

Consultative Committee**CC/96/5 Add.****Ninety-Sixth Session
Geneva, October 31, 2019****Original: English
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**ADDENDUM
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 present proposals, analysis and information, as agreed by the Working Group on a possible International System of Cooperation (WG-ISC), at its fifth meeting, held in Geneva on October 30, 2019, in accordance with the mandate and terms of reference for the WG-ISC, as established by the Consultative Committee at its ninety-second session, held in Geneva on October 27, 2016.
2. The proposals, analysis and information are presented in the Annex to this document.

[Annex follows]

ANNEX

PROPOSALS, ANALYSIS AND INFORMATION, AS AGREED BY THE WORKING GROUP ON A POSSIBLE INTERNATIONAL SYSTEM OF COOPERATION (WG-ISC), AT ITS FIFTH MEETING, HELD IN GENEVA ON OCTOBER 30, 2019, IN ACCORDANCE WITH THE MANDATE AND TERMS OF REFERENCE FOR THE WG-ISC, AS ESTABLISHED BY THE CONSULTATIVE COMMITTEE AT ITS NINETY-SECOND SESSION, HELD IN GENEVA ON OCTOBER 27, 2016

PROPOSAL 1

Assist members of the Union to make their documented DUS procedures and information on their quality management systems available to other members of the Union

Existing UPOV initiatives and materials

- Document TGP/6 “Arrangements for DUS Testing”

Analysis

Need

Document TGP/6/Section/2 “Examples of Arrangements for DUS Testing” provides some information from selected members of the Union on their arrangements for DUS testing. However, currently, members of the Union are not invited to provide further information for this document.

Advantages and disadvantages of the proposals, compared to existing arrangements

The proposal would provide an opportunity for members of the Union to make their documented DUS procedures and information on their quality management systems available to other members of the Union. If the information were proposed for inclusion in TGP/6/Section/2, the inclusion of information would be subject to approval by the Council.

Existence of a legal basis under the Acts of the UPOV Convention

The type of information proposed to be provided is already included in document TGP/6/Section/2 “Examples of Arrangements for DUS Testing”

Impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of members of the Union

It would be a matter for each member of the Union to decide whether to modify any of its domestic legislation, administrative procedures, rights and policy framework on the basis of the information provided.

Potential advantages and disadvantages for:

(i) society in the members of the Union;

The wider availability of documented DUS procedures and information on quality management systems could enable members of the Union to further improve the efficiency and quality of DUS testing. This would ensure that the cost of the system was as attractive as possible for breeders, thereby encouraging the wider availability of new varieties for agriculture, while ensuring that the quality of decisions was paramount.

(ii) PVP Offices of members of the Union, including:

- *costs and income*
- *number of applications and income received for applications;*

The availability of information would enable members of the Union to review their DUS testing system by providing information on opportunities to improve the efficiency and cost-effectiveness of DUS testing. In many members of the Union, the income received from applications includes the cost of DUS testing. In those cases, the cost of DUS testing will have an impact on income. It would be a matter for each member of the Union to decide how changes in DUS testing costs would affect fees for applicants and, therefore, income. However, a more efficient DUS testing system could be anticipated to result in a larger number of applications.

(iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);

A more effective and efficient DUS testing system is beneficial for all breeders, particularly SMEs.

(iv) farmers;

New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users' needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties. (see FAQ "Why do farmers and growers need new plant varieties?" <https://www.upov.int/about/en/faq.html#QF10>).

The introduction of the UPOV system of plant variety protection and UPOV membership were found to be associated with (see "What are the benefits of plant variety protection and UPOV membership?" <https://www.upov.int/about/en/faq.html#QG31>):

- (a) increased breeding activities,
- (b) greater availability of improved varieties,
- (c) increased number of new varieties,
- (d) diversification of types of breeders (e.g. private breeders, researchers),
- (e) increased number of foreign new varieties,
- (f) encouraging the development of a new industry competitiveness on foreign markets, and
- (g) improved access to foreign plant varieties and enhanced domestic breeding programs.

A more effective and efficient DUS testing system could be expected to result in a larger number of applications and, therefore, the availability of a larger number of new, improved varieties for farmers.

(v) UPOV

UPOV's mission statement includes reference to providing "an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society". An effective and efficient DUS testing system is a key part of an effective system of plant variety protection.

Resources of the Office of the Union would be required to implement the proposal.

