

Consultative Committee

CC/97/7

Ninety-Seventh Session
Geneva, October 29, 2020

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to be considered by correspondence

SUMMARY OF THE WORK OF THE CONSULTATIVE GROUP ON LONG-TERM FINANCIAL ISSUES OF UPOV

Document prepared by the Office of the Union

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EXECUTIVE SUMMARY

1. The purpose of this document is to provide a summary of the work of the Consultative Group on Long-Term Financial Issues of UPOV (Consultative Group) as a basis for consideration by the Consultative Committee of the issues concerned.
2. The Consultative Committee is invited to:
 - (a) note the summary of the work of the Consultative Group on Long-Term Financial Issues of UPOV (Consultative Group);
 - (b) note that documents referenced in this document will be made available on the CC/97 webpage for ease of reference;
 - (c) note the issues on which the Consultative Group prepared recommendations that were accepted by the Consultative Committee, as set out in paragraphs 19 and 20 of this document;
 - (d) note the matters considered by the Consultative Group on which recommendations were not made to the Consultative Committee, as set out in paragraph 21 of this document;
 - (e) note the decisions by the Council concerning certain financial matters of the Union, as set out in paragraph 26 of this document;
 - (f) note the developments concerning the matters considered by the Consultative Group on which recommendations were not made to the Consultative Committee, as set out in paragraphs 28 to 35 of this document; and
 - (g) identify issues as summarized in paragraph 27 to 35 of this document, or other issues, that it would wish to consider further.

BACKGROUND

3. In recognition of UPOV's financial stability being dependent on the contributions of members of the Union, the Consultative Committee, at its ninety-sixth session, held in Geneva, October 31, 2019, requested the Office of the Union to include an item and prepare a document, for its ninety-seventh session, in order to provide a summary of the work of the Consultative Group on Long-Term Financial Issues of UPOV and the consideration of those issues by the Consultative Committee (see document CC/96/14 "Report", paragraph 53). Documents referenced in this document will be made available on the CC/97 webpage for ease of reference.

Creation of the Consultative Group

4. The Consultative Committee, at its sixty-fifth session, held in Geneva on September 8, 2003, considered document CC/65/4 "Financial Situation of the Union" (see document CC65/8 "Report", paragraphs 12-41).

5. On the basis of the information provided in document CC/65/4, the Consultative Committee was invited in paragraph 4:

"(a) to indicate which option of activities corresponding to the following increases of the value of a contribution unit it wishes to be pursued for the Program and Budget for the 2004-2005 Biennium:

- (i) Zero increase;
- (ii) 10 percent increase with effect from January 2004;
- (iii) 20 percent increase with effect from January 2004;
- (iv) 10 percent increase with effect from January 2004 and 10 percent increase with effect from January 2005;
- (v) full coverage of the present level of activities in the 2004-2005 biennium through increase of the value of a contribution unit by 35 percent with effect from January 2004;

"(b) to consider the effect of a reassessment of the number of contribution units applicable to a member of the Union on the income of the Union;

"(c) to consider whether the titles of protection granted and the importance of the national agricultural sector are suitable indicators to provide guidance on the number of contribution units applicable to a member of the Union;

"(d) to advise whether

- (i) guidelines on the number of contribution units applicable to a member of the Union based on suitable indicators should be developed;
- (ii) the introduction of a system of determination of numbers of contribution units applicable to a member of the Union based on suitable indicators should be further examined;

"(e) to advise which of the following options for a stable budgeting procedure should be further examined:

- (i) indexing the budget to inflation;
- (ii) raising the minimum fraction of a contribution unit applicable to a member of the Union;
- (iii) excluding downward adjustments of the number of contribution units applicable to a member of the Union."

6. The Chair noted that the document addressed three subjects, namely priorities, short-term financing and long-term financing. He invited delegations to make general statements, indicating their standpoint on each of these issues, to guide the Office of the Union (the Office) in the preparation of the Program and Budget for the 2004-2005 Biennium. As a result of discussions at the session, the Chair considered that the Office might benefit from the formation of a consultative group to provide guidance on how to take these issues further and invited the delegations to comment on such an approach.

