

Consultative Committee
CC/98/15.
**Ninety-Eighth Session
Geneva, October 28, 2021**
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OUTCOME OF THE CONSIDERATION OF DOCUMENTS BY CORRESPONDENCE
Document prepared by the Office of the Union
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EXECUTIVE SUMMARY

1. The purpose of this document is to report the outcome of consideration of the Consultative Committee documents by correspondence, in accordance with the procedure adopted by the Council in 2021¹.
2. The Consultative Committee is invited to note the approval of the Consultative Committee by correspondence on September 21, 2021, of the decisions contained in the following documents:

Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document CC/98/14)

Adoption of documents (document C/55/3 Rev.)

- UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (Annex to document C/55/3 Rev.)
- UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)
- UPOV/INF/17: Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (“BMT Guidelines”) (Revision) (document UPOV/INF/17/2 Draft 6)
- UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 2)
- UPOV/INF/23: UPOV Code System (document UPOV/INF/23/1 Draft 3)
- UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)
- TGP/5: Experience and Cooperation in DUS Testing, Section 2: UPOV Model Form for the Application for Plant Breeders’ Rights (Revision) (document TGP/5: Section 2/4 Draft 1)
- TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)

Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)

UPOV/EXN/DEN Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/EXN/DEN/1 Draft 6)

Financial statements for 2020 (document C/55/5)

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4)

Reporting on UPOV PRISMA financing (document CC/98/3)

Possible use of the Chinese language in UPOV (document CC/98/8)

Policy on translation (document CC/98/9)

¹ The procedure for consideration of documents by correspondence is provided in Circular E-21/063 of May 14, 2021 (available at the TC/57, CAJ/78, CC/98 and C/55 webpages).

3. The Consultative Committee is invited to note the comments received, in response to Circular E-21/124 of August 23, 2021, on the following documents that have not resulted in a revision of those documents that were part of the procedure for approval by correspondence:

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4)

Reporting on UPOV PRISMA financing (document CC/98/3)

Possible use of the Chinese language in UPOV (document CC/98/8)

4. The Consultative Committee is invited to note that the responses received to Circular E-21/124 of August 23, 2021, also included comments on documents C/55/6 "Report of the External Auditor" and CC/98/5 "Communication strategy", which were not part of the procedure for approval by correspondence, and will be considered at the virtual session of the Consultative Committee in October 2021. The Consultative Committee is invited to note that the comments received concerning those documents are presented in this document for information of the Consultative Committee.

5. The Consultative Committee is invited to consider the proposals in paragraph 13 of document CC/98/11 "Possible guidance concerning smallholder farmers in relation to private and non-commercial use" in conjunction with the comments received from the European Union in response to Circular E -21/124 (see paragraph 64).

6. The structure of this document is as follows:

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BACKGROUND

7. The Council adopted the procedure for the UPOV sessions in October 2021, in accordance with Circular E-21/063 of May 14, 2021 (available on the [CC/98](#) webpage). The ninety-eighth session of the Consultative Committee (CC/98) will be held on October 28, 2021, by electronic means (see invitation Circular E-21/072 of May 31, 2021), in combination with prior consideration of certain documents by correspondence.

8. In consultation with the President of the Council, the following documents in Circular E-21/088 of June 16, 2021 were identified in document CCC/98/1 (Draft Agenda) with one asterisk (*) as documents for the procedure by correspondence with an opportunity for comments by July 15, 2021, prior to requests for approval of the proposed decisions in the documents:

Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document CC/98/14)*

Adoption of documents (document C/55/3)*

UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (Annex to document C/55/3)*

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 1)*

UPOV/INF/17: Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines") (Revision) (document UPOV/INF/17/2 Draft 6)*

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 1)*

UPOV/INF/23: UPOV Code System (document UPOV/INF/23/1 Draft 3)*

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)*

TGP/5: Experience and Cooperation in DUS Testing, Section 2: UPOV Model Form for the Application for Plant Breeders' Rights (Revision) (document TGP/5: Section 2/4 Draft 1)*

TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)*

Reporting on UPOV PRISMA financing (document CC/98/3)*

Possible use of the Chinese language in UPOV (document CC/98/8)*

9. By July 15, 2021, comments of a straightforward nature were received on the following documents in Circular E-21/087 of June 16, 2021. The Office of the Union addressed the comments in a revised version of the following documents, with endnote explanations:

Adoption of documents (document C/55/3 Rev.)