PROPOSAL 2

Add contact details for DUS experts with practical knowledge of DUS testing for particular crops / species to the GENIE database

Existing UPOV initiatives and materials

- GENIE database
- Document TC/[session]/4 “List of genera and species for which authorities have practical experience in the examination of distinctness, uniformity and stability”
- Directory of PVP Offices (https://www.upov.int/members/en/pvp_offices.html)
- TGP/13 “Guidance for New Types and Species”

Analysis

Need

The “UPOV Report on the Impact of Plant Variety Protection Cooperation” (Impact Study) states that “Clearly, it is important that an effective PVP system not only provides a legal basis for protection, but also has the necessary mechanisms to enable its implementation in a practical and efficient manner. UPOV offers such a basis by providing guidance and by making provision for cooperation and support, particularly with regard to the examination of Distinctness, Uniformity and Stability (DUS testing), thereby removing potential practical constraints on the development of a PVP system. [...] membership of UPOV provides important technical assistance and maximizes opportunities for cooperation, which enables PVP to be extended to the widest range of plant genera and species in an efficient way. Cooperation has always been a key benefit of membership of UPOV and, as UPOV has grown both geographically and in terms of the number of plant genera and species for which protection has been required, that aspect has become more important, but also more powerful.”

One of the most important aspects of cooperation in DUS testing is the possibility for members of the Union to seek guidance from experts from other members of the Union, particularly with regard to plant genera and species in which the experts have experience that does not exist in the member of the Union seeking guidance.

Document TGP/13 “Guidance for New Types and Species” states that “2.3.1 [...] an authority may receive an application for a variety of a species of which they have no previous experience. In that situation, the first step should be to determine whether UPOV Guidelines for the Conduct of Tests for Distinctness, Uniformity and Stability (Test Guidelines) exist. The list of Test Guidelines can be found at <http://www.upov.int/en/publications/tg-rom/index.html> and relevant Test Guidelines will also be indicated in the GENIE database. If there are no Test Guidelines, a search should be made in TGP/5 Section 9 or the GENIE Database to identify if other members of the Union have practical experience of DUS testing in the species concerned.”

Information on members of the Union with experience in practical experience in the examination of DUS is provided by UPOV (GENIE database and document TC/[session]/4) and contact details for PVP Offices are provided on the UPOV website, but the contact details for DUS experts with practical knowledge of DUS testing for particular crops / species are currently not available. However, the bodies responsible for DUS testing are often not the PVP Offices, thereby presenting practical obstacles for members of the Union to obtain guidance from the relevant experts of other members of the Union.

Advantages and disadvantages of the proposals, compared to existing arrangements

The proposal to add contact details for DUS experts with practical knowledge of DUS testing for particular crops / species to the GENIE database would address information that is not provided in the GENIE database/document TC/[session]/4 and in the Directory of PVP Offices. No disadvantages are foreseen, because it would be a matter for each member of the Union to decide whether to provide the information and which contact details.

Existence of a legal basis under the Acts of the UPOV Convention

Information on practical knowledge of DUS testing is already published in UPOV.

Impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members

None foreseen. Information on practical knowledge of DUS testing is already published in UPOV.

Potential advantages and disadvantages for:

(i) *society in the members of the Union;*

Assistance for members of the Union in DUS testing can be anticipated to improve the quality of DUS testing and improve cost-effectiveness. This would ensure that the cost of the system was as attractive as possible for breeders, thereby encouraging the wider availability of new varieties for agriculture (see (iv) Potential advantages and disadvantages for farmers):

(ii) *PVP Offices of members of the Union, including:*

- *costs and income*
- *number of applications and income received for applications;*

This proposal could reduce the time, and therefore cost, for PVP Offices of members of the Union to obtain guidance on DUS testing. A more effective and efficient DUS testing system could be anticipated to result in a larger number of applications.

(iii) *domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);*

A more efficient means of obtaining guidance, including for new types and species would be beneficial for all breeders, particularly SMEs

(iv) *farmers;*

New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users' needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties. (see FAQ "Why do farmers and growers need new plant varieties?" <https://www.upov.int/about/en/faq.html#QF10>)

The introduction of the UPOV system of plant variety protection and UPOV membership were found to be associated with (see "What are the benefits of plant variety protection and UPOV membership?" <https://www.upov.int/about/en/faq.html#QG31>):

- (a) increased breeding activities,
- (b) greater availability of improved varieties,
- (c) increased number of new varieties,
- (d) diversification of types of breeders (e.g. private breeders, researchers),
- (e) increased number of foreign new varieties,
- (f) encouraging the development of a new industry competitiveness on foreign markets, and
- (g) improved access to foreign plant varieties and enhanced domestic breeding programs.