7. The Chair stated that there would be very little time for the establishment of a consultative group in such a way as to allow for its input into the preparation of the Program and Budget for the 2004-2005 Biennium, for which the task of the preparation should be a matter handled by the Office. He noted that written comments from members of the Union could be sent to the Office to help in its preparation of the document. With regard to the consultative group, he proposed that its role should rather be to look at the long-term financial situation.

8. The Vice Secretary-General noted, with regard to the preparation of the Program and Budget for the 2004-2005 Biennium, that there seemed to be a clear indication to pursue the option for a zero increase, as presented in paragraph 4(a)(i) of document CC/65/4. He noted that, for those members of the Union which had indicated a certain willingness to increase their financial contribution to the Union, there was the possibility to increase their number of units of contribution. With regard to the role of a consultative group, he suggested that this should be to consider together with the issues raised in paragraphs 4(b) to 4(e) of document CC/65/4.

9. At the proposal of the Chair, the Consultative Committee agreed that the Office would proceed to prepare a Program and Budget for the 2004-2005 Biennium, on the basis of a zero increase, and the

consultative group would consider the long-term financial issues raised in paragraphs 4(b) to 4(e) of document CC/65/4. With regard to the establishment of the consultative group, it was agreed that this should not happen until October 2003.

10. At its sixty-sixth session, held in Geneva on October 22, 2003 (see document CC/66/7, paragraph 18), the Consultative Committee agreed that the Consultative Group should consider possibilities for services in languages other than those referred to in Article 28 of the 1991 Act of the UPOV Convention and UPOV mission expenses for events organized by other parties to be funded by the organizers of such events.

11. At its sixty-sixth session, the Consultative Committee agreed that the Consultative Group should be comprised of a small number of participants who would be able to reflect the range of circumstances across the members of the Union. It further agreed that the Office of the Union (the Office), in consultation with the President of the Council, be requested to form the Consultative Group and to convene a meeting of the Consultative Group in connection with the April 2004 session of the UPOV bodies.

12. With regard to the work program of the Consultative Group, it was agreed at the sixty-sixth session of the Consultative Committee that, in the first instance, the Consultative Group should examine and report to the Consultative Committee on the scope of the measures it would consider appropriate and, in particular, whether this might include a recommendation to revise the 1991 Act of the UPOV Convention with regard to Article 29 "Finances".

Recommendations of the Consultative Group

13. Document CC/68/3 "Long-Term Financial Issues of the Union" confirmed the composition of the Consultative Group, as established by the Office in consultation with the President of the Council, and presented the proposals developed by the Consultative Group.

14. The Consultative Committee at its sixty-eighth session, held in Geneva on October 20, 2004, considered document CC/68/3 and a new proposal submitted by the Delegation of the Russian Federation after consultation with the Office of the Union, concerning document CC/68/3, Table 1, Annexes II(a) and II(b) and III, which was reproduced as Annex II to document CC/68/9 "Report".

15. The Consultative Committee agreed that document CC/68/3 could not be accepted without substantial revision in relation to paragraphs 11 to 24 and Annexes II to VII. In that respect, it was agreed that, in addition to the change of content, the said document would be reformatted as an information document. There was agreement that a section addressing States and organizations acceding to the Convention should be retained. It was also agreed that a new section should be elaborated in relation to Article 29(4) of the 1991 Act of the UPOV Convention and consideration of activity-based budgeting. On that basis, the Consultative Committee requested the Consultative Group to prepare a new draft for consideration at the seventieth session of the Consultative Committee to be held in October 2005 (see document CC/68/9 "Report", paragraphs 13 to 31).

16. At its seventieth session, held in Geneva on October 26, 2005, the Consultative Committee considered document CC/70/3 "Long-Term Financial Issues of the Union" (see document CC/70/11 "Report", paragraphs 18 to 21).

