

**Consultative Committee**

CC/97/17

**Ninety-Seventh Session  
Geneva, October 29, 2020****Original:** English  
**Date:** October 30, 2020

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**REPORT***adopted by the Consultative Committee**Disclaimer: this document does not represent UPOV policies or guidance*Opening of the session

1. The Consultative Committee held its ninety-seventh session via electronic means on October 29 and 30, 2020. The list of participants is reproduced in the Annex to this document.
2. The session was opened and chaired by Mr. Marien Valstar (Netherlands), President of the Council, who welcomed the participants and the new Secretary-General, Mr. Daren Tang.
3. Mr. Daren Tang, Secretary-General, welcomed the participants to the first virtual meeting of the Consultative Committee and thanked the members of the Union for their cooperation and support in the approach taken for the UPOV sessions in 2020, namely virtual meetings combined with consideration of documents by correspondence. He expressed his satisfaction at the approval of the Strategic Business Plan 2021-2025, which set out a positive vision for the development of UPOV over the next 5 years, based on the use of technology and enhancing cooperation. He was encouraged that the Consultative Committee had endorsed the basis for the Preparation of the Draft Program and Budget for the 2022-2023 Biennium. Also in relation to the Program and Budget for the 2022-2023 Biennium, he was pleased to see that the Consultative Committee had embraced the proposal for the organization of a pilot project on the use of neural machine translation technologies. He noted that the initiative had the potential to reduce costs and to increase the impact of UPOV guidance and materials.
4. The Consultative Committee noted the report by the Vice Secretary-General that Mr. Amit Sharma would start work on November 1, 2020 as IT Support Officer on a temporary appointment.

Adoption of the agenda

5. The Consultative Committee adopted the revised draft agenda, as presented in document CC/97/1 Rev. 2, and agreed to move item 19 "Policy on translation" (document CC/97/10 Rev.), after item 15 "Summary of the work of the Consultative Group on Long-term Financial Issues of UPOV" (document CC/97/7).

Outcome of the consideration of documents by correspondence

6. The Consultative Committee considered document CC/97/15.
7. The Consultative Committee noted the information on the outcome of the procedure for consideration of documents by correspondence, as reported in document CC/97/15.

Appointment of the Secretary-General

8. The Consultative Committee noted that document C/54/11 had been considered by correspondence.
9. The Consultative Committee noted that the decision in document C/54/11 had been taken by the Consultative Committee, as provided in document CC/97/15, paragraphs 13 and 14.

10. The Consultative Committee noted the report from the Office of the Union that the Council, in the procedure by correspondence, had appointed, on October 25, 2020, Mr. Daren Tang as the Secretary-General of UPOV for the period from October 30, 2020, to September 30, 2026 (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraphs 12 and 13).

#### Extension of the appointment of the Vice Secretary-General

11. The Consultative Committee noted that document C/54/12 had been considered by correspondence.

12. The Consultative Committee noted that the decision in document C/54/12 had been taken by the Consultative Committee, as provided in document CC/97/15, paragraphs 15 and 16.

13. The Consultative Committee noted the report from the Office of the Union that the Council, in the procedure by correspondence, had extended, on October 25, 2020, the appointment of the Vice Secretary-General from December 1, 2021, until November 30, 2022 (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraphs 14 and 15).

#### Documents proposed for adoption by the Council

14. The Consultative Committee noted that document C/54/3 Rev. had been considered by correspondence.

15. The Consultative Committee noted that the decisions in document C/54/3 Rev. had been taken and the following documents had been approved by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraphs 18 and 33.