A more effective and efficient DUS testing system could be expected to result in a larger number of applications and, therefore, the availability of a larger number of new, improved varieties for farmers.

(v) *UPOV*

UPOV's mission statement includes reference to providing "an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society". An effective and efficient DUS testing system is a key part of an effective system of plant variety protection.

Resources of the Office of the Union would be required to implement the proposal.

PROPOSAL 3

Encourage the Technical Committee and Technical Working Parties to explore opportunities for facilitating cooperation in selected crops/species where cooperation is already developing between some members of the Union

Existing UPOV initiatives and materials

- Document TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants”
- Document TGP/5 “Experience and Cooperation in DUS Testing”
- Document TGP/6 “Arrangements for DUS Testing”
- GENIE database
- Document C/[session]/5 “Cooperation in Examination”
- Document TC/[session]/4 “List of genera and species for which authorities have practical experience in the examination of distinctness, uniformity and stability”
- TGP/13 “Guidance for New Types and Species”

Analysis

Need

The “UPOV Report on the Impact of Plant Variety Protection Cooperation” (Impact Study) states that “Clearly, it is important that an effective PVP system not only provides a legal basis for protection, but also has the necessary mechanisms to enable its implementation in a practical and efficient manner. UPOV offers such a basis by providing guidance and by making provision for cooperation and support, particularly with regard to the examination of Distinctness, Uniformity and Stability (DUS testing), thereby removing potential practical constraints on the development of a PVP system. [...] membership of UPOV provides important technical assistance and maximizes opportunities for cooperation, which enables PVP to be extended to the widest range of plant genera and species in an efficient way. Cooperation has always been a key benefit of membership of UPOV and, as UPOV has grown both geographically and in terms of the number of plant genera and species for which protection has been required, that aspect has become more important, but also more powerful.”

The introduction to document TGP/5 “Experience and Cooperation in DUS Testing” states that “Cooperation with regard to DUS testing is an important benefit of the UPOV system.” Document TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” (General Introduction) states in Chapter 3.1.1 that “Cooperation with other members of the Union can reduce the overall time, expense and number of examiners involved in the DUS tests, and minimize the work involved in the maintenance of variety collections.”

Advantages and disadvantages of the proposals, compared to existing arrangements

This proposal would complement information on cooperation in DUS testing by encouraging the Technical Committee (TC) and Technical Working Parties (TWPs) to explore opportunities for facilitating cooperation in selected crops/species where cooperation is already developing between some members of the Union. No disadvantages are foreseen with this proposal because it proposes that the TC and TWPs support developments initiated by the individual members of the Union.

Existence of a legal basis under the Acts of the UPOV Convention

Cooperation between members of the Union in DUS examination is foreseen in the UPOV Convention (see document TGP/5 Introduction).

Impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members

Facilitating cooperation between members of the Union may result in a change to administrative procedures for members of the Union, if they consider that to be appropriate.

Potential advantages and disadvantages for:

(i) society in the members of the Union;

As stated in the General Introduction, Chapter 3.1.1, "Cooperation with other members of the Union can reduce the overall time, expense and number of examiners involved in the DUS tests, and minimize the work involved in the maintenance of variety collections." Improvements in efficiency would ensure that the cost of the system was as attractive as possible for breeders, thereby encouraging the wider availability of new varieties for agriculture (see (iv) Potential advantages and disadvantages for farmers).

(ii) PVP Offices of members of the Union, including:

- *costs and income*
- *number of applications and income received for applications;*

As stated in the General Introduction, Chapter 3.1.1, "Cooperation with other members of the Union can reduce the overall time, expense and number of examiners involved in the DUS tests, and minimize the work involved in the maintenance of variety collections." Improvements in efficiency would ensure that the cost of the system was as attractive as possible for breeders, thereby encouraging more applications. Increasing number of applications would increase income from application fees and potentially annual fees, where appropriate. At the same time, increasing cooperation between members of the Union could result in reduced costs and income from DUS testing for PVP Offices, where appropriate.

(iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);

Cooperation in DUS testing would be beneficial for all breeders, particularly SMEs

(iv) farmers;

New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users' needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties. (see FAQ "Why do farmers and growers need new plant varieties?" <https://www.upov.int/about/en/faq.html#QF10>)

The introduction of the UPOV system of plant variety protection and UPOV membership were found to be associated with (see "What are the benefits of plant variety protection and UPOV membership?" <https://www.upov.int/about/en/faq.html#QG31>):

- (a) increased breeding activities,
- (b) greater availability of improved varieties,
- (c) increased number of new varieties,
- (d) diversification of types of breeders (e.g. private breeders, researchers),
- (e) increased number of foreign new varieties,
- (f) encouraging the development of a new industry competitiveness on foreign markets, and
- (g) improved access to foreign plant varieties and enhanced domestic breeding programs.

A more effective and efficient DUS testing system could be expected to result in a larger number of applications and, therefore, the availability of a larger number of new, improved varieties for farmers.

(v) UPOV

UPOV's mission statement includes reference to providing "an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society". An effective and efficient DUS testing system is a key part of an effective system of plant variety protection.

Resources of the Office of the Union, the Technical Committee and the Technical Working Parties would be required to implement the proposal.

PROPOSAL 4

Development of databases containing variety descriptions based on existing initiatives between members of the Union. To consider the role of UPOV for supporting members of the Union in the development, maintenance and expansion of shared databases (e.g. by providing guidance on data models), rather than seeking to incorporate data in the PLUTO database.¹

Existing UPOV initiatives and materials

- PLUTO plant variety database
- Reports to the Technical Committee and Technical Working Parties, including the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT), on developments concerning variety description databases

Analysis

Need

Article 7 of the 1991 Act of the UPOV Convention establishes that “a variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.” (see also Article 6 of the 1978 Act)

Document TGP/4 “Constitution and Maintenance of Variety Collections” states that:

“1.3 Although not exhaustive, and taking into account that these aspects have to be considered on a worldwide basis, it is clear that the list of varieties of common knowledge for a given species can be very large. Therefore, it may be useful to employ a process to reduce the number of varieties of common knowledge which need to be included in growing trials or other tests for direct comparison against a variety which is the subject of an application for plant breeders’ rights (“candidate variety”). That process can be summarized in the following steps:

Step 1: Making an inventory of the varieties of common knowledge; Step 1: Making an inventory of the varieties of common knowledge;

Step 2: Establishing a collection (“variety collection”) of varieties of common knowledge which are relevant for the examination of distinctness of candidate varieties according to Section 2 “Constitution of Variety Collections” of this document;

Step 3: Selecting the varieties from the variety collection which should be included in the growing trial or other tests for the examination of distinctness of a particular candidate variety.

[...]

“SECTION 2: CONSTITUTION OF VARIETY COLLECTIONS

2.1. Forms of variety collection

A variety collection may comprise variety descriptions and, where necessary, living plant material.

2.1.1 Variety Descriptions

2.1.1.1 The following forms of variety description might be included in the variety collection:

(i) a full description according to the UPOV Test Guidelines produced by the member of the Union establishing the variety collection: where used, this provides the possibility to detect the most similar varieties on the basis of the data, held in a database, which have all been collected from the same location. However, in the case of very similar varieties, it is still necessary to have a direct side-by-side comparison of the varieties;

(ii) a full description according to the UPOV Test Guidelines which has not been produced by the member of the Union establishing the variety collection: this might be a satisfactory basis on which to exclude varieties in the variety collection from a direct comparison against the candidate variety in a growing trial or other test, if the differences are sufficiently clear. In the case of similar varieties, the environmental effect on the expression of characteristics is such that, in general, this is likely not to be a satisfactory basis for excluding varieties from the growing trial or other tests;

(iii) a short description produced by another member of the Union where the variety is registered: in general, this type of description may be helpful for grouping of similar varieties in the growing trial or other tests where the description is based on grouping or Technical Questionnaire characteristics, but may not be very helpful for excluding varieties from the growing trial or other tests;

(iv) images (e.g. photographs, illustrations or digitalized images) of representative parts of the plants of each variety;

(v) relevant descriptive information from, for example, scientific publications, commercial catalogues, databases, etc.

¹ The WG-ISC noted that there was a need to update document TGP/4 “Constitution and Maintenance of Variety Collections” to include reference to molecular techniques.

2.1.2 Living Plant Material

2.1.2.1 As explained in Section 2.1.1 documented descriptions can provide information to assist with the grouping of varieties and reducing the number of varieties of common knowledge which need to be included in a growing trial. The most effective means of examining distinctness is to conduct a growing trial or other test containing the candidate variety and the relevant varieties of common knowledge. This requires that living plant material is available.”

This guidance illustrates the potential value of databases containing data from members of the Union for the examination of distinctness, particularly where living plant material is not available.