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 2)

10. Circular E-21/124 of August 23, 2021, invited the Consultative Committee to approve the proposed decisions contained in the following documents within 30 days (i.e. September 21, 2021):

Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document CC/98/14)

Adoption of documents (document C/55/3 Rev.)

Reporting on UPOV PRISMA financing (document CC/98/3)

Possible use of the Chinese language in UPOV (document CC/98/8)

11. Circular E-21/124 of August 23, 2021, also included documents identified in document CC/98/1 (Draft Agenda) with two asterisks (**) to be considered by correspondence in accordance with the specific procedure agreed by the relevant UPOV body. The Consultative Committee was invited to approve the proposed decisions contained in the following documents within 30 days (i.e. September 21, 2021):

Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)**

Explanatory Notes on Variety Denominations under the UPOV Convention
(document UPOV/EXN/DEN/1 Draft 6)**

Financial statements for 2020 (document C/55/5)**

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4)**

Policy on translation (document CC/98/9)**

Possible guidance concerning smallholder farmers in relation to private and non-commercial use
(document CC/98/11)**

12. By September 21, 2021, comments were received on document CC/98/11 "Possible guidance concerning smallholder farmers in relation to private and non-commercial use" that were not of a straightforward nature and, therefore, document CC/98/11 together with the comments received will be considered at the virtual session of the Consultative Committee in October 2021. The comments received in relation to document CC/98/11 are presented in this document (see paragraph 64).

13. As no objections were received by September 21, 2021, relevant decisions in the following documents are considered to have been taken by correspondence:

Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document CC/98/14)*

Adoption of documents (document C/55/3 Rev.)*

Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)**

Explanatory Notes on Variety Denominations under the UPOV Convention
(document UPOV/EXN/DEN/1 Draft 6)**

Financial statements for 2020 (document C/55/5)**

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4)**

Reporting on UPOV PRISMA financing (document CC/98/3)*

Possible use of the Chinese language in UPOV (document CC/98/8)*

Policy on translation (document CC/98/9)**

14. The decisions taken by the Consultative Committee by correspondence on September 21, 2021 are reproduced in this document according to the items in the Revised Draft Agenda (document CC/98/1 Rev 2.).

15. Circular E-21/124 of August 23, 2021, also included documents which were not part of the procedure for approval by correspondence concerning Circular E-21/124 of August 23, 2021, and will be considered at the virtual session of the Consultative Committee in October 2021:

Report of the External Auditor (document C/55/6)

Strategic Business Plan (document CC/98/2)

UPOV Accountability Framework (document CC/98/13)

Long-term Financial Issues of UPOV (document CC/98/4)

Communication strategy (document CC/98/5)

New developments in members of the Union (document CC/98/10)

16. The responses to Circular E-21/124 of August 23, 2021, included comments received concerning documents C/55/6 "Report of the External Auditor" and CC/98/5 "Communication strategy", which were not part of the procedure for approval by correspondence, and are included in this document for information of the Consultative Committee.

AGENDA ITEM 4: EXTENSION OF THE APPOINTMENT OF THE VICE SECRETARY-GENERAL AND PROCEDURE FOR THE APPOINTMENT OF A NEW VICE SECRETARY-GENERAL (DOCUMENT CC/98/14)

17. The Consultative Committee considered document CC/98/14.

18. The Consultative Committee recommended to the Council to extend the appointment of the Vice Secretary-General from December 1, 2022, until October 22, 2023.

