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## INTERNATIONAL SYSTEM OF COOPERATION

*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. The purpose of this document is to clarify the issues raised and possible ways forward with regard to an international system of cooperation (ISC).

## BACKGROUND

2. The Consultative Committee at its eighty-eighth session, held in Geneva on October 15, 2014, considered document CC/88/9 "International filing system, quality assurance and variety denomination search" (see document CC/88/16 "Report on the Conclusions", paragraphs 42 to 44). It noted the information provided on the WIPO International Patent System (PCT), International Trademark System (Madrid) and International Design System (Hague) in Annex I to document CC/88/9 and considered the written contribution by International Seed Federation (ISF), International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) and CropLife International, provided in Annex II to document CC/88/9 (ISF/CIOPORA/CropLife International contribution), in conjunction with their joint presentation at the eighty-eighth session of the Consultative Committee. A copy of document CC/88/9 "International filing system, quality assurance and variety denomination search" is provided on the CC/89 webpage for ease of reference.

3. The Consultative Committee requested the Office of the Union to prepare a document to clarify the issues raised and possible ways forward with regard to an international system of cooperation, for consideration by the Consultative Committee at its eighty-ninth session, in March 2015.

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## INTRODUCTION

4. The ISF/CIOPORA/CropLife International contribution explains that an “international system of cooperation (ISC) in processing of applications for plant breeders’ rights (PBRs) should be designed to systematize the filing and initial processing of applications while reserving to UPOV members the final decisions on grant and term of the right.” That explanation clarifies that the proposals in the ISF/CIOPORA/CropLife International contribution would not represent a change to the responsibility of the members of the Union to grant and protect breeders’ rights.

5. In order to clarify the issues raised and possible ways forward with regard to an international system of cooperation, the ISF/CIOPORA/CropLife International contribution has been categorized in four elements as follows:

### 1. International System of Administration

- a) receive 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 form in language of breeder’s choice with automatic translation into language of relevant UPOV members
- d) universally applicable fee schedule
- e) provide information on accredited DUS centers
- f) provide information on [choice of] preliminary examination office(s)
- g) monitor 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)
- l) [could include a search for relevant varieties of common knowledge against which the application variety may be compared]

### 2. Preliminary examination

- a) preparing the application’s content for publication
- b) completeness of the application
- c) payment of fee
- d) determination of novelty
- e) searching, and evaluation of the proposed denomination

### 3. DUS examination

- a) coordinated between members of the Union
- b) accreditation system

### 4. Examination by members of the Union using the ISC

- a) receive an application directly or via UPOV electronic application system
- b) review preliminary examination information
- c) review DUS examination report
- d) take decision on the granting of the PBR
- e) report decision on granting of PBR to ISC

6. The following section considers issues in relation to each of those elements. The four elements are considered in reverse order to reflect the perspective of members of the Union. In addition to those four elements, issues in relation to the legal basis and resourcing are also considered. A schematic summary of an ISC as summarized below is provided as Annex I to this document.

## ISSUES FOR AN INTERNATIONAL SYSTEM OF COOPERATION (ISC)

### Examination by members of the Union using the ISC

7. In the first instance, it could be clarified that the ISC would not affect the responsibility of the members of the Union in relation to the grant and protection of breeders' rights. It should also be clarified 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 (see also "Legal basis", below).

8. In relation to the practical and operational effects of an ISC for members of the Union, one element would be that a member of the Union could receive an application directly, as now, or could receive information for an application via a UPOV electronic application system. In the case of the latter, this approach is already under consideration in the form of the project on the development of a UPOV electronic application system<sup>1</sup> (EAS Project) and is considered further in the section "International System of Administration".

9. In relation to the number of applications, the ISF/CIOPORA/CropLife International contribution states:

"Perceived benefits of an international system of cooperation in processing of applications for plant breeders' rights:

"[...]

"15. More PBR applications by more breeders in more crops, countries, and regions. It will be much easier for breeders to file applications, so more applications can be expected by the PBR offices in countries where previously there have been very few applications."

10. A second element, in relation to the practical and operational effects, would be that a DUS report could be made available from another member of the Union. That matter is considered further in the section "DUS Examination"; however, it should be noted that such arrangements already exist between members of the Union.

11. A third element would be that the member of the Union would receive preliminary examination information from the preliminary examination office(s). That matter is considered further in the section "Preliminary examination".

### *Issues*

<i>Issue 1</i>	<i>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.</i>
<i>Issue 2</i>	<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>Issue 3</i>	<i>to note that the ISF/CIOPORA/CropLife International contribution anticipates more PBR applications as a result of an ISC.</i>

### DUS examination

12. The ISF/CIOPORA/CropLife International contribution states as follows:

"The ISC should forward PBR applications that pass its preliminary review, along with the international search report to the destination UPOV members designated by the breeder for DUS testing. The ISC would not be directly involved in conducting DUS examinations, but could make available a knowledge resource of DUS stations including DUS capacities and crop expertise. [...] UPOV members should share DUS testing responsibilities and centers of excellence should be developed to facilitate take-over of test reports.

<sup>1</sup> see document CAJ/70/7 "Electronic Application Systems".