#### *Information Materials*

Document UPOV/INF/16:	Exchangeable Software (Revision) (document UPOV/INF/16/9 Draft 2)
Document UPOV/INF/22:	Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/7 Draft 1)
Document UPOV/INF-EXN:	List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/14 Draft 2)

#### *TGP Documents*

Document TGP/5:	Experience and Cooperation in DUS Testing, Section 6: UPOV Report on Technical Examination and UPOV Variety Description (Revision) (document TGP/5: Section 6/3 Draft 1)
Document TGP/7:	Development of Test Guidelines (Revision) (document TGP/7/8 Draft 1)
Document TGP/14:	Glossary of Terms Used in UPOV Documents (Revision) (document TGP/14/5 Draft 1)
Document TGP/15:	Guidance on the Use of Biochemical and Molecular Markers in the Examination of Distinctness, Uniformity and Stability (DUS) (Revision) (document TGP/15/3 Draft 1)
Document TGP/0:	List of TGP documents and latest issue dates (Revision) (document TGP/0/12 Draft 1)

16. The Consultative Committee noted the report from the Office of the Union that the information materials and TGP documents above had been adopted by the Council on October 25, 2020, in the procedure by correspondence (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraphs 16 to 24).

#### Financial statements for 2019

17. The Consultative Committee noted that document C/54/5 had been considered by correspondence.
18. The Consultative Committee noted that the decision in document C/54/5 had been taken by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraph 35.
19. The Consultative Committee noted the report from the Office of the Union that the decision in document C/54/5 had been adopted by the Council on October 25, 2020, in the procedure by correspondence (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraph 26).

#### Report of the External Auditor

20. The Consultative Committee considered document C/54/6 and noted the information contained in the Report of the External Auditor.
21. In response to a question from the Delegation of the European Union on how the Office of the Union planned to respond to the two recommendations in the Report of the External Auditor, it was agreed that the Office of the Union should present proposals on the reporting of the financing of UPOV PRISMA for consideration by the Consultative Committee at its ninety-eighth session.
22. In response to a question from the Delegation of the European Union on how the Office of the Union planned to address the External Auditor's comment on their previous recommendation (2018 (C/53/6) R#1) concerning the provision of more details of the relevance of IOD's work to UPOV within the review of effectiveness, the Office of the Union explained that this would be addressed in the new UPOV Statement on Internal Control (October-December 2020).

#### Arrears in contributions as of September 30, 2020

23. The Consultative Committee considered document C/54/10.
24. The Consultative Committee noted the status of payment of contributions as of September 30, 2020, and noted that due to recent payments, Ireland, Sweden and Ukraine had no arrears. The Consultative Committee noted that Ecuador had made a payment, leaving a balance of 588 Swiss francs.

#### Financial Management Report for the 2018-2019 Biennium and Consolidation of reports

25. The Consultative Committee noted that documents C/54/4 and CC/97/16 had been considered by correspondence.
26. The Consultative Committee noted that the decisions in documents C/54/4 and CC/97/16 had been taken by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraphs 37 and 38 (see document C/54/18 "Consolidation of financial and performance reports").
27. The Consultative Committee noted the report from the Office of the Union that the decisions in documents C/54/4 and C/54/18 had been adopted by the Council on October 25, 2020, in the procedure by correspondence (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraphs 27 and 31).

#### Strategic Business Plan

28. The Consultative Committee noted that document CC/97/3 had been considered by correspondence.
29. The Consultative Committee noted that the decisions in document CC/97/3 had been taken by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraphs 40 to 42.

30. In response to a proposal from the Delegation of the European Union to provide a general context in relation to political and strategic developments and other trends and issues, the Vice Secretary-General proposed to introduce such a contextual background in future versions of the Strategic Business Plan, similar to the information that had been provided in Appendix I to the Annex to document CC/94/3.

#### Preparation of the Draft Program and Budget for the 2022-2023 Biennium

31. The Consultative Committee noted that document CC/97/8 had been considered by correspondence.

32. The Consultative Committee noted that the decisions in document CC/97/8 had been taken by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraphs 44 and 45.

#### Financing of long-term employee benefits

33. The Consultative Committee considered document CC/97/2.

34. The Consultative Committee noted that, due to the COVID-19 situation, there had been no developments to report with regard to financing of long term employee benefits.

#### Review of Regulation 4.6 of the UPOV Financial Regulation and Rules

35. The Consultative Committee noted that document CC/97/4 had been considered by correspondence.

36. The Consultative Committee noted that the decision in document CC/97/4 had been taken by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraph 47.