19. The Consultative Committee recommended to the Council to approve the procedure and timetable for the appointment of the new Vice Secretary-General, including:

(a) the circular announcing the vacancy and the general description of the post and an outline of the conditions of employment of the post, as provided in the Annex to document CC/98/14;

(b) announcing the appointment of the Vice Secretary-General at the Assistant Secretary General (ASG) grade of the United Nations common system, thereby avoiding the need for a consideration of a promotion after the Vice Secretary-General has been in post for one year; and

(c) the following course of action and timetable

(i) to approve a circular, announcing the vacancy and the general description of the post and an outline of the conditions of employment of the post, as provided in the Annex to document CC/98/14;

(ii) to request the Secretary-General to announce the vacancy by the end of May 2022;

(iii) to establish a deadline for the receipt of applications by August 31, 2022;

(iv) to send to each member of the Union, as soon as possible after August 31, 2022, a copy of the applications received;

(v) to add an agenda item for the ninety-ninth session of the Consultative Committee, to be held on October 27, 2022, to consider applications received for the post of Vice Secretary-General, to establish an Ad hoc Sub-Committee based on previous practice on the appointment of Vice Secretary-Generals, charged with interviewing the selected candidates at the beginning of 2023 and to decide on the topic for a presentation to be made by the candidates selected for interview;

(vi) by end of January/beginning of February 2023, to arrange an informal meeting of members of the Union to listen to 10 to 15 minute presentations by the candidates selected for interview in the morning and to arrange for the selected candidates to meet with the Ad hoc Sub Committee in the afternoon;

(vii) by the end of February 2023, to send a report of the meeting of the Ad hoc Sub Committee to the members of the Union;

(viii) to convene the one hundredth session of the Consultative Committee and an extraordinary session of the Council on March 23, 2023, and after seeking the agreement of the Secretary-General, to make a recommendation on the appointment of the new Vice Secretary-General to the Council.

AGENDA ITEM 6: DOCUMENTS PROPOSED FOR ADOPTION BY THE COUNCIL (DOCUMENT C/55/3 REV.)

20. The Consultative Committee considered document C/55/3 Rev.

Information documents

UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (Annex to document C/55/3 Rev.)

21. The Consultative Committee considered the Annex to document C/55/3 Rev..

22. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/6 "Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention" (document UPOV/INF/6/6), on the basis of the Annex to document C/55/3 Rev..

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)

23. The Consultative Committee considered document UPOV/INF/16/10 Draft 2.

24. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/16 "Exchangeable Software" (document UPOV/INF/16/10), on the basis of document UPOV/INF/16/10 Draft 2.

UPOV/INF/17: Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction ("BMT Guidelines") (Revision) (document UPOV/INF/17/2 Draft 6)

25. The Consultative Committee considered document UPOV/INF/17/2 Draft 6.

26. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/17 "Guidelines for DNA Profiling: Molecular Marker Selection and Database Construction ('BMT Guidelines')" (document UPOV/INF/17/2), on the basis of document UPOV/INF/17/2 Draft 6.

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 2)

27. The Consultative Committee considered document UPOV/INF/22/8 Draft 2.

28. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/22 "Software and equipment used by members of the Union" (document UPOV/INF/22/8), on the basis of document UPOV/INF/22/8 Draft 2.

UPOV/INF/23: UPOV Code System (document UPOV/INF/23/1 Draft 3)

29. The Consultative Committee considered document UPOV/INF/23/1 Draft 3.

30. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF/23 "UPOV Code System" (document UPOV/INF/23/1), on the basis of document UPOV/INF/23/1 Draft 3.

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)

31. The Consultative Committee considered document UPOV/INF-EXN/15 Draft 1.

32. The Consultative Committee recommended to the Council to adopt a revision of document UPOV/INF-EXN "List of INF-EXN Documents and Latest Issue Dates" (document UPOV/INF-EXN/15), on the basis of document UPOV/INF-EXN/15 Draft 1.

Explanatory Notes

UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/EXN/DEN/1 Draft 6)

33. The Consultative Committee noted that matters concerning variety denominations were considered in document C/55/11.

Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)

34. The Consultative Committee considered document C/55/11.

35. The Consultative Committee recommended to the Council to adopt a revision of UPOV/EXN/DEN “Explanatory notes on variety denominations under the UPOV Convention” (document UPOV/EXN/DEN/1), on the basis of document UPOV/EXN/DEN/1 Draft 6.