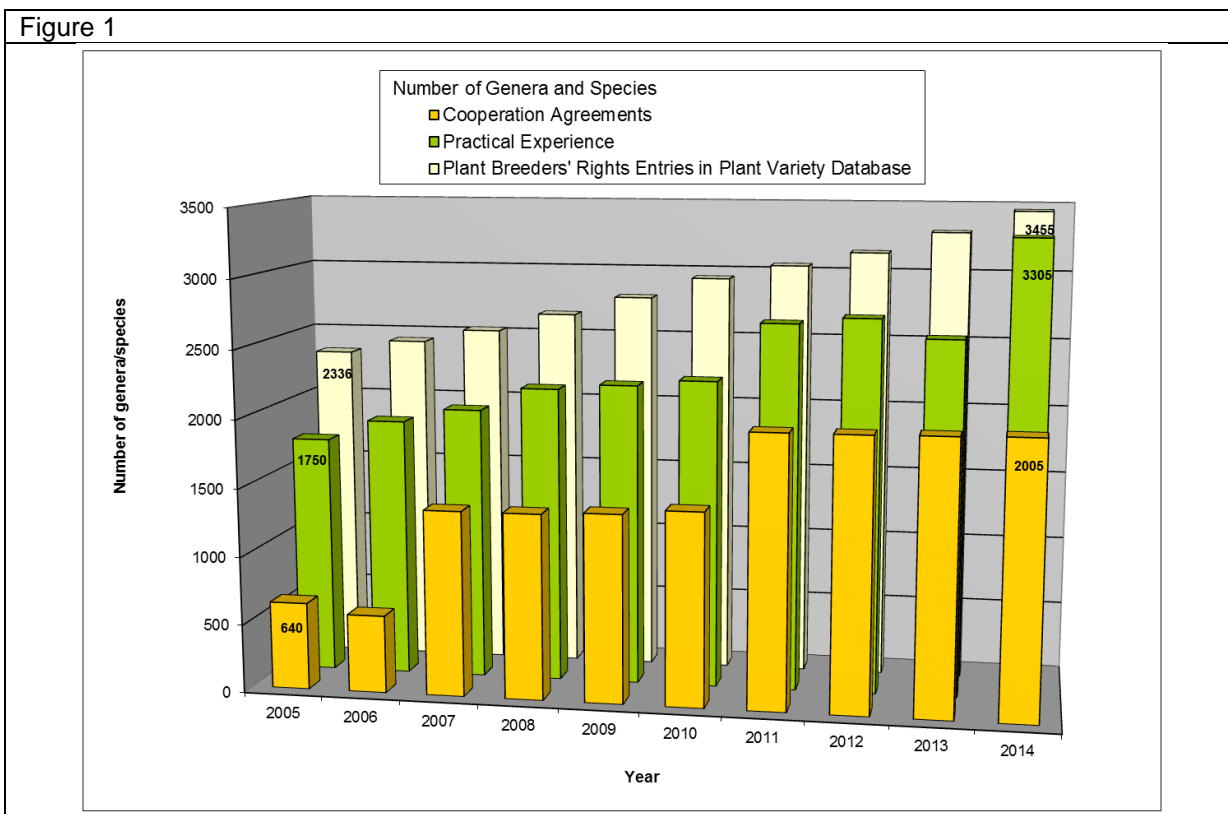
“The ISC could institute an accreditation system to ensure the availability of high quality DUS examination and adequacy of the deposit of propagating material. [...] Applicants would send plant material directly to the testing station of their choice.”

13. The Program and Budget for the 2014-2015 Biennium<sup>2</sup> explains that “cooperation between members of the Union is a key feature of the UPOV system and is the basis for an efficient system covering all plant genera and species. Such efficiency is an important means of ensuring that the UPOV system is accessible and affordable for all types of breeders”. The purpose of document C/48/5 “Cooperation in examination”, and one of the main purposes of the GENIE database, is to provide information on cooperation in examination by members of the Union.

14. Figure 1 below demonstrates that the number of plant genera and species for which there are cooperation agreements between members of the Union has not increased in line with the number of genera and species for which there have been PBR applications and for which practical experience has been declared by members of the Union. The large increases in numbers of agreements in 2007 and 2011 were almost exclusively as a result of cooperation involving the members States of the European Union and/or Community Plant Variety Office of the European Union (CPVO). Furthermore, analysis of the information in document C/48/5 “Cooperation in examination” reveals that for the individual entries:

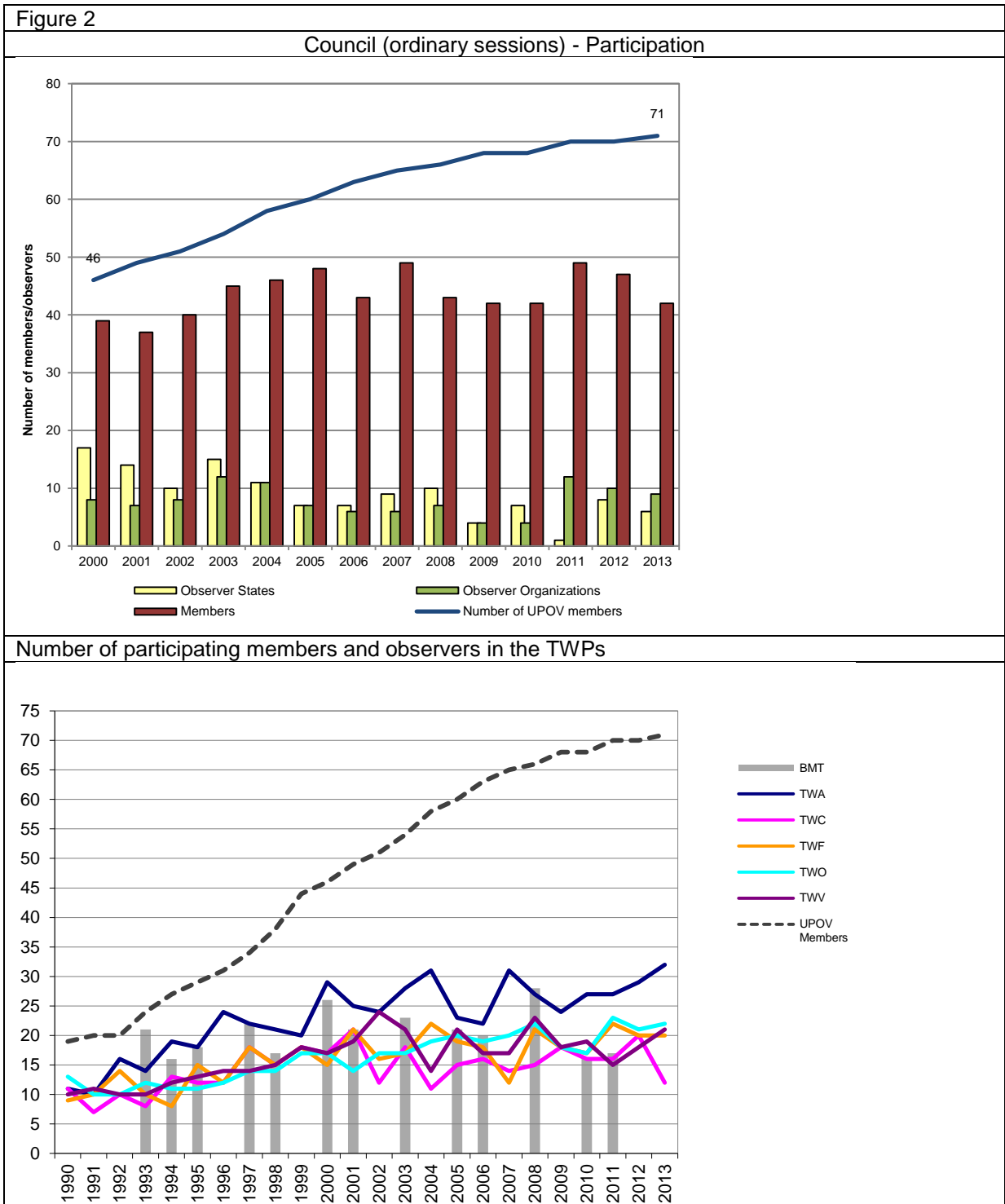
- 96% of all offer arrangements of DUS examination are from the member States of the European Union or the CPVO
- 96% of all receiving arrangements of DUS examination are from the member States of the European Union or the CPVO
- 97% of utilization of existing DUS reports involves DUS reports provided by member States of the European Union or the CPVO
- 85% of utilization of existing DUS reports involves utilization by member States of the European Union or the CPVO

15. The information above does not include the general arrangements for the providing or receiving of existing DUS reports. However, only Australia, Canada and Switzerland have reported general arrangements for the utilization of existing DUS reports.



<sup>2</sup> See document C/47/4 Rev. “Program and Budget of the Union for the 2014-2015 Biennium”, Sub-program UV.2: Services to the Union for Enhancing the Effectiveness of the UPOV System, Section 2.2.2.4.

16. One of the factors that may have made it more difficult for the development of cooperation is that the proportion of members of the Union regularly attending UPOV sessions has declined substantially in recent years, as indicated in Figure 2.



17. The Consultative Committee may wish to be aware that the Office of the Union has received requests from members of the Union for guidance on how to arrange cooperation in DUS examination. Furthermore, the recent UPOV membership of the African Intellectual Property Organization (OAPI) might be taken into account in this regard, bearing in mind that none of the member States of OAPI are currently members of the Union.

18. On the above basis, the Consultative Committee may wish 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. With regard to an accreditation system, or other means of

conveying objective information on DUS examination capacity, elements that might provide a starting point could include the following:

- Document TGP/5/Section/1 “Model Administrative Agreement for International Cooperation in the Testing of Varieties”
- Document TGP/6/Section/2 “Examples of Arrangements for DUS Testing”
- Agreements between members of the Union
- Entrustment requirements for Community Plant Variety Office of the European Union (CPVO) Examination Offices<sup>3</sup>

19. It should also be clarified that it could 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, meaning that an ISC might not be expected to result in a single DUS examination being sufficient for all members of the Union for all species. However, an ISC could present existing arrangements in order that the breeder could specify DUS examination(s) by members of the Union in the most efficient way under existing arrangements, with a view to extending cooperation over time.

#### *Example*

For a particular species, Breeder 1 wishes to obtain protection in members of the Union A, B, C and D. The ISC would provide information that members of the Union A, B and C will accept DUS reports from each other. Member of the Union D requires a DUS examination in its territory.

The breeder will need to specify a DUS examination in Country D, but would only need to specify an examination in one of the members of the Union A, B or C (although the breeder could also specify a DUS examination in two or all three).

20. Information on cooperation between members of the Union in DUS examination is already integrated in the GENIE database.