Advantages and disadvantages of the proposals, compared to existing arrangements

Databases containing variety descriptions produced by members of the Union have the potential to facilitate the examination of distinctness by members of the Union, particularly where living plant material is not available. The proposal is to consider the role of UPOV for supporting members of the Union in the development, maintenance and expansion of shared databases (e.g. by providing guidance on data models), rather than seeking to incorporate data in the PLUTO database.

As explained in document TGP/4 “Constitution and Maintenance of Variety Collections”, Section 2.1.1.1 (see above), a description which has not been produced by the member of the Union establishing the variety collection might be a satisfactory basis on which to exclude varieties in the variety collection from a direct comparison against the candidate variety in a growing trial or other test, if the differences are sufficiently clear. In the case of similar varieties, the environmental effect on the expression of characteristics is such that, in general, this is likely not to be a satisfactory basis for excluding varieties from the growing trial or other tests. Therefore, members of the Union would need to give careful consideration to the use of such data.

Existence of a legal basis under the Acts of the UPOV Convention

The UPOV Convention requires examination of distinctness from “any other variety whose existence is a matter of common knowledge”.

Impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members

It would be a matter for each member of the Union to decide whether to modify its administrative procedures and policy framework to contribute and/or use databases containing variety descriptions produced by members of the Union

Potential advantages and disadvantages for:

(i) society in the members of the Union;

The availability of databases of containing variety descriptions produced by members of the Union could enable members of the Union to improve the efficiency and quality of DUS testing. This would ensure that the cost of the system was as attractive as possible for breeders, thereby encouraging the wider availability of new varieties for agriculture, while ensuring the quality of decisions on distinctness.

(ii) PVP Offices of members of the Union, including:

- *costs and income*
- *number of applications and income received for applications;*

The availability of databases of containing variety descriptions produced by members of the Union could enable members of the Union to improve the efficiency and quality of DUS testing. In some cases, it might enable members of the Union to engage in DUS testing that would not otherwise be feasible. The measure could result in some cost savings for DUS testing, although it might also introduce costs for the contribution and maintenance of data in databases. A more efficient DUS testing system could be anticipated to result in a larger number of applications and, therefore income for members of the Union.

(iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);

A more effective and efficient DUS testing system is beneficial for all breeders, particularly SMEs.

(iv) farmers;

New varieties of plants with features such as improved yield, resistance to plant pests and diseases, salt and drought tolerance, or better adaptation to climatic stress are a key element in increasing productivity and product quality in agriculture, horticulture and forestry, whilst minimizing the pressure on the natural environment. Due to the continuous evolution of new pests and diseases as well as changes in climatic conditions and users' needs, there is a continuous demand by farmers/growers of new plant varieties and development by breeders of such new plant varieties. (see FAQ "Why do farmers and growers need new plant varieties?" <https://www.upov.int/about/en/faq.html#QF10>)

The introduction of the UPOV system of plant variety protection and UPOV membership were found to be associated with (see "What are the benefits of plant variety protection and UPOV membership?" <https://www.upov.int/about/en/faq.html#QG31>):

- (a) increased breeding activities,
- (b) greater availability of improved varieties,
- (c) increased number of new varieties,
- (d) diversification of types of breeders (e.g. private breeders, researchers),
- (e) increased number of foreign new varieties,
- (f) encouraging the development of a new industry competitiveness on foreign markets, and
- (g) improved access to foreign plant varieties and enhanced domestic breeding programs.

A more effective and efficient DUS testing system could be expected to result in a larger number of applications and, therefore, the availability of a larger number of new, improved varieties for farmers.

(v) UPOV

UPOV's mission statement includes reference to providing "an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society". An effective and efficient DUS testing system is a key part of an effective system of plant variety protection.

Resources of the Office of the Union would be required to implement the proposal.

PROPOSAL 5

Review of application forms in UPOV PRISMA for options on seeking information from applicants, concerning novelty

Existing UPOV initiatives and materials

- Document UPOV/EXN/NOV “Explanatory Notes on Novelty under the UPOV Convention”
- Document TGP/5/SECTION/2 UPOV “Model Form for the Application for Plant Breeders’ Rights” (Item 8)
- Document UPOV/INF/15 “Guidance for Members of UPOV”
- PLUTO database (dates of commercialization)
- UPOV PRISMA PBR Application Tool

Analysis

Need

Document UPOV/EXN/NOV “Explanatory Notes on Novelty under the UPOV Convention” explains as follows:

“13. 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. 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 the following request for information: [...]”