TGP documents

TGP/5: Experience and Cooperation in DUS Testing: Section 2: UPOV Model Form for the Application for Plant Breeders’ Rights (Revision) (document TGP/5: Section 2/4 Draft 1)

36. The Consultative Committee considered document TGP/5: Section 2/4 Draft 1.

37. The Consultative Committee recommended to the Council to adopt a revision of document TGP/5: “Experience and Cooperation in DUS Testing: Section 2: UPOV Model Form for the Application for Plant Breeders’ Rights” (document TGP/5: Section 2/4), on the basis of document TGP/5: Section 2/4 Draft 1.

TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)

38. The Consultative Committee considered document TGP/0/13 Draft 1.

39. The Consultative Committee recommended to the Council to adopt a revision of document TGP/0 “List of TGP documents and latest issue dates” (document TGP/0/13), on the basis of document TGP/0/13 Draft 1.

AGENDA ITEM 7: FINANCIAL STATEMENTS FOR 2020 (DOCUMENT C/55/5)

40. The Consultative Committee considered document C/55/5.

41. The Consultative Committee recommended to the Council to approve the Financial Statements for 2020.

AGENDA ITEM 9: REPORT OF THE EXTERNAL AUDITOR (DOCUMENT C/55/6)

42. The posting of document C/55/6 “Report of the External Auditor” was mentioned in Circular E-21/124 of August 23, 2021, but was not part of the procedure by correspondence. However, the following comments on document C/55/6 were received:

Comments from the European Union

“The EU and its Member States take note of the report of the External Auditor and ask the UPOV Office to follow the two recommendations as regards to after-service health insurance and consultation of staff in relation to costs and benefits of alignment with WIPO Staff Regulations and Rules UN common system.”

Comments from Switzerland

"We have the following comments on the External Auditor's report (document C/55/6):

"Under point 5, it is mentioned that the employee benefits liability for health insurance has increased by CHF 1 million to a total of CHF 3 million. The amount seems to us to be exorbitant given the size of the Organization. We would like to request more detailed information on the subject. In particular, we would like to know whether the adjustment was a one-off or rather that such increases are likely to be a regular occurrence in the coming years.

"The financial situation of UPOV could take a significant turn for the worse in the absence of measures to make savings or increase the employees' share of the cost of the insurance. Recommendations to that effect have been made in the Report. However, in our view, concrete solutions for implementation are lacking."

43. The Office of the Union invited the European Union and Switzerland to make its comments at the Consultative Committee session and explained that the Controller would make an intervention on this point at the session.

AGENDA ITEM 12: DRAFT PROGRAM AND BUDGET FOR THE 2022-2023 BIENNIUM (DOCUMENT C/55/4)

44. The Consultative Committee considered document C/55/4.

45. The Consultative Committee recommended to the Council to approve the Draft Program and Budget of the Union for the 2022 2023 Biennium, as presented in the Annex to document C/55/4, including:

- (i) the amount of contributions from members of the Union;
- (ii) the proposed maximum ceiling of expenditure in the regular budget being 7,634,500 Swiss francs or the income received in the biennium, whichever is the lower; and
- (iii) the total number of posts.

Comments from the European Union

46. In reply to Circular E-21/124 of August 23, 2021, the following comments on document C/55/4 were received from the European Union:

"The EU and its Member States can consider to approve the Draft Program and Budget of the Union for the 2022-2023 Biennium with following comments:

"We note the intention to develop new IT tools to support a better and more efficient implementation of the UPOV system.

"We would like to ask UPOV to clarify the input and resources they need, also from its members. Working groups may need to be organised and more information about the timing would be welcome."

"Concerning communication and in particular awareness raising we suggest, as under agenda point 16 on the Communication Strategy, that the UPOV Office will support the OECD Seed Schemes Secretariat on a proposal on International Year of Seed in the next meeting of the World Seed Partnership. This would allow and give space to a communication exercise in various forms, and to raising awareness of the UPOV system and importance of plant breeding.