21. The Consultative Committee may also wish 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.

#### *Issues*

<i>Issue 4</i>	<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>Issue 5</i>	<i>to consider whether: (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 (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 members of the Union.</i>
<i>Issue 6</i>	<i>to consider whether arrangements between members of the Union for DUS examination might be integrated in an ISC.</i>
<i>Issue 7</i>	<i>to note that information on arrangements between members of the Union for DUS examination is already included in the GENIE database.</i>
<i>Issue 8</i>	<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>

<sup>3</sup> [http://www.cpvo.europa.eu/documents/qas/Entrustment\\_Requirements.pdf](http://www.cpvo.europa.eu/documents/qas/Entrustment_Requirements.pdf).

<i>Issue 9</i>	<i>to consider other measures that might facilitate cooperation in DUS examination between members of the Union.</i>
<i>Issue 10</i>	<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>

### Preliminary examination

#### *Preliminary examination office*

22. The ISF/CIOPORA/CropLife International contribution does not indicate a basis on which a “leading examination office(s)” would be selected to conduct a preliminary examination of: completeness of the application; payment of fee; determination of novelty; and searching, and evaluation of the proposed denomination and to prepare the application for publication. However, it indicates that the “leading” office should have “competence and experience in the species concerned to ensure uniformity of examination for the relevant genus and species”. For the purposes of this document, the office that would conduct the preliminary examination is referred to as the “preliminary examination office”.

#### *Proposed denomination*

23. The ISF/CIOPORA/CropLife International contribution indicates that the preliminary examination should include an evaluation of the proposed denomination for “uniqueness and appropriateness”.

24. The UPOV Convention<sup>4</sup> states that a “variety must be submitted to all members of the Union under the same denomination. The authority of each member of the Union shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.”

25. Document UPOV/INF/12/4 “Explanatory notes on variety denominations under the UPOV Convention”, Preamble, states that:

“3. The Council emphasizes that the main purpose of these Explanatory Notes is to ensure that, as far as possible, protected varieties are designated in all members of the Union by the same variety denomination [...].

“4. Whilst noting that the only binding obligations for members of the Union are those contained in the UPOV Convention itself, the Council considers that the aim set out in paragraph 3 can only be achieved if the broadly worded provisions on variety denominations under the UPOV Convention are uniformly interpreted and applied by the members of the Union, and that the adoption of appropriate explanatory notes is therefore advisable. Those Explanatory Notes should not be interpreted in a way that is inconsistent with the UPOV Convention.

“5. The Council considers that the adoption of such Explanatory Notes for the uniform interpretation and application of the provisions on variety denominations will be of assistance not only to the authorities of members of the Union but also to breeders in their selection of variety denominations.

“6. The Council, [...] recommends that the authorities of the members of the Union,

(i) base their decisions on the suitability of proposed variety denominations on these Explanatory Notes;

(ii) take into account the guidance in these Explanatory Notes concerning the procedure for assessing the suitability of proposed variety denominations and the exchange of information;

(iii) provide comprehensive information concerning these Explanatory Notes, to assist breeders when selecting variety denominations.

“[...]”

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<sup>4</sup> Paragraph 5 of Article 20 of the 1991 Act and of Article 13 of the 1978 Act and 1961 Convention.



26. It might be clarified 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. However, in the case that a member of the Union subsequently considered the proposed denomination unsuitable within its territory it would require the breeder to submit another denomination.

27. In relation to a preliminary examination of a proposed denomination, it is recalled that the CAJ<sup>5</sup> approved the establishment of a working group to develop proposals for a UPOV similarity search tool for variety denomination purposes (the "WG-DST"). Such a tool would be an important element of a preliminary examination. However, in order to reduce the frequency of members of the Union considering a proposed denomination to be unsuitable within their territories after the preliminary examination, it could be useful to include words or elements that are considered to be unsuitable by members of the Union. Furthermore, it would be necessary to extend consideration of the denominations currently included in the PLUTO database to other denominations considered by members of the Union.

#### *Issues*

<i>Issue 11</i>	<i>to consider the basis on which a preliminary examination office(s) would be selected to conduct the preliminary examination.</i>
<i>Issue 12</i>	<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>Issue 13</i>	<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>Issue 14</i>	<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>Issue 15</i>	<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>

#### *Novelty*

28. The Explanatory Notes on Novelty under the UPOV Convention (document UPOV/EXN/NOV) state that as "explained in the UPOV Convention, for the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material. In that respect, the authority may request the breeder to furnish all the necessary information for the examination of novelty in the application form." Document UPOV/EXN/NOV/1 further explains 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.

29. It is also recalled that the PLUTO database<sup>6</sup> 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.

#### *Issues*

<i>Issue 16</i>	<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>
<i>Issue 17</i>	<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>

<sup>5</sup> At its sixty-eighth session, held in Geneva, on October 21, 2013 (see document CAJ/70/4 "Variety denominations").

<sup>6</sup> See document CAJ/69/6, Annex I "Program for Improvements to the Plant Variety Database", Section 3.4.

*Preparing the application's content for publication/completeness of the application/payment of fee*

30. The ISF/CIOPORA/CropLife International contribution states that:

"5. Centralized review and preliminary evaluation

"The ISC should consistently route PBR applications through international phase examination conducted by leading examination office(s) having competence and experience in the species concerned to ensure uniformity of examination for the relevant genus and species. Review should include all formal (i.e., non-DUS testing) matters, such as completeness of the application, payment of the fee, searching, and evaluation of the proposed denomination for uniqueness and appropriateness, including determination of novelty, etc. The ISC international phase process should include indexing the information in the application in a manner consistent with international documentation standards, preparing the application's content for publication, and inserting the relevant information about the application in a centralized application database. [...]"