This indicates the importance of the information provided by the applicant in the application form for the examination of novelty. The proposal is to review the application forms of members of the Union participating in UPOV PRISMA to identify ways in which to obtain information relevant for the examination of novelty. This might include information on novelty-breaking criteria and acts for individual members of the Union that might prove useful for other members of the Union.

Advantages and disadvantages of the proposals, compared to existing arrangements

This measure would increase the information available on practices by members of the Union when requesting information on novelty in their application forms. No disadvantages are foreseen in making this information available.

Existence of a legal basis under the Acts of the UPOV Convention

Under 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.

Impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members

It would be a matter for each member of the Union to decide whether to amend its application form in relation to requesting information on novelty.

Potential advantages and disadvantages for:

(i) society in the members of the Union;

Increased information relevant for the examination of novelty might improve the quality of decisions on novelty and further reduce risks of an incorrect grant of a plant breeder’s right.

(ii) PVP Offices of members of the Union, including:

- *costs and income*
- *number of applications and income received for applications;*

Increased information relevant for the examination of novelty might improve the quality of decisions on novelty and further reduce risks of an incorrect grant of a plant breeder’s right. No impact is expected on costs and income for PVP Offices, nor the number of applications and income received for applications.

(iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);

Increased information relevant for the examination of novelty might improve the quality of decisions on novelty and further reduce risks of an incorrect grant of a plant breeder’s right.

(iv) farmers;

Increased information relevant for the examination of novelty might improve the quality of decisions on novelty and further reduce risks of an incorrect grant of a plant breeder's right.

(v) UPOV

Increased information relevant for the examination of novelty might improve the quality of decisions on novelty and further reduce risks of an incorrect grant of a plant breeder's right.

Resources of the Office of the Union would be required to implement the proposal.

PROPOSAL 6

Establishment of a network of denomination contact persons

Existing UPOV initiatives and materials

- Document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention”
- PLUTO Plant Variety Database
- Directory of PVP Offices (https://www.upov.int/members/en/pvp_offices.html)
- UPOV MCDS contacts database

Analysis

Need

The UPOV Convention requires that the authority of a member of the Union shall ensure that the authorities of all the other members of the Union are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

Document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention”, paragraph 6.1, explains that this provision indicates the importance of cooperation and exchange of variety denomination information among authorities.

UPOV does not collect information on denomination contact persons, although contact details for PVP Offices are provided in the “Directory of PVP Offices” on the UPOV website (https://www.upov.int/members/en/pvp_offices.html).

Advantages and disadvantages of the proposals, compared to existing arrangements

This measure would facilitate cooperation and exchange of variety denomination information among authorities, thereby potentially reducing the acceptance of denominations that could be unsuitable for certain members of the Union and minimizing the need for different denominations (synonyms) to be created in different members of the Union.

This measure would require that members of the Union provide information on denomination contact persons on a regular basis and inform the Office of the Union of any changes in a timely way and would require the Office of the Union to maintain that information.

Existence of a legal basis under the Acts of the UPOV Convention

The UPOV Convention requires that the authority of a member of the Union shall ensure that the authorities of all the other members of the Union are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

Impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members

Members of the Union could be requested to provide information on denomination contact persons on a regular basis and to inform the Office of the Union of any changes in a timely way.

Potential advantages and disadvantages for:

- (i) *society in the members of the Union;*

This measure could reduce the acceptance of unsuitable denominations and minimize the need for different denominations (synonyms) to be created in different members of the Union.

(ii) PVP Offices of members of the Union, including:

- *costs and income*
- *number of applications and income received for applications;*

This measure would facilitate cooperation and exchange of variety denomination information among authorities, thereby reducing the acceptance of denominations that could be unsuitable for certain members of the Union and minimizing the need for different denominations (synonyms) to be created in different UPOV members. Members of the Union would need to provide information on denomination contact persons on a regular basis and inform the Office of the Union of any changes in a timely way. Other than these aspects, it is not anticipated that the establishment of a network of denomination contact persons would have any impact on the costs and income for PVP Offices, nor on number of applications and income received for applications.

(iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);

This measure could reduce the acceptance of denominations that could be unsuitable for certain members of the Union and minimize the need for different denominations (synonyms) to be created in different UPOV members, which would be beneficial for all breeders.

(iv) farmers;

This measure could reduce the acceptance of denominations that could be unsuitable for certain members of the Union and minimize the need for different denominations (synonyms) to be created in different members of the Union.