37. The Consultative Committee noted the report from the Office of the Union that the decision in document C/54/19 "UPOV/INF/4 "Financial Regulations and Rules of UPOV (Revision of Regulation 4.6)" had been adopted by the Council on October 25, 2020, in the procedure by correspondence (see document C/54/17 "Outcome of consideration of documents by correspondence", paragraph 25).

#### Summary of the work of the Consultative Group on Long-term Financial Issues of UPOV

38. The Consultative Committee noted that document CC/97/7 had been considered by correspondence.

39. The Consultative Committee noted that the decisions in document CC/97/7 had been taken by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraphs 49 to 55.

#### *Proposals for next steps*

40. The Consultative Committee considered document CC/97/15.

41. The Consultative Committee noted the comments provided by the European Union in response to Circular E-20/121, of August 21, 2020, as reported in document CC/97/15, paragraphs 56 and 57.

42. The Consultative Committee requested the Office of the Union to report to the Consultative Committee, at its ninety-eighth session, on developments concerning the issues on which the Consultative Group had prepared recommendations that were accepted by the Consultative Committee, as set out in paragraphs 19 and 20 of document CC/97/7, and any other relevant developments on matters considered by the Consultative Group.

#### Communication strategy

43. The Consultative Committee noted that document CC/97/6 Rev. had been considered by correspondence.

44. The Consultative Committee noted that the decisions in document CC/97/6 rev. had been taken by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraphs 60 to 62.

Training and assistance strategy

45. The Consultative Committee considered document CC/97/14.
46. The Consultative Committee agreed to modify decision paragraph 19(b) of document CC/97/14, as follows:
- “19. The Consultative Committee is invited to:
- “(b) endorse the updating of training materials, to reflect recent developments (e.g. UPOV PRISMA and latest information on benefits of UPOV membership) and, in relation to the UPOV distance learning courses, the updating to be implemented for the 2021 sessions, reflecting both the 1978 Act and 1991 Act of the UPOV Convention;”
47. The Consultative Committee recalled the importance of making UPOV session documents available according to the agreed timetable and agreed that document CC/97/14 with the revised decision paragraph be circulated to the Consultative Committee for approval by correspondence within 30 days.

Program for the use of the Russian language in UPOV

48. The Consultative Committee considered document CC/97/11.
49. The Consultative Committee noted the developments reported in document CC/97/11.

Policy on translation

50. The Consultative Committee noted that document CC/97/10 Rev. had been considered by correspondence.
51. The Consultative Committee noted that the decisions in document CC/97/10 Rev. had been taken by the Consultative Committee by correspondence, as provided in document CC/97/15, paragraphs 64 to 66.
52. The Delegation of China made reference to document CC/97/10 Rev. “Draft UPOV Policy on Translation”, Annex II, paragraph 9 “[t]ranslation requirements in other languages will be in accordance with the programs adopted by the Council and will include a cost analysis” and proposed that consideration should be given not only to the cost analysis but also to the advantages of materials being available in other languages for the development of the UPOV system.
53. The Vice Secretary-General confirmed that the policy was intended to consider both the benefits and the costs.

Proposals on international cooperation

54. The Consultative Committee considered documents CC/97/5 and CC/97/15.
55. The Consultative Committee welcomed the proposals, analysis and information agreed by the Working Group on a Possible International System of Cooperation (WG-ISC), as set out in Annex II to document CC/97/5, in conjunction with the comments received from members of the Union in response to Circular E-20/121, and the additional information provided by the Office of the Union, reproduced in the Annex to document CC/97/15.
56. The Consultative Committee noted the initiatives to address the proposals, as set out in Annex II to document CC/97/5.
57. The Consultative Committee noted that the WG-ISC has completed its mandate according to its terms of reference.

Providing support to new members of the Union

58. The Consultative Committee considered document CC/97/12.

59. The Consultative Committee agreed to broaden the agenda item “Providing support for new members of the Union” to “New developments in members of the Union”, to identify and consider possibilities to address relevant developments in members of the Union.

60. The Consultative Committee agreed to recommend to the Council the organization of a seminar, which would be open to members and observers, in the week of the UPOV sessions in 2021, to exchange information and experiences on strategies involving plant breeding and plant variety protection that addressed broad policy issues.