31. With regard to "completeness of the application" and "preparing the application's content for publication, and inserting the relevant information about the application in a centralized application database" it might be clarified that the proposal in the ISF/CIOPORA/CropLife International contribution suggests that the ISC international phase would not, in itself, constitute an application for PBR. The applications would need to be made with the members of the Union and publication arranged by the members of the Union concerned. In that regard, the Consultative Committee might wish to be aware that the analysis of application forms of members of the Union in the context of the EAS Project has revealed a low level of harmonization, meaning that a preliminary examination of the completeness of the application for the purposes of all members of the Union concerned could be problematic unless, or until, greater harmonization is achieved. Therefore, at least in a first phase, 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, in the ISC. At the same time, the Consultative Committee may wish to consider that the EAS 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.

32. Consideration of whether the application information from members of the Union might subsequently be collated at the ISC level is covered under "International System of Administration".

33. The ISF/CIOPORA/CropLife International contribution states the following with regard to fees:

"3. One application, any language, one time application payment

"The ISC should permit breeders to apply for PBRs in any number of UPOV members using a single application form of consistent content prepared by the breeder in their language of choice with payment of an application fee determined from a universally applicable fee schedule. [...]"

"7. Final examination and grant limited to countries designated by breeder

"Applicants could receive an interim report directly from the country or regional DUS testing station and send DUS fees to the testing station. The ISC need not have a role in the DUS examination, but should coordinate and monitor the DUS examination process.

"ISC shall send the DUS test report, plus any other required fees, to all destination countries for which the breeder has applied. On the basis of the DUS report, the countries shall grant the title."

34. The extracts above imply that there could be a single fee for the ISC system, with an additional fee for the DUS examination, which would reflect the costs concerned. The ISF/CIOPORA/CropLife International contribution does not mention fees for the individual applications with the members of the Union; however, there would need to be additional payments to the members of the Union for other fees, at least for annual fees etc., as appropriate.

35. Consideration could be given to whether all fees related to applications might be collected via the ISC system, with subsequent distribution to relevant parties. This matter will be considered under "International System of Administration".

Issues

Issue 18	<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>
Issue 19	<i>to consider that the EAS 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>
Issue 20	<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>

International System of Administration

36. An important consideration for the cost of establishing and maintaining an ISC would be the extent of services that would be offered by the ISC, as opposed to the work that would be done by the individual members of the Union. In that regard, it would be appropriate to recognize the relatively small number of PBR applications (approx. 14,000/annum) compared to WIPO systems such as the International Patent System (PCT) (approx. 200,000/annum).

37. In relation to the international service to be provided by an ISC, a starting point could be the EAS Project. The aim of the EAS project is to develop a multilingual, electronic form containing questions relevant for PBR applications for members of the Union<sup>7</sup>. It is planned that a proof-of-concept prototype (Version 1), comprising relevant questions for the application forms and technical questionnaires of the participating members of the Union<sup>8</sup>, will be presented to the CAJ and Council in October 2015. Version 1 would be in English only, using Lettuce as an example species.

38. Version 1 would enable breeders to complete an online form containing all relevant questions for the application forms and technical questionnaires of the selected participating members of the Union, or to submit all the relevant data electronically via XML format. The data would be stored in a UPOV database. Relevant data would then be forwarded to each member of the Union in a chosen format. There would also be the possibility for members of the Union to upload application data to the UPOV database, with a view to that data being accessible to the relevant breeder for use in other applications. The final version of the EAS would include features such as payment authorization, language options and the possibility for participating UPOV members to introduce or modify their questions in the form. A short presentation on the EAS Project (in English only) will be made available on the Consultative Committee website at [http://www.upov.int/restrict/meetings/en/details.jsp?meeting\\_id=35057](http://www.upov.int/restrict/meetings/en/details.jsp?meeting_id=35057).

39. The following sections consider the elements of an ISC indicated in the ISF/CIOPORA/CropLife International contribution:

- a) receive 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 language of breeder's choice with automatic translation into languages of relevant UPOV members

40. In principle, items (a), (b) and (c) would be addressed by the EAS Project. However, there would be additional complexity and cost in receiving applications from any receiving UPOV member office.

<sup>7</sup> See document CAJ/66/5 "Electronic Application Systems", paragraph 2.

<sup>8</sup> Argentina, Australia, Brazil, Canada, Colombia, Dominican Republic, Ecuador, European Union, France, Germany, Japan, Mexico, Netherlands, New Zealand, Paraguay, Republic of Korea, Switzerland, United States of America, Viet Nam.

d) universally applicable fee schedule

41. The EAS Project would have a facility for collecting fees for the ISC and could also be designed to collect and distribute fees for DUS examination and other fees for individual members of the Union (e.g. fees to cover the administration of the application at the level of the member of the Union).

e) provide information on accredited DUS centers

42. The EAS Project could be designed to provide information on arrangements for cooperation in DUS examination between members of the Union in a form that would enable breeders to identify the most efficient arrangements.

f) provide information on [choice of] preliminary examination office(s)

43. Subject to the establishment of clear criteria for determining preliminary examination offices for the preliminary examination, the EAS Project could be designed to provide information on the choice of preliminary examination offices.

g) monitor 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)

l) [could include a search for relevant varieties of common knowledge against which the application variety may be compared]

44. Elements (a) to (f) could be integrated into an automated system that would avoid the need for work by administrative staff on individual applications. However, elements (g) to (l) would all, potentially, require significant administrative work at the ISC (UPOV) level. To avoid the creation of a substantial administrative unit at the UPOV level, it could be agreed that the members of the Union would coordinate the exchange of information in relation to the preliminary examination and DUS examination according to agreed procedures.