"For the communication on the benefits of the UPOV system it would be highly important to have factual, preferably quantitative data. An update of the earlier impact assessment and cooperation with the members of the Union on impact assessments should pursued. In particular, it would be beneficial to gather data in relation to plant breeding and impacts on the UN Sustainable Development Goals"

47. The Office of the Union provided the following explanations to the European Union:

“The resources that would be needed from the regular UPOV budget are included in the Draft Program and Budget of the Union for the 2022-2023 Biennium.

“The e-PVP modules (see document C/55/INF/2 Developments in UPOV and accompanying video https://www.upov.int/meetings/en/details.jsp?meeting_id=60600) are already well advanced as part of the e-PVP Asia project, with relevant parts of the costs having been covered by the Japan FIT. E-PVP Asia, which is built on the e-PVP modules, will be finalized in early 2022. The modules have been developed in consultation with PVP offices, including CPVO, via an experienced ICS contract coordinator (Kees van Ettehoven). UPOV members will be able to use the e-PVP modules with minimal cost (e.g. for maintenance and cloud hosting costs). However, if a UPOV member wishes to customize the e-PVP modules, for example because they wish to have a more complex workflow and/or do not use the UPOV model application form and standard UPOV Test Guidelines Technical Questionnaires, the UPOV member would need to cover the costs involved. In the case of EAPVP Forum countries that are UPOV members, the Japan FIT may cover certain of these costs in relation to the e-PVP Asia project. In the case of other UPOV members, other sources of support might be available, for example, via EU funded programs implemented by the EUIPO.

“UPOV is already in discussion with some UPOV members that have expressed an interest to use the e-PVP modules.

“The proposal of the European Union to gather data in relation to plant breeding and impacts on the UN Sustainable Development Goals could be raised for consideration at the Consultative Committee session.

“The proposal of the European Union for UPOV to support the OECD Seed Schemes proposal on International Year of Seed in the next meeting of the World Seed Partnership could be raised by the European Union at the Consultative Committee session with a view to obtaining approval by the Council.”

AGENDA ITEM 15: REPORTING ON UPOV PRISMA FINANCING (DOCUMENT CC/98/3)

48. The Consultative Committee considered document CC/98/3.

49. The Consultative Committee approved the proposals to address the recommendations in the External Auditor's Report on the 2019 UPOV Financial Statements, as set out in paragraphs 8 and 9 of document CC/98/3.

Comments from the European Union

50. In reply to Circular E-21/124 of August 23, 2021, the following comments on document CC/98/3 were received from the European Union:

“The EU and its Member States can consider the proposals to address the recommendations in the External Auditor's Report on the 2019 UPOV Financial Statements:

- “(a) latest costs and revenues relating to UPOV PRISMA;
- “(b) funding sources other than the regular budget;
- “(c) latest and projected coverage of UPOV PRISMA (capacity);
- “(d) projected costs and revenues of UPOV PRISMA;
- “(e) anticipated funding sources other than the regular budget;
- “(f) incentives by members of the Union for the use of UPOV PRISMA; and
- “(g) a proposal for the UPOV PRISMA fee.

“We recognise all the benefits of UPOV PRISMA, however, we would like to seek clarification on the following points:

“Is the long-term prediction on the use of UPOV PRISMA presented in para 47 realistic?”

“We note that a fee of 90 CHF was introduced in the beginning of 2020. How many applications were received and how many participating offices were there in 2020 and what is the crop coverage at the moment?”

"We note that between the EU/CPVO and UPOV PRISMA technicalities still need to be solved to allow full participation.

"As regards the timing of the introduction of fees it should be made sure that the system works well and that applicants can make applications without being faced with technical problems. The CPVO is working with UPOV on improving some fundamental issues this year but the system needs to be improved in the years to come. The main challenge is that the CPVO has more than 200 different TQs, and CPVO needs to configure the transmission of data accordingly. This should be achieved by 2022-2023.

"Therefore, the EU and its Member States can agree to prolong the lower fee of 90 CHF per application until the end of 2023."