17. The Controller of the World Intellectual Property Organization (WIPO) explained that WIPO had established a new policy, which was also relevant for UPOV, whereby the extra-budgetary financing of missions of WIPO officials was accepted from States, intergovernmental organizations and, in some cases, universities, where such financing was in support of WIPO's program of activities. A policy for extra-budgetary financing of missions of WIPO officials by the private sector was under development, but such funding was not accepted at that time.

18. With regard to the possibility of establishing a triennial Program and Budget, the Controller of WIPO explained that such an arrangement could be introduced and the decision on that was a matter to be taken by the Council of UPOV.

19. The Consultative Committee took note of the additional information provided by the Controller of WIPO and endorsed the recommendations of the Consultative Group on Long-term Financial Issues of UPOV, as contained in paragraphs 4, 7, 9, 13, 15, 17, 18, 23 and 25 of the Annex to document CC/70/3.

20. The recommendations of the Consultative Group on Long-term Financial Issues of UPOV, as contained in paragraphs 4, 7, 9, 13, 15, 17, 18, 23 and 25 of the Annex to document CC/70/3 are reproduced below:

[I. Scope of the Measures to be Considered and, in Particular, Possible Revision of the 1991 Act of the UPOV Convention]

"4. Recommendation 1: The Consultative Group recommended that there should be no limit to the scope of measures which might be considered with regard to the financial situation of the Union. However, noting the difficulties set out above, it agreed that, currently, a revision of the 1991 Act of the UPOV Convention with regard to Article 29 "Finances" should not be recommended.

[II. Number of Units of Contribution for Acceding States]

"7. Recommendation 2: The Consultative Group proposed that acceding States be provided with information on: the number of contribution units; the Gross Domestic Product (GDP); the GDP per capita; and the number of titles in force, for existing members of the Union, as set out in Appendix I to this document.

[III. Number of Units of Contribution for Existing Members of the Union]

"9. Recommendation 3: In response to the discussions in the sixty-eighth session of the Consultative Committee, the Consultative Group concluded that guidelines on the number of contribution units applicable to existing members of the Union based on suitable indicators should not be developed and the introduction of a system of determination of numbers of contribution units applicable to a member of the Union based on suitable indicators should not be examined further.

[IV. Working Capital Fund]

"13. Recommendation 4: The Consultative Group recommended that, in accordance with the principle set out in the decisions of the Council of 1972, 1978 and 1993 (see paragraph 57(b)(ii) of document C/VI/12, paragraph 42(b)(ii) of document C/XII/15 and paragraph 14(ii) of document C/26/15, respectively, reproduced in Appendix II to this document), when a member increases its level of contribution to the Union, the member should make an additional proportionate payment to the Working Capital Fund. It further proposed that the participation in the Working Capital Fund of those members that decide to reduce their level of contribution to the UPOV budget should not be reduced.

[V. Stable Budgeting Procedure]
[Indexing the budget to inflation]

"15. Recommendation 5: The Consultative Group recommended that the budget should be activity based and the program and budget should be developed according to defined activities. It was recognized that the costs of the activities considered within the budget would need to take into account the effects of inflation as appropriate and the Council would then decide on the activities to be included in the program.

[Excluding downward adjustments of the number of contribution units applicable to a member of the Union]

"17. Recommendation 6: The Consultative Group noted that excluding downward adjustments of the number of contribution units applicable to a member of the Union would require a revision of the Convention. Thus, the same considerations as set out in Section I, paragraph 2, above, would apply. However, the Consultative Group recommended that members of the Union should not adjust downwards their number of units of contribution without considering the implications for UPOV and considering how such a reduction would be compensated by other members of the Union. In particular, the Consultative Group agreed that members of the Union should not reduce their number of units of contribution during a budget period approved by the Council, except under exceptional and unavoidable circumstances (see also paragraph 3).

"18. Recommendation 7: With regard to other means by which UPOV might establish a more stable budgeting procedure, it was recommended that the Office should investigate the possibility of a triennial budget.

