

Consultative Committee**CC/97/4****Ninety-Seventh Session
Geneva, October 29, 2020****Original:** English
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to be considered by correspondence

REVIEW OF REGULATION 4.6 OF THE UPOV FINANCIAL REGULATIONS AND RULES*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 invite the Consultative Committee to consider a revision Regulation 4.6 of UPOV Financial Regulations and Rules (document UPOV/INF/4/5).
2. The Consultative Committee is invited to recommend to the Council the revision of Regulation 4.6 of document UPOV/INF/4/5 "Financial Regulations and Rules of UPOV", as set out in paragraph 10.

BACKGROUND

3. The Consultative Committee, at its ninety-sixth session, held in Geneva, October 31, 2019, agreed to include an item to review Regulation 4.6 of UPOV Financial Regulations and Rules (document UPOV/INF/4/5) (see document CC/96/14 "Report", paragraph 54).
4. Regulation 4.6 of UPOV Financial Regulations and Rules (document UPOV/INF/4/5), states as follows:

"Surpluses and deficits; Reserve Funds**"Regulation 4.6**

"The use, other than for the covering of any deficits, of the reserve fund is a matter for the decision of the Council. If after the closure of the financial period, the amount of the reserve fund exceeds 15 percent of the total income for the financial period, the amount in excess shall be reimbursed to the members of UPOV, unless otherwise decided by the Council. Any member of UPOV may request that the reimbursement attributed to it be deposited in a special account or trust fund specified by it."

5. The purpose of revising Regulation 4.6 would be to enable UPOV to respond to developments that could affect its financial stability and to reflect developments concerning the sources of UPOV's income.
6. The current wording of document UPOV/INF/4/5, Regulation 4.6 requires that, in the absence of consensus to the contrary, the amount of the reserve fund exceeding 15 percent of the total income for the financial period "shall be reimbursed to the members of UPOV".
7. In practice, once the reserve fund is at 15%, it is inevitable that an excess will be generated at the end of successive financial periods because of controls on expenditure. UPOV's financial controls will not allow any risk of overspending the authorized budget, so actual expenditure towards the end of the biennium will always need to be lower than the approved expenditure.
8. The current wording of Regulation 4.6 refers to reimbursement to the members of the Union. However, whilst income from units of contribution from members of the Union forms the majority of UPOV's income, UPOV also has income from other sources. The Program and Budget for the 2020-2021 Biennium (document C/54/4 Rev.) identifies other sources of income as: UPOV IT tools and services fees; administrative support costs for Funds-in-Trust and the distance learning program. The unpredictability of income from such

other sources means that these other sources of income are likely to be the primary cause of income exceeding budgeted income and expenditure, thereby generating excess income.

9. The level of 15 percent of the total income for the financial period means that UPOV's reserve fund represents only 3.6 months of UPOV's expenditure. The level of 15 percent was based on the confidence that income predominantly arising from contributions from States and intergovernmental organizations would provide adequate assurance for the liquidity of UPOV. It is further recalled that document UPOV/INF/4/5, Regulation 4.13 states that "External borrowing by UPOV shall not be allowed, unless otherwise decided by the Council". The speed of developments in relation to the COVID-19 situation may suggest that it would be appropriate to review the assumptions on which the 15 percent threshold is based.

PROPOSAL

10. In order to remove difficulties with interpreting "reimbursement" to members of the Union where income was not received from members of the Union, while retaining the 15 percent threshold as a trigger for measures to be taken by the Council, which could include the possibility to increase the level of reserves if agreed by members of the Union, it is proposed to revise Regulation 4.6 as follows:

"Regulation 4.6

"The use, other than for the covering of any deficits, of the reserve fund is a matter for the decision of the Council. If after the closure of the financial period, the amount of the reserve fund exceeds 15 percent of the total income for the financial period, the Council shall decide on the use of the income in excess of the expenditure for the financial period. ~~the amount in excess shall be reimbursed to the members of UPOV, unless otherwise decided by the Council. Any member of UPOV may request that the reimbursement attributed to it be deposited in a special account or trust fund specified by it.~~"

11. The Consultative Committee is invited to recommend to the Council the revision of Regulation 4.6 of document UPOV/INF/4/5 "Financial Regulations and Rules of UPOV", as set out in paragraph 10.

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