45. Information on applications filed with the members of the Union could be provided at a general level by the members of the Union via the PLUTO database. It would be possible to use an international reference to indicate applications that were entered via the ISC. In that regard, as a part of the EAS Project, the Office of the Union has made a request to WIPO for a two-letter code to represent the name of the UPOV within WIPO ST.3 "Recommended Standard on Two-Letter Codes for the Representation of States, Other Entities and Intergovernmental Organizations".

#### Issues

<i>Issue 21</i>	<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> <ul style="list-style-type: none"><li><i>a) receiving an application from through a UPOV electronic application system and, at a later stage, any receiving UPOV member office;</i></li><li><i>b) application information to be distributed to UPOV members designated by the breeder;</i></li><li><i>c) application in a language of the breeder's choice with automatic translation into languages of relevant UPOV members;</i></li><li><i>d) collection and distribution of fees;</i></li><li><i>e) information on arrangements for cooperation in DUS examination between members of the Union; and</i></li><li><i>f) information on [choice of] preliminary examination office(s).</i></li></ul>
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<i>Issue 22</i>	<i>To consider whether an international service to be provided by an ISC should:</i> <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> <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>
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### Legal basis

46. Issue 1 proposes 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. The basis of an ISC would be: an international system of administration; a preliminary examination; and facilitation of cooperation in DUS examination, in order to assist members of the Union in the process of examining applications in accordance with the requirements of the UPOV Convention. Those aspects are based on existing provisions of the UPOV Convention. Therefore, a revision of the UPOV Convention would not seem an appropriate basis for an ISC.

47. The ISF/CIOPORA/CropLife International contribution states that the “ISC should bind UPOV members by contract to 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), 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.”

48. Contractual arrangements could provide a legal basis for an ISC. However, it might not be a suitable instrument at the UPOV level and could imply that contractual arrangements would only be negotiated by the participating members of the Union.

49. In anticipation of the need for any legal basis to contain suitable provisions and procedures, to be agreed by all UPOV members and to be transparent, an “agreement” could provide a suitable legal basis. The text of the agreement would be adopted by the Council and the agreement would enter into effect between the members of the Union that signed the agreement. It is anticipated that such an agreement would only be open to members of the Union. The “Agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants”<sup>9</sup> (WIPO/UPOV Agreement) is an example of an agreement adopted by the Council within its mandate for the efficient functioning of the Union. The WIPO/UPOV Agreement implements certain provisions of the UPOV Convention (e.g. administrative and financial regulations).

<i>Issue 23</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>
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### Resources and Financing

50. As explained above, in order to clarify the issues raised and possible ways forward with regard to an international system of cooperation, the ISF/CIOPORA/CropLife International contribution has been categorized in the following four elements:

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<sup>9</sup> document UPOV/INF/8.

1. International System of Administration
2. Preliminary examination
3. DUS examination
4. Examination by members of the Union using the ISC

51. The substantial aspects of those elements have been considered above. The resource and financing aspects are considered below:

#### *International System of Administration*

52. This section considers the resources and possible sources of financing that would be required for the international elements of an ISC.

#### *Resource requirements*

53. The resources that would be required for the international administration elements of an ISC might be broadly categorized as follows:

- (i) Initial IT infrastructure development
- (ii) Maintenance and ongoing development of IT infrastructure
- (iii) Administrative work
- (iv) Management.

54. The development of the initial IT infrastructure would comprise software development, probably outsourced to a specialist company. Maintenance and on-going development of the IT infrastructure would also need to be provided. As with other UPOV IT projects, arrangements for WIPO's support for the system would need to be considered.

55. The extent of resources for administrative work and management would be determined by the extent of the international system of administration. As explained in paragraph 44, certain elements could be integrated into an automated system that would avoid the need for work by administrative staff on individual applications. However, other elements would potentially require significant administrative work at the ISC (UPOV) level and, therefore, also imply significant management resources. A business analysis of the international administration elements of an ISC, built on the EAS Project, could provide a basis to estimate the cost.

#### *Financing*

56. It is anticipated that the development and maintenance of an ISC, including the IT infrastructure support provided by WIPO<sup>10</sup>, would need to be fully financed by income from fees paid by breeders. However, in the development stage, there would be no income from applicants. Therefore, consideration would need to be given to how to finance the development of the ISC system, pending income from applications.

57. The first phase of the EAS Project was included in the Program and Budget of the Union for the 2014-2015 Biennium<sup>11</sup> and the completion and implementation of the EAS Project is proposed for inclusion in the Draft Program and Budget for the 2016-2017 Biennium<sup>12</sup>. Subject to approval by the Consultative Committee and the Council, a modest income from the EAS Project would be projected for the 2016-2017 Biennium. Therefore, in a situation where the EAS Project provided the core of the international system of administration, the ISC might start to be developed within the Program and Budget for the 2016-2017

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<sup>10</sup> The "Agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants" (document UPOV/INF/8), Article 2 (Indemnification of WIPO), states that "(2) Where any service rendered by WIPO concerns both UPOV and one or more Unions administered by WIPO (hereinafter referred to as "common services"), or where any expenditure incurred by WIPO concerns both UPOV and one or more Unions administered by WIPO (hereinafter referred to as "common expenditures"), the amounts of the indemnification owed by UPOV to WIPO shall be established in proportion to the interest of UPOV in the said service or expenditure. (3) The value of any service rendered exclusively to UPOV by WIPO and the evaluation of the interest of UPOV in common services and common expenditures shall be established by the Council of UPOV and the Director General of WIPO.