(v) UPOV

This measure could reduce the acceptance of denominations that could be unsuitable for certain members of the Union and minimize the need for different denominations (synonyms) to be created in different members of the Union.

Resources of the Office of the Union would be required to implement the proposal. However, the Office of the Union already collects information on designated persons for variety denomination purposes as a part of the request for the list of designated persons in UPOV bodies. This information is stored in the UPOV contacts database (MCDS), which is not publically accessible.

PROPOSAL 7

To endorse the work of the Administrative and Legal Committee (CAJ) on assessing the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union.

Existing UPOV initiatives and materials

- Document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention”
- PLUTO Plant Variety Database

Analysis

Need

The work of the CAJ and WG-DEN reflects the requirement in the UPOV Convention for variety denominations to be “different from every denomination which designates, in the territory of any member of the Union, an existing variety of the same plant species or of a closely related species.”

Document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention”, paragraph 2.5.3 states that “It is recommended that the UPOV Plant Variety Database (‘UPOV-ROM’²) is used in the process to check if, in the territory of any member of the Union, the proposed denomination is different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class (see Annex I). [...]”

Advantages and disadvantages of the proposals, compared to existing arrangements

The proposal is to endorse the work of the WG-DEN and CAJ to assess the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union. This assessment would enable UPOV to determine if it would be beneficial to extend the denominations currently included in the PLUTO database. No disadvantages are foreseen in endorsing this assessment.

Existence of a legal basis under the Acts of the UPOV Convention

The work of the CAJ and WG-DEN reflects the requirement in the UPOV Convention for variety denominations to be “different from every denomination which designates, in the territory of any member of the Union, an existing variety of the same plant species or of a closely related species.”

Impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members

The work of the WG-DEN and CAJ is to assess the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union. Any proposals developed by the WG-DEN and CAJ would be considered by the Council.

Potential advantages and disadvantages for:

- (i) *society in the members of the Union;*

The assessment of the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union, is not expected to have an impact on society in the members of the Union. Any proposals developed by the WG-DEN and CAJ would be considered by the Council. Possible measures arising from that assessment to improve the information in the PLUTO database could have the potential to reduce the risk of acceptance of denominations that are not different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class.

² Replaced by the PLUTO database.

(ii) PVP Offices of members of the Union, including:

- *costs and income*
- *number of applications and income received for applications;*

The assessment of the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union, is not expected to have an impact on PVP Offices of the members of the Union. Any proposals developed by the WG-DEN and CAJ will be considered by the Council. Possible measures arising from that assessment to improve the information in the PLUTO database have the potential to reduce the risk of acceptance of denominations that are not different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class. It is not anticipated that any measures would have an impact on costs and income for PVP Offices, nor affect the number of applications and income received for applications.

(iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);

The assessment of the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union, is not expected to have an impact on breeders. Any proposals developed by the WG-DEN and CAJ will be considered by the UPOV Council. Possible measures arising from that assessment to improve the information in the PLUTO database could, potentially, enable breeders to make a more effective check of the suitability of their proposed denominations and would also reduce the risk of acceptance of denominations that are not different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class, which would then need to be amended after the grant of the plant breeder's right.

(iv) farmers;

The assessment of the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union, is not expected to have an impact on society in the members of the Union. Any proposals developed by the WG-DEN and CAJ would be considered by the Council. Possible measures arising from that assessment to improve the information in the PLUTO database could have the potential to reduce the risk of acceptance of denominations that are not different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class.

(v) UPOV

The assessment of the need to extend consideration beyond the denominations currently included in the PLUTO database, to other denominations considered by members of the Union would require resources from the Office of the Union. Implementation of any possible measures arising from that assessment, to improve the information in the PLUTO database, would also require resources from the Office of the Union.

Resources of the Office of the Union would be required to implement the proposal.

PROPOSAL 8

Include information in UPOV PRISMA on how to make payments for the use of existing DUS reports, provided by another member of the Union.

Existing UPOV initiatives and materials

- UPOV PRISMA
- GENIE database
- TGP/5 Experience and Cooperation in DUS Testing
 - TGP/5/SECTION/1 Model Administrative Agreement for International Cooperation in the Testing of Varieties
 - TGP/5/SECTION/5 UPOV Request for Examination Results and UPOV Answer to the Request for Examination Results
 - TGP/5/SECTION/6 UPOV Report on Technical Examination and UPOV Variety Description
 - TGP/5/SECTION/7 UPOV Interim Report on Technical Examination
 - TGP/5/SECTION/8 Cooperation in Examination
- Document C/[session]/5 “Cooperation in Examination”
- Directory of PVP Offices (https://www.upov.int/members/en/pvp_offices.html)

Analysis

Need

Document TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” (General Introduction) states in Chapter 3.1.1 that “Cooperation with other members of the Union can reduce the overall time, expense and number of examiners involved in the DUS tests, and minimize the work involved in the maintenance of variety collections.”