51. The Office of the Union provided the following explanations to the European Union:

"Document C/55/INF/2 "Report by the Vice Secretary-General on developments in UPOV" and accompanying video (see: https://www.upov.int/meetings/en/details.jsp?meeting_id=60600) provides an update on the number of applications via UPOV PRISMA in 2021 and the background to those developments. Since the recording of the video, the number of applications in UPOV PRISMA in 2021 has exceeded 1,800. The report that will be presented to the Consultative Committee in 2022 is intended to provide the necessary data to enable the Consultative Committee to make appropriate recommendations on UPOV PRISMA funding.

"The Office of the Union welcomes the commitment by the CPVO to enable applicants to use UPOV PRISMA to make applications to the CPVO for all genera and species in the next Biennium. The project between CPVO and UPOV is also intended to ensure that applicants will be able to re-use the data from the CPVO online application system when making PBR applications in other UPOV members via UPOV PRISMA. Those developments will greatly enhance the value of the tool for breeders."

AGENDA ITEM 16: COMMUNICATION STRATEGY (DOCUMENT CC/98/5)

52. The posting of document CC/98/5 "Communication strategy" was mentioned in Circular E-21/124 of August 23, 2021, but was not part of the procedure by correspondence. However, the following comments on document CC/98/5 were received from the European Union:

Comments from the European Union

"The EU and its Member States wish to point out that in the last Annual Meeting of the OECD Seed Schemes it was decided that the Secretariat will propose an International Year of Seed at its next meeting with the World Seed Partnership. We ask that the Consultative Committee will endorse that the UPOV office will support the proposal on an International Year of Seed. This would give space to a unique communication exercise in various forms and allowing to highlight and raise awareness of the UPOV system and plant breeding in more general."

53. The Office of the Union explained that the proposal of the European Union for UPOV to support the OECD Seed Schemes proposal on an International Year of Seed in the next meeting of the World Seed Partnership could be raised by the European Union at the Consultative Committee session with a view to obtaining approval by the Council.

AGENDA ITEM 19: POSSIBLE USE OF THE CHINESE LANGUAGE IN UPOV (DOCUMENT CC/98/8)

54. The Consultative Committee considered document CC/98/8.

55. The Consultative Committee approved the program for the use of the Chinese language in UPOV and proposed resourcing, as set out in paragraphs 6 to 16 of document CC/98/8, as reproduced in Annex I to this document. On that basis, a new item and document have been included in the agenda of the fifty-fifth ordinary session of the Council to be held on October 29, 2021.

56. The Consultative Committee noted that the program should not be considered to be applicable to other additional languages without a separate analysis.

Comments from the European Union

57. In reply to Circular E-21/124 of August 23, 2021, the following comments on document CC/98/8 were received from the European Union:

“The EU and its Member States welcome that the contribution of China has been raised to 2 units which should cover the interpretation costs, a Chinese-speaking professional will be provided with no cost, translation would be funded or provided by China and a training centre would be developed and funded by China. It is noted that income from PRISMA would be critical for sustainable resourcing of this program requiring full participation of China in UPOV PRISMA. We wish to enquire if the latter is the case now or in foreseeable future?”

“The EU and its Member States can

“(a) approve the proposed program for use of the Chinese language in UPOV and proposed resourcing and

“(b) note that this proposed program should not be considered to be applicable to other additional languages without a separate analysis.

“The EU and its Member States wish to highlight that the introduction of any new language should be studied case by case to ensure that it covers costs for all activities foreseen, and in particular subject to available resources, before the UPOV can consider any additional language. We are concerned that expanding the language regime could become unmanageable for such a relatively small organisation like UPOV. A prudent approach is also needed against the background of the current global economic uncertainty.”

58. The Office of the Union provided the following explanations to the European Union:

“It is a matter for China to comment on its intention with regard to participation in UPOV PRISMA.

“Document CC/98/8, paragraph 7 provides that:

“7. The proposed program below is based on circumstances related to the use of Chinese language, which includes in particular that Chinese is a working language of the World Intellectual Property Organization (WIPO). Furthermore, it is based on the existing language capacity of WIPO facilities. Therefore, this proposed program should not be considered to be applicable to other additional languages without a separate analysis.”