61. The Consultative Committee agreed that the seminar would be based on presentations by members of the Union and that a draft program, developed in consultation with the President of the Council and based on interest for participation and presentations by the members of the Union, would be prepared by the Office of the Union and circulated to members of the Union, for comments by correspondence.

#### Developments of relevance to UPOV in other international fora

62. The Consultative Committee noted the developments reported in document CC/97/13.

63. The Consultative Committee agreed to the participation of the Office of the Union in the reference group for the research project “Pathways to food security, poverty alleviation and livelihoods through the implementation of farmers’ rights to crop genetic diversity (DIVERSIFARM)”.

64. The Consultative Committee welcomed the participation of the Office of the Union in other international fora and noted that its interventions and contributions would need to reflect the UPOV Convention.

65. In relation to the following part of the Resolution 4/2019, “Implementation of the Global Information System”, from the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), held in Rome, Italy, from November 11 to 16, 2019 (GB-8):

[...]

*“4. **Encourages** the International Union for the Protection of New Varieties of Plants (UPOV) to explore possibilities for free access to and use of the information in the PLUTO database, including downloading information, for example by linking PLUTO to GLIS;”*

the Consultative Committee noted that the Delegation of Norway would propose that the Secretariat of the ITPGRFA contact the Office of the Union to explore the above possibilities. It was further noted that developments concerning those explorations would be presented to the Consultative Committee for its consideration.

#### Report on an initiative concerning smallholder farmers

66. The Consultative Committee considered document CC/97/9, in conjunction with the joint presentation made by Oxfam, Plantum and Euroseeds (project team) concerning smallholder farmers.

67. In reply to the questions raised by the Delegation of Canada, the project team clarified that:

(a) consideration of the findings of the Report would be a choice for each member of the Union. As presented in the report, policy considerations of accessibility or affordability of seed of protected varieties in relation to smallholder farmers might not be relevant for certain members of the Union;

(b) findings of the report were focused on seed-propagated crops and were not intended to apply to crops for non-food purposes, such as ornamentals and fiber crops. Consultations with fruit breeders were ongoing; and

(c) the flowchart in the report was intended to apply only to specific acts of smallholder farmers and would cease to be relevant when those farmers become commercial farmers, although there would be grey areas as farmers transitioned to becoming commercial farmers. Breeders would only be interested to enforce their rights if farmers were commercial farmers.

68. The Consultative Committee agreed the following in relation to providing guidance regarding the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers, taking into account the concerns raised at the session:

- (a) a circular to be sent to members of the Union requesting contributions on their experience and on their views on the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers;
- (b) the Office of the Union to draft guidance text taking into consideration the findings of the "Report and Recommendations of the project 'Options to interpret the notion of private and non-commercial use as included in Article 15. 1. I of the UPOV 1991 Convention'" and its flowchart, in conjunction with the contributions in reply to the Circular (see (a) above);
- (c) to circulate the first draft of the guidance to the Consultative Committee for comments by correspondence in conjunction with a compendium of the contributions received in reply to the circular; and
- (d) based on the comments received on the first draft of the guidance, to prepare an updated version for consideration of the Consultative Committee at its session in 2021, together with consideration of the status (e.g. explanatory note, guidance document, FAQ) that any agreed guidance should have.

Matters for information:

69. The Consultative Committee noted the following documents under item 24 "Matters for information", which had been posted for information on the CC/97 webpage:

- (a) Internal oversight and the WIPO Independent Advisory Oversight Committee (IAOC) (document CC/97/INF/2)
- (b) Observers in UPOV bodies (document CC/97/INF/3)
- (c) Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention or which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention (document CC/97/INF/4)

70. In reply to a question by the Delegation of Japan on the provision of assistance for future UPOV members in the development of legislation and in the accession procedures in current COVID-19 situation, the Office of the Union explained that it was organizing virtual meetings to maintain progress.

- (d) UPOV PRISMA (document CC/97/INF/5)

71. In response to a request from the Delegation of Norway, the Office of the Union confirmed that UPOV PRISMA would be updated to provide the information required for applications for plant breeders' rights in Norway.