[VI. Services in Non-UPOV Languages]

"23. Recommendation 8: On the basis set out in paragraph 22, above, the Consultative Group recommended that, for certain non UPOV languages to be specified by the Consultative Committee

(specified languages), translation-draft documents of the Council, Consultative Committee, Administrative and Legal Committee (CAJ) and Technical Committee (TC) should be made available to a single translator for the specified language at the same time as the documents were sent for translation into the UPOV languages. It would be the responsibility of the interested members of the Union to agree the translator for the specified language and to notify the Office accordingly. The Consultative Group recommended that the Consultative Committee consider the possibility for Russian to be identified as a specified language.

[VI. UPOV Mission Expenses]

“25. Recommendation 9: The Consultative Group recommended that the Office should investigate the possibility of establishing funds-in-trust for members of the Union, not only for the purpose of covering mission expenses, but also as a means of providing funds for particular projects or activities. It agreed that the Vice Secretary General should report in more detail on this subject to the seventieth session of the Consultative Committee to be held on October 26, 2005.

21. The Consultative Group on Long-term Financial Issues of UPOV also reported its discussions on the following matters in the Annex to document CC/70/3, on which recommendations were not made to the Consultative Committee:

“VII. Other items

“UPOV levy on each title of protection granted

“26. Section 2.4 of document CC/66/6, submitted by the Delegation of Germany to the sixty-sixth session of the Consultative Committee, contained a proposal to “consider a levy in favor of UPOV on every protection title issued”. The Consultative Group considered that this was an interesting proposal, but it noted that such a scheme would require the establishment of a suitable legislative and administrative basis, which would be difficult to develop, at least in the short to medium term.

“Organization of training, seminars, etc.

“27. Section 2.5 of document CC/66/6, submitted by the Delegation of Germany to the sixty-sixth session of the Consultative Committee, stated that, with regard to worldwide seminars and training organized by the Office, “a critical question needs to be raised as to the extent to which such cost-intensive training is still justified, or whether other means of imparting information should not be sought. One could imagine making use of technical aids, such as video-conferencing, video training packages or the like.”

“28. The Consultative Group received an oral report from the Vice Secretary-General on the development of a distance-learning program currently under development and possibilities concerning the use of video-conferencing. It noted that developments had been reported to the Consultative Committee at its sixty-eighth session.

UPOV meetings

“29. Section 2.6 of document CC/66/6, submitted by the Delegation of Germany to the sixty-sixth session of the Consultative Committee, stated that “The UPOV Technical Working Parties meet all over the world, and give rise to costs not only for the Office, but also for the host country in which the meeting takes place, and indeed for the members who send their delegates to such meetings. A question to be asked against this additional financial background is the extent to which these sessions could rather be organized in Geneva in a concentrated manner, especially as the Technical Committee is convened in Geneva in Spring, and therefore a large number of delegations are present for that meeting.”

“30. The Consultative Group noted that the delegates to the TC might not be the same persons as the experts attending the Technical Working Parties (TWP) and also noted that, for many members of the Union, the cost of travel to, and accommodation in, Geneva was probably higher than for most other locations. The Consultative Group further heard that, in the 2002-2003 biennium, the various TWP sessions had been hosted by eight countries, covering the Americas (6 meetings), Asia/Pacific (3) and Europe (2). There had been a total of 462 participants, of which 216 (47%) were from local plant variety protection offices, local breeding companies or attending local training activities. The Office reported that several members of the Union were very keen to host future sessions of the TWPs and explained that, to improve cost efficiency, the sessions were increasingly being used as the basis for training

exercises in the country and regions concerned. Nevertheless, the Office explained that it was aware of these costs concerning experts from the members of the Union and explained that it would keep the situation under constant review to ensure the most efficient use of available financial and personnel resources within UPOV.

“Other funding possibilities

“31. As explained in paragraph 25 of this document, the Consultative Group recommended that the Office should investigate the possibility of establishing funds-in-trust for members of the Union, not only for the purpose of covering mission expenses, but also as a means of providing funds for particular projects or activities, and agreed that the Vice Secretary General should report in more detail on this subject at the seventieth session of the Consultative Committee. It also agreed that the Office should investigate possible sources of funding other than from members of the Union, which might be linked to particular projects or activities.