<sup>11</sup> See document C/47/4 Rev. "Program and Budget of the Union for the 2014-2015 Biennium", Sub-program UV.2: Services to the Union for Enhancing the Effectiveness of the UPOV System.

<sup>12</sup> See document CC/89/5 "Preparation of the Draft Program and Budget of the Union for the 2016-2017 Biennium".

Biennium. However, as explained above, an ISC system would require 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 office(s). Therefore, consideration would need to be given to the possibility for the additional elements to be funded from the Program and Budget, or whether to explore other funding options.

58. On the basis that an ISC would need to be fully financed by income from fees paid by breeders, the fees for the ISC system would need to recoup the cost of the development of the system, amortized over a suitable period, in addition to covering the on-going costs.

59. As explained in the section "Preparing the application's content for publication/completeness of the application/payment of fee", there could be a single fee for the ISC system, an additional fee for the DUS examination and possibly fees for the individual applications with relevant members of the Union. Consideration would need to be given to whether all fees related to applications might be collected via the ISC system, with subsequent distribution to relevant parties.

*Preliminary examination*

60. In the case of the preliminary examination, it would be necessary to agree a basis for a fee for the preliminary examination office, including whether there would be a universal fee for all members of the Union that acted as preliminary examination offices, for all species. The fees could be collected as a part of the international system of administration of an ISC.

*DUS examination*

61. In the case of DUS examination, it would be necessary to agree on a basis for DUS examination fees, probably varying by species, which could be collected via the international system of administration of an ISC.

*Examination by members of the Union using the ISC*

62. It is not proposed to consider the resources and financing of examination by members of the Union, on the basis that this 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.

*Issues*

<i>Issue 24</i>	<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>Issue 25</i>	<i>It would be necessary to agree on a basis for DUS examination fees, probably varying by species</i>
<i>Issue 26</i>	<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>Issue 27</i>	<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>Issue 28</i>	<i>To consider whether the development and maintenance of an ISC should be fully financed by income from fees paid by breeders</i>
<i>Issue 29</i>	<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>Issue 30</i>	<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>

## POSSIBLE WAY FORWARD

63. An approach for a way forward might be:

(i) The Consultative Committee to consider whether the concept of an International System of Cooperation (ISC) should be discussed further on the basis of Issues 1 to 30 in this document and/or other issues; and, if so,

(ii) To agree on which issues should be considered with a view to reaching a conclusion at the ninetieth session of the Consultative Committee and, in that regard, any additional information to be provided by the Office of the Union on those issues. Issues on which it might be appropriate to seek to reach a conclusion at the ninetieth session of the Consultative Committee are indicated in Annex II to this document;

(iii) To agree on which issues would require the development of detailed proposals/options before consideration by the Consultative Committee and to agree to establish an *ad hoc* working group ("ISC Working Group") for that purpose, the terms of reference and composition of which would be decided at the ninetieth session of the Consultative Committee. Issues on which it might be appropriate to establish an ISC Working Group to consider are indicated in Annex II to this document;

(iv) 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

(v) The Consultative Committee, at its eighty-ninth session, to be held in Geneva on March 27, 2015, to recommend to the Council, at its thirty-second extraordinary session, to be held in Geneva on March 27, 2015 to consider the development of an International System of Cooperation (ISC), on the above basis.