Draft press release

72. Subject to developments in the Council, the Consultative Committee recommended to the Council to approve the draft press release contained in the Annex to document C/54/20 Prov..

Program for the ninety-eighth session

73. The Consultative Committee noted the developments at the virtual UPOV sessions in 2020 in relation to the calendar of meetings in 2021 approved by the Council (see document C/54/8). The Consultative Committee agreed that the following changes be presented for the approval of the Council and a revised version of document C/54/8 be prepared:

Administrative and Legal Committee

WG-EDV/1            December 8, 2020 (virtual meeting)  
Working Group on Essentially Derived Varieties (WG-EDV)

(Seminar on harvested material: date to be decided)

CAJ/78                October 27  
EAF/17                March 25 ~~(morning)~~ (virtual meeting from 12.00 pm to 2.00 pm (Geneva time))  
EAF/18                October 26 (evening)  
Meeting on the Development of an Electronic Application Form (EAF)

Seminar on strategies that address policies involving plant breeding and plant variety protection  
(date to be decided)

74. The Delegation of China expressed the commitment of China to UPOV and its activities. The Delegation was of the view that the use of more languages would bring greater benefits to members of the Union. The Delegation proposed the inclusion of a new item "Possible use of the Chinese language in UPOV" for the program of the ninety-eighth session of the Consultative Committee, in 2021.

75. The Delegation of the European Union referred to the study on cost implications and technical feasibility exercise that led to the program for the use of the Russian language in UPOV. The Delegation was of the view that the introduction of any new language required a case-by-case analysis of all foreseen activities, taking into account technical feasibility and available resources to ensure that the costs are covered, and the European Union and its members States highlighted that a prudent approach was needed due to the size of UPOV and the current economic uncertainty.

76. The Vice Secretary-General suggested to prepare a document with an analysis and proposals on activities and resourcing considerations, for consideration by the Consultative Committee at its ninety-eighth session.

77. The Consultative Committee agreed to include the following item for the program of its ninety-eighth session: "Possible use of the Chinese language in UPOV".

78. The following program was agreed for the ninety-eighth session of the Consultative Committee:

1. Opening of the session
2. Adoption of the agenda
3. Preliminary examination of the conformity of the legislation or proposed legislation of any State or organization having submitted a request under Article 34(3) of the 1991 Act of the UPOV Convention
4. Documents proposed for adoption by the Council
5. Financial statements for 2020
6. UPOV Performance Report for 2020
7. Report of the External Auditor
8. Arrears in contributions as of September 30, 2021
9. Strategic Business Plan



10. Draft Program and Budget for the 2022-2023 Biennium
11. Reporting on UPOV PRISMA financing
12. Long-term Financial Issues of UPOV
13. Communication strategy
14. Training and assistance strategy
15. Program for the use of the Russian language in UPOV
16. Possible use of the Chinese language in UPOV
17. Policy on translation
18. New developments in members of the Union
19. Possible guidance concerning smallholder farmers in relation to private and non-commercial use
20. Developments of relevance to UPOV in other international fora
21. Matters for information\*:
  - (a) Internal oversight and the WIPO Independent Advisory Oversight Committee (IAOC)
  - (b) Observers in UPOV bodies
  - (c) Situation concerning those States and intergovernmental organizations which have initiated the procedure for acceding to the UPOV Convention or which have been in contact with the Office of the Union for assistance in the development of laws based on the UPOV Convention
  - (d) UPOV PRISMA
22. Draft press release
23. Program for the ninety-ninth session
24. Adoption of the report on the conclusions (if time permits)

*79. This report was adopted by the Consultative Committee at the close of its session, on October 30, 2020.*

[Annex follows]

## ANNEXE / ANNEX / ANLAGE / ANEXO

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS /  
TEILNEHMERLISTE / LISTA DE PARTICIPANTES

(dans l'ordre alphabétique des noms français des membres /  
in the alphabetical order of the French names of the Members /  
in alphabetischer Reihenfolge der französischen Namen der Mitglieder /  
por orden alfabético de los nombres en francés de los miembros)

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