22. The Consultative Committee, at its seventy-first session, held in Geneva on April 7, 2006 (see document CC/71/9 “Report”, paragraphs 46-51), considered document CC/71/4 “Long-Term Financial Issues of the Union”, which identified the recommendations that had been endorsed by the Consultative Committee at its seventieth session (paragraphs 4, 7, 9, 13, 15, 17, 18, 23 and 25 of the Annex to document CC/70/3; see paragraph 21 of this document) for which a decision by the Council of UPOV was required in order to facilitate their implementation.

23. The Consultative Committee noted that further information on the possibility of a triennial budget would be reported to the Consultative Committee in due course.

24. The Consultative Committee recommended to the Council that it adopt the decision on the Working Capital Fund of UPOV, as reproduced in Annex II to document CC/71/4.

25. The Consultative Committee recommended that the Council decide that members of the Union should not adjust downwards their number of units of contribution without considering the implications for UPOV and considering how such a reduction would be compensated by other members of the Union. In particular, it recommended that the Council decide that members of the Union should not reduce their number of units of contribution during a budget period approved by the Council, except under exceptional and unavoidable circumstances.

Decisions by the Council

26. The Council, at its twenty-third extraordinary session, held in Geneva on April 7, 2006, considered document C(Extr.)/23/3 and, in accordance with the recommendation of the Consultative Committee, adopted the decisions concerning “Certain Financial Matters of the Union”, as proposed in Annexes I and II to document C(Extr.)/23/3 (see document C(Extr.)/23/5 “Report”, paragraph 12), which are reproduced below:

UPOV Working Capital Fund

Document C(Extr.)/23/3, Annex I, paragraph 2

“2. The Council recalls its earlier decisions on the Working Capital Fund of UPOV (paragraph 57 of document C/VI/12, paragraph 42 of document C/XII/15 and paragraph 14 of document C/26/15) and the recommendation of the Consultative Committee at its seventy first session, and decides to consolidate them as follows:

“(a) to base the share of the members of the Union in the Working Capital Fund on the number of contribution units applicable to it for the purpose of the annual contributions under the UPOV Convention;

“(b) if a member of the Union increases its number of contribution units, it would be called upon to pay, into the Working Capital Fund, an additional amount in proportion to the increase in the number of contribution units it had officially chosen;

“(c) if a member of the Union decides to reduce its number of contribution units applicable to it, the participation in the Working Capital Fund of that member would not be reduced; and

“(d) the contribution towards the Working Capital Fund of new members joining the Union is fixed at 8,333 Swiss francs (fixed amount) multiplied by the number of contribution units applicable to the new member.”

Adjustments of the Number of Contribution Units Applicable to a Member of the Union

Document C(Extr.)/23/3, Annex II

“At its twenty-third extraordinary session, held in Geneva on April 7, 2006, the Council decided that members of the Union should not adjust downwards their number of units of contribution without considering the implications for UPOV and considering how such a reduction would be compensated by other members of the Union. In particular, members of the Union should not reduce their number of units of contribution during a budget period approved by the Council, except under exceptional and unavoidable circumstances.”

POSSIBLE ISSUES FOR CONSIDERATION

Issues previously addressed by the Consultative Committee

27. The issues on which the Consultative Group prepared recommendations that were accepted by the Consultative Committee were as follows:

- (a) Number of Units of Contribution for Acceding States
- (b) Number of Units of Contribution for Existing Members of the Union
- (c) Working Capital Fund
- (d) Stable Budgeting Procedure
 - (i.) Indexing the budget to inflation
 - (ii.) Excluding downward adjustments of the number of contribution units applicable to a member of the Union
- (e) Services in Non-UPOV Languages
- (f) UPOV Mission Expenses

Issues on which recommendations were not made to the Consultative Committee

28. The Consultative Group also reported its discussions on the following matters in the Annex to document CC/70/3, on which recommendations were not made to the Consultative Committee, as set out in paragraph 21 of this document. This section reports on measures that UPOV is taking or considering that are relevant to those issues.

