspondence that replicates the preliminary examination of laws by the Consultative Committee (see document CC/93/9 "Report on the Conclusions", paragraph 30).

10. The proposals to amend document UPOV/INF/13/1 in order to introduce a procedure for examination of laws by correspondence that replicates the preliminary examination of laws by the Consultative Committee, are presented below highlighted and in revision mode:

[Extract from document UPOV/INF/13/1 "Guidance on how to become a member of UPOV"]

### SECTION B. ADVICE OF THE COUNCIL

#### *Relevant Article*

#### **Article 34**

#### **Ratification, Acceptance or Approval; Accession**

[...]

**(3) [Advice of the Council] Any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited.**

6. In order to become a member of the Union the advice of the Council in respect of the conformity of the law with the provisions of the UPOV Convention (Article 34(3) of the UPOV Convention) is required.

7. The advice of the Council involves the following procedure:

- (a) request by the State/intergovernmental organization for the advice of the Council;
- (b) preparation of a document with the analysis of the law by the Office of the Union ("analysis document");
- (c) posting of the analysis document and the law on the UPOV website;
- (d) preliminary examination of the law by the Consultative Committee; and
- (e) decision embodying the advice of the Council.

Further information on the procedure is provided below.

(a) Request by the State/intergovernmental organization for the advice of the Council

8. The request from any State or any intergovernmental organization for the advice of the Council in respect of the conformity of its law with the provisions of the UPOV Convention is required to be made in a letter addressed to the Secretary-General of UPOV (example letter available upon request). A copy of the law, or its translation, in one of the UPOV languages (English, French, German, Spanish) is required to be enclosed in the letter.

9. A State or intergovernmental organization may submit to the Council an adopted law or, alternatively, may submit a draft law as presented to its parliament or relevant legislative body. The draft law can provide the basis for a positive decision of the Council on accession to the UPOV Convention, provided that no modifications are introduced in the draft law during the parliamentary procedure other than any modification proposed by the Council in its decision (see below subsection (e) "decision embodying the advice of the Council").

10. Requests for examination of laws by the Council are required to reach the Office of the Union at least four weeks prior to the week of the relevant ordinary session of the Council session. In general, r Requests received after that date would be considered at the subsequent session of the Council, unless the procedure of examination of laws by correspondence is applicable (see paragraph 11). The Council holds its ordinary session in October/November, and, where necessary, holds an extraordinary session in March/April. The dates of the sessions can be found at <http://www.upov.int/meetings/en/calendar.html>.

11. The procedure of examination of laws by correspondence will be applicable if:

(i) the request is received less than four weeks prior to the week of the earliest ordinary session of the Council and more than six months before the date of the subsequent ordinary session of the Council; and

(ii) the analysis of the Office of the Union anticipates a positive decision and does not identify any significant issues concerning the conformity of the legislation with the UPOV Convention.

(b) Preparation of a document with the analysis of the law by the Office of the Union

14-12. In order to assist the Council in its examination of the law, the Office of the Union prepares a document that analyzes the law in relation to the text of the UPOV Convention ("analysis document").

(c) Posting of the analysis document and the law on the UPOV website

12-13. The analysis document and the law are posted on the UPOV website in advance of the examination of the Law by the Council session at which the law will be examined to assist members and observers in their consideration of the law. This procedure also provides an opportunity for comments from members and observers prior to the examination of the law by the Council. Any comments received are communicated to the State or the intergovernmental organization requesting the examination of the law and to the members of the Union. Where so requested by the member or observer making the comment, comments are posted on the UPOV website on a section accessible to observers.

14. In the case of examination of a law by correspondence (see paragraph 11), the procedure will be as follows:

(i) the analysis document and the law will be posted on the UPOV website within six weeks of receipt of the request and members and observers to the Council will be informed accordingly; and

(ii) members or observers will have the opportunity to provide comments within 30 days from the date the analysis document is posted on the UPOV website.

(d) Preliminary examination of the law by the Consultative Committee

13-15. Prior to consideration by the Council, the law will undergo a preliminary examination by the Consultative Committee, which is the body charged with the preparation of the sessions of the Council. The Consultative Committee is composed exclusively of members of the Union and, in general, meets immediately prior to the sessions of the Council. Although observers do not participate in the sessions of the Consultative Committee, a delegation from the State or intergovernmental organization concerned will be invited to participate in the session of the Consultative Committee in which the examination of its law

will take place. The delegation will be present during the introduction of the law and will be invited to answer any questions raised by the Consultative Committee.