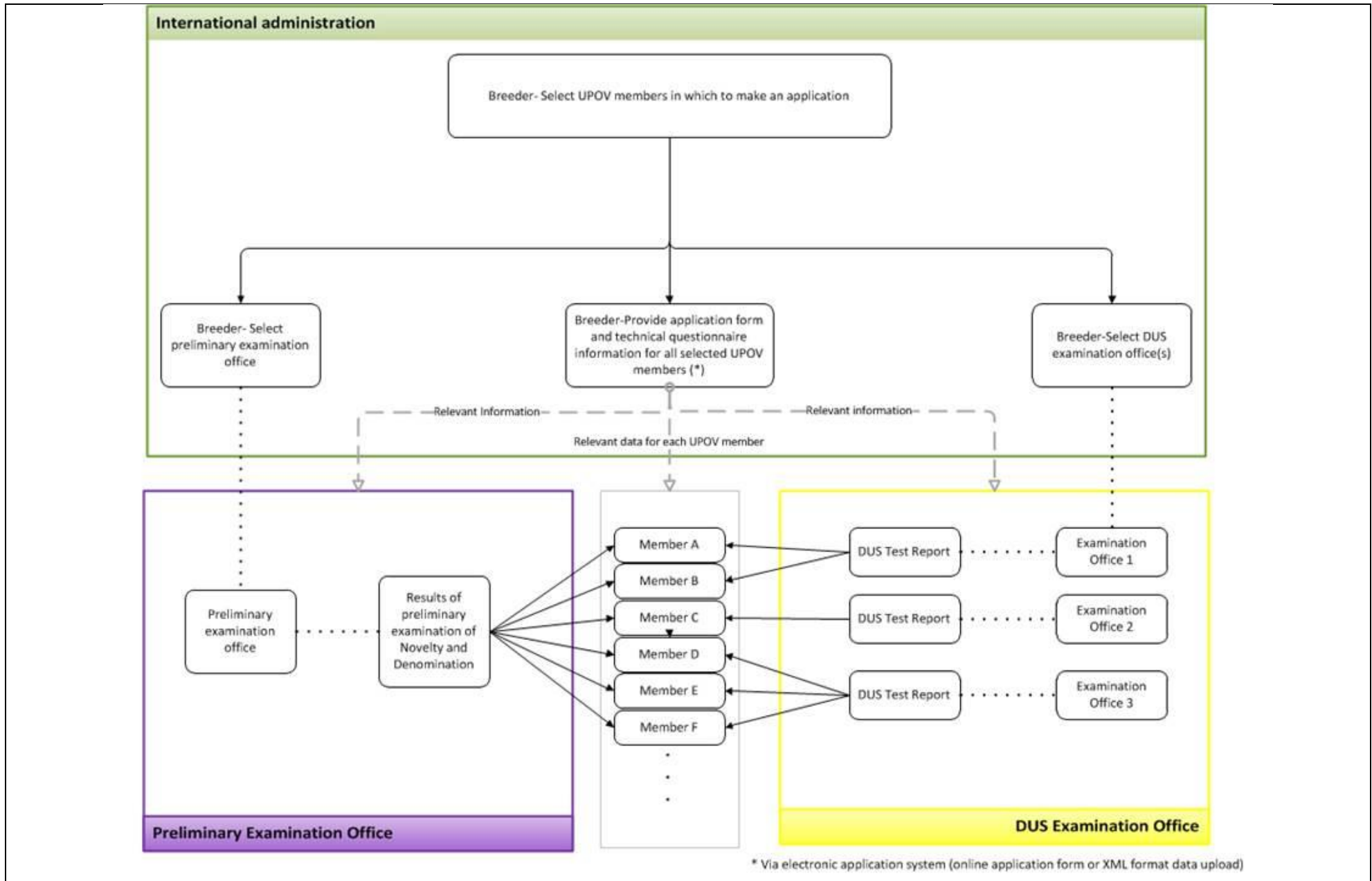
*64. The Consultative Committee is invited to consider the possible way forward proposed in paragraph 63 of this document.*

[Annex I follows]



ANNEX I

ILLUSTRATION OF A POSSIBLE INTERNATIONAL SYSTEM OF COOPERATION (ISC)



## ANNEX II

## SUMMARY OF POSSIBLE ISSUES CONCERNING AN INTERNATIONAL SYSTEM OF COOPERATION (ISC)

The following table provides a summary of the possible issues concerning an ISC, as set out in the main document with an indication of issues on which it might be appropriate to:

- seek to reach a conclusion at the ninetieth session of the Consultative Committee (indicated as “CC”) and
- establish an *ad hoc* working group (“ISC Working Group”) to develop detailed proposals/options for consideration by the Consultative Committee (indicated as “ISC WG”).

		<i>Consideration:</i>
<i>Issue 1</i>	<i>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.</i>	CC
<i>Issue 2</i>	<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>	CC
<i>Issue 3</i>	<i>to note that the ISF/CIOPORA/CropLife International contribution anticipates more PBR applications as a result of an ISC.</i>	CC
<i>Issue 4</i>	<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>	CC
<i>Issue 5</i>	<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 members of the Union.</i>	CC
<i>Issue 6</i>	<i>to consider whether arrangements between members of the Union for DUS examination might be integrated in an ISC.</i>	CC
<i>Issue 7</i>	<i>to note that information on arrangements between members of the Union for DUS examination is already included in the GENIE database.</i>	CC
<i>Issue 8</i>	<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>	ISC WG
<i>Issue 9</i>	<i>to consider other measures that might facilitate cooperation in DUS examination between members of the Union.</i>	ISC WG
<i>Issue 10</i>	<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 capacity that would facilitate cooperation.</i>	ISC WG
<i>Issue 11</i>	<i>to consider the basis on which a preliminary examination office(s) would be selected to conduct the preliminary examination.</i>	ISC WG
<i>Issue 12</i>	<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>	CC
<i>Issue 13</i>	<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>	ISC WG
<i>Issue 14</i>	<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>	ISC WG
<i>Issue 15</i>	<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>	ISC WG

Issue 16	<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>	CC
Issue 17	<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>	CC
Issue 18	<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>	CC
Issue 19	<i>to consider that the EAS 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>	CC
Issue 20	<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>	CC
Issue 21	<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> <i>a) receiving an application from any receiving UPOV member office or through a UPOV electronic application system;</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 accredited DUS centers; and</i> <i>f) information on [choice of] preliminary examination office(s).</i>	CC
Issue 22	<i>To consider whether an international service to be provided by an ISC should:</i> <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> <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>	CC
Issue 23	<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>	CC
Issue 24	<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>	CC
Issue 25	<i>It would be necessary to agree on a basis for DUS examination fees, probably varying by species.</i>	ISC WG
Issue 26	<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>	ISC WG
Issue 27	<i>To note that the extent of resources for an ISC would be determined by the extent of the international system of administration.</i>	CC

<i>Issue 28</i>	<i>To consider whether the development and maintenance of an ISC should be fully financed by income from fees paid by breeders.</i>	<i>CC</i>
<i>Issue 29</i>	<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>CC</i>
<i>Issue 30</i>	<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>CC</i>

[End of Annex II and of document]