UPOV levy on each title of protection granted

29. There are no plans to introduce a levy on each title of protection granted for the reasons observed by the Consultative Group. However, UPOV PRISMA and the PLUTO database provide income that is related to the number of applications and grants of plant breeders' rights.

Organization of training, seminars, etc.

30. In the Consultative Group, reference was made to other means of imparting information using “technical aids, such as video-conferencing, video training packages or the like”. Since that time, UPOV has introduced and extended its program of distance learning courses. Furthermore, the Strategic Business Plan (document CC/97/3) and preparation of the Draft Program and Budget for the 2022-2023 Biennium (see document CC/97/8) consider opportunities, particularly in the context of the COVID-19 situation, to reduce travel, and therefore travel costs, while maintaining and perhaps enhancing training.

UPOV meetings

31. The Consultative Group received comments that “UPOV Technical Working Parties meet all over the world, and give rise to costs not only for the Office, but also for the host country in which the meeting takes place, and indeed for the members who send their delegates to such meetings. A question to be asked against this additional financial background is the extent to which these sessions could rather be organized in Geneva in a concentrated manner, especially as the Technical Committee is convened in Geneva in Spring, and therefore a large number of delegations are present for that meeting”.

32. The Consultative Group “noted that the delegates to the TC might not be the same persons as the experts attending the Technical Working Parties (TWP) and also noted that, for many members of the Union, the cost of travel to, and accommodation in, Geneva was probably higher than for most other locations. The Consultative Group further heard that, in the 2002-2003 biennium, the various TWP sessions had been hosted by eight countries, covering the Americas (6 meetings), Asia/Pacific (3) and Europe (2). There had been a total of 462 participants, of which 216 (47%) were from local plant variety protection offices, local breeding companies or attending local training activities. The Office reported that several members of the Union were very keen to host future sessions of the TWPs and explained that, to improve cost efficiency, the sessions were increasingly being used as the basis for training exercises in the country and regions concerned. Nevertheless, the Office explained that it was aware of these costs concerning experts from the members of the Union and explained that it would keep the situation under constant review to ensure the most efficient use of available financial and personnel resources within UPOV.”

33. While acknowledging the importance of TWPs being hosted by members of the Union, for the reasons explained to the Consultative Group, the COVID-19 situation has necessitated the organization of TWPs by electronic means in 2020. This has provided an opportunity to review whether the effectiveness of TWPs might be enhanced by the use of electronic meetings, including increasing the number of participants and participating members of the Union and observers. Although it is anticipated that physical meetings of the TWP will resume in due course, the Office of the Union will develop proposals for consideration by relevant UPOV bodies where it identifies possibilities to increase effectiveness of the, increase participation and minimize travel costs for the Office of the Union, members of the Union and observers.

Other funding possibilities

34. The Consultative Group recommended that the Office should investigate the possibility of establishing funds-in-trust for members of the Union, not only for the purpose of covering mission expenses, but also as a means of providing funds for particular projects or activities, and agreed that the Vice Secretary-General should report in more detail on this subject at the seventieth session of the Consultative Committee. It also agreed that the Office should investigate possible sources of funding other than from members of the Union, which might be linked to particular projects or activities.

35. The Strategic Business Plan (document CC/97/3) recognizes the importance of extrabudgetary funds, including funds-in-trust and provides an overview of the evolution in the value and diversity of extrabudgetary funds.

36. *The Consultative Committee is invited to:*

(a) *note the summary of the work of the Consultative Group on Long-Term Financial Issues of UPOV (Consultative Group);*

(b) *note that documents referenced in this document will be made available on the CC/97 webpage for ease of reference;*

(c) *note the issues on which the Consultative Group prepared recommendations that were accepted by the Consultative Committee, as set out in paragraphs 19 and 20 of this document;*

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(e) *note the decisions by the Council concerning certain financial matters of the Union, as set out in paragraph 26 of this document;*

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(g) identify issues as summarized in paragraph 27 to 35 of this document, or other issues, that it would wish to consider further.

[End of document]