16. In the case of examination of a law by correspondence (see paragraph 11), the procedure will be as follows:

(i) after the period for comments (see paragraph 14 (ii)) the Consultative Committee will be invited to make a positive recommendation by correspondence within 30 days;

(ii) if no objections are received from the representative to the Council of any of the members of the Union, the Consultative Committee will be deemed to have made a positive recommendation;

(iii) if an objection is received from the representative to the Council of one or more members of the Union, the examination of the law will be referred to the earliest ordinary session of the Council and the Consultative Committee will be informed accordingly;

(iv) if the Consultative Committee makes a positive recommendation by correspondence, the Council will be invited to take a positive decision by correspondence in accordance with the procedure in paragraph 18 (see below subsection "(e) Decision embodying the advice of the Council").

(e) Decision embodying the advice of the Council

14-17. At the Council session, will consider the recommendations of the Consultative Committee will be considered and the Council and will take its decision in respect of the conformity of the law with the provisions of the UPOV Convention. The delegation from the State or intergovernmental organization concerned will be invited to participate in the session of the Council.

18. In the case of examination of a law by correspondence (see paragraph 11), the procedure will be as follows:

(i) the designated persons to the Council (members and observers) will be informed that the Consultative Committee has made a positive recommendation and the Council will be invited to take a positive decision;

(ii) if no objections are received from the representative to the Council of any of the members of the Union within 15 days, the Council will be deemed to have taken a positive decision and the Council would be notified accordingly;

(iii) if an objection is received from the representative to the Council of one or more members of the Union, the examination of the law will be referred to the earliest ordinary session of the Council and the Council will be notified accordingly.

15-19. Some possible scenarios concerning the decisions of the Council are summarized below:

(i) if the decision of the Council embodying the advice concerning an adopted law is positive, the instrument of accession may be deposited (Article 34(3) of the UPOV Convention) (see Section C. "Implementation of the Convention"), provided that the law is not amended in the meantime;

(ii) if the decision of the Council embodying the advice concerning a draft law is positive, and if the draft law is adopted with no changes, and in force, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C "Implementation of the Convention");

(iii) The decision of the Council embodying the advice concerning a draft law is positive; however, changes are introduced during the procedure of adopting the law: if in the opinion of the Office of the Union those changes do not affect the substantive provisions of the 1991 Act of the UPOV Convention, the Office of the Union will prepare a document presenting those changes and its opinion and the Council will be invited to reaffirm its decision of conformity. If the Council reaffirms its decision of conformity, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C "Implementation of the Convention"). The procedure for examination of a law by correspondence will apply mutatis mutandis to the procedure to reaffirm a decision of conformity of the Council if the conditions in paragraph 11 apply;

(iii)(iv) if the decision of the Council embodying the advice concerning a draft law is positive, subject to modifications, reference to those modifications will be made in the decision of the Council embodying the positive advice. Once the required modifications are made to the draft law and that law is adopted with no other changes, and in force, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C "Implementation of the Convention");

(v) The decision of the Council embodying the advice concerning a draft law is positive, subject to modifications; however, additional changes are introduced during the procedure of adopting the law: if in the opinion of the Office of the Union those additional changes do not affect the substantive provisions of the 1991 Act of the UPOV Convention, the Office of the Union will prepare a document presenting those additional changes and its opinion and the Council will be invited to reaffirm its decision of conformity. If the Council reaffirms its decision of conformity, the State or intergovernmental organization may deposit its instrument of accession to the UPOV Convention (see section C "Implementation of the Convention"). The procedure for examination of a law by correspondence will apply mutatis mutandis to the procedure to reaffirm a decision of conformity of the Council if the conditions in paragraph 11 apply;

~~(iv)~~(vi) ~~if~~ The decision of the Council is that modifications to a law are required; the Council decision would recommend that once the modifications have been incorporated in the law, the amended law would need to be submitted for examination by the Council ~~at a subsequent session~~.

~~16-20~~. The Secretary-General of UPOV will communicate the decision of the Council to the authority requesting the examination of the law.

[End of extract from document UPOV/INF/13/1 "Guidance on how to become a member of UPOV"]

11. The Consultative Committee is invited to consider the proposals to amend document UPOV/INF/13/1 in order to introduce a procedure for examination of laws by correspondence that replicates the preliminary examination of laws by the Consultative Committee, as set out in paragraph 10 of this document. It is further proposed to present for adoption by the Council, at its fifty-first ordinary session, to be held in Geneva on October 26, 2017, the proposals to amend document UPOV/INF/13/1 approved by the Consultative Committee. The proposed revision of document UPOV/INF/13/1 (document UPOV/INF/13/2) could be presented in document C/51/18 "Report by the President on the work of the ninety-fourth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee".

12. *The Consultative Committee is invited to:*

(a) *consider the proposals to amend document UPOV/INF/13/1, in order to introduce a procedure for examination of laws by correspondence, as set out in paragraph 10 of this document, and*

(b) *recommend to the Council to adopt a revision of document UPOV/INF/13/1 "Guidance on how to become a member of UPOV" (document UPOV/INF/13/2), on the basis of the proposed amendments approved by the Consultative Committee, as it would be presented in document C/51/18 "Report by the President on the work of the ninety-fourth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee".*

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