The introduction to document TGP/5 “Experience and Cooperation in DUS Testing” states that “Cooperation with regard to DUS testing is an important benefit of the UPOV system.” In paragraph 1 (c), it further explains that the UPOV Convention “allows for members of the Union to accept DUS reports on varieties already examined by another member of the Union. Such an approach is encouraged as an important means of minimizing the time for DUS examination and minimizing the cost of DUS examination by reducing duplication.”

Document TGP/5/SECTION/1 Model Administrative Agreement for International Cooperation in the Testing of Varieties, Article 7(1)(iv) states that the “Receiving Authority shall pay to the Executing Authority the consideration agreed upon under Article 6”. It further states in Article 7(2) (i) “In the case of a service specified in Article 1(1)(iv) above, an administrative consideration equivalent to 350 Swiss Francs or of an amount agreed upon by correspondence between the Authorities shall be charged.”

The GENIE database and document C/[session]/5 “Cooperation in Examination” provide information on which members of the Union will accept the use of existing DUS reports, provided by another member of the Union, and for which crops/species. No information is provided on how to make payments for existing DUS reports, although the UPOV website has a directory of PVP Offices (https://www.upov.int/members/en/pvp_offices.html).

Advantages and disadvantages of the proposals, compared to existing arrangements

The proposal to include information in UPOV PRISMA on how to make payments for the use of existing DUS reports, provided by another member of the Union, would provide practical information that would be of assistance to members of the Union providing DUS reports, members of the Union receiving DUS reports and applicants. It is also anticipated that this information would be available in the UPOV PRISMA navigation languages, which would be a further advantage. No disadvantages are foreseen, because it would be a matter for each member of the Union participating in UPOV PRISMA to decide whether to provide the information.

Existence of a legal basis under the Acts of the UPOV Convention

The introduction to document TGP/5 “Experience and Cooperation in DUS Testing” states that “Cooperation with regard to DUS testing is an important benefit of the UPOV system.” In paragraph 1 (c), it further explains that the UPOV Convention “allows for members of the Union to accept DUS reports on varieties already examined by another member of the Union. Such an approach is encouraged as an important means of minimizing the time for DUS examination and minimizing the cost of DUS examination by reducing duplication.”

Impact on domestic legislation, administrative procedures, rights and policy framework, in relation to the relevant Act of the UPOV Convention, for the PVP Offices of UPOV members

None foreseen. This proposal is intended to enable existing administrative procedures to be implemented more efficiently.

Potential advantages and disadvantages for:

(i) society in the members of the Union;

No significant impact is envisaged for society in the members of the Union.

(ii) PVP Offices of members of the Union, including:

- *costs and income*
- *number of applications and income received for applications;*

It is anticipated that the proposal would reduce administrative work, and therefore costs, for members of the Union providing DUS reports and members of the Union receiving DUS reports. It is not anticipated that the proposal would affect the income of PVP Offices, the number of applications, nor income received for applications.

(iii) domestic and foreign breeders, including for small- and medium-sized enterprises (SMEs);

The proposal would provide practical information that would be of assistance to all breeders and is likely to be particularly advantageous for SME's, because these are less likely to be familiar with the procedures in different members of the Union. It is anticipated that this information would be available in the UPOV PRISMA navigation languages, which would be a further advantage for applicants. It is further anticipated that the proposal would reduce administrative work, and therefore costs, for members of the Union providing DUS reports and members of the Union receiving DUS reports. This could ultimately reduce the costs of applications to some extent.

(iv) farmers;

No significant impact is envisaged for farmers, although reduced administrative work for PVP Offices could reduce the cost of the PVP system and, therefore, the cost of varieties to some extent.

(v) UPOV

UPOV's mission statement includes reference to providing "an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society". An effective and efficient DUS testing system is a key part of an effective system of plant variety protection. Including information on how to make payments for the use of existing DUS reports in UPOV PRISMA would enhance the value of UPOV PRISMA to applicants and could increase the use of UPOV PRISMA, which will provide income for UPOV via UPOV PRISMA fees.

Resources of the Office of the Union would be required to implement the proposal.

[End of Annex and of document]