AGENDA ITEM 20: POLICY ON TRANSLATION (DOCUMENT CC/98/9)

59. The Consultative Committee considered document CC/98/9.

60. The Consultative Committee noted the developments since the ninety-seventh session of the Consultative Committee, reported in document CC/98/9.

61. The Consultative Committee noted the information and comments received in reply to UPOV Circular E-21/111, as reproduced in Annex II to document CC/98/9.

62. The Consultative Committee approved the proposal to amend the section “Use of neural machine translation technologies” of the Draft UPOV Policy on Translation and to include an Annex “Policy for the use of Machine Translation”, as provided in paragraph 11 of document CC/98/9.

63. The Consultative Committee recommended to the Council to adopt a revision of the Draft UPOV Policy on Translation, on the basis of the text in Annex I as amended by paragraph 11 of document CC/98/9, as reproduced in Annex II to this document. On that basis, a new item and document have been included in the agenda of the fifty-fifth ordinary session of the Council to be held on October 29, 2021.

AGENDA ITEM 22: POSSIBLE GUIDANCE CONCERNING SMALLHOLDER FARMERS IN RELATION TO PRIVATE AND NON-COMMERCIAL USE (DOCUMENT CC/98/11)

Comments from the European Union

64. In reply to Circular E-21/124 of August 23, 2021, comments were received from the European Union on document CC/98/11 that were not of a straightforward nature and, therefore, document CC/98/11 will be considered by the Consultative Committee at its virtual session on October 28, 2021, in conjunction with the comments received, which are reproduced below:

"13. The Consultative Committee is invited to:

"(a) note the developments since the ninety-seventh session of the Consultative Committee on possible guidance concerning smallholder farmers in relation to private and non-commercial use, reported in this document;

"(b) request the Office of the Union to include an item 'Possible revision of the 'Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention', in the agenda of the seventy-eighth session of the CAJ, to be held by electronic means on October 27, 2021;

"(c) request the CAJ to draft a revision of the 'Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention' (document UPOV/EXN/EXC/1) to provide guidance concerning smallholder farmers in relation to private and non-commercial use and to consider the establishment of a working group to assist in that process;

"(d) subject to the above agreement by the Consultative Committee in the procedure by correspondence (see UPOV Circular 124 of August 23, 2021), to request the Office of the Union to prepare a CAJ document for consideration by the CAJ, at its seventy-eighth session, to include:

"(i) a copy of the compendium with the replies to UPOV Circular E-20/246 (see Annex I), subject to the agreement of the observer State and observer organizations that contributed to the compendium; and

"(ii) in consultation with the Chair of the CAJ, draft terms of reference for a working group with the purpose to revise the "Explanatory Notes on Exceptions to the Breeder's Right under the 1991 Act of the UPOV Convention" (document UPOV/EXN/EXC/1) to provide guidance concerning smallholder farmers in relation to private and non-commercial use."

[comment of the Office of the Union: the above text in italics is an extract from document CC/98/11, paragraph 13, which was reproduced in the comments from the European Union.]

"The EU and its Member States take note of the amended process on possible guidance concerning smallholder farmers in relation to private and non-commercial use and welcome the establishment of a Working Group on the revision of Explanatory Note. However, in order to make progress in the matter we propose that the Project Team (Euroseeds, Plantum and Oxfam) as a first step analyses the contributions received and presents a report with possible conclusions to the Working Group for discussion. In addition, the CAJ should consider the revision, however, it might not be the most efficient way to give the responsibility of drafting the revision of the Explanatory Note document to the CAJ. Therefore, we suggest that the Office of the Union takes over the task following the discussion in the Working Group which should contribute to drafting of the possible revision document."

"It is proposed to invite the Consultative Committee to modify the planned procedure as follows:

"(a) to request the Office of the Union to discuss the contributions received from members of the Union and observers in the Council in reply to Circular E-20/246 (Compendium) with the Team of the Project "Options to interpret the notion of private and non-commercial use as included in Article 15. 1. I of the UPOV 1991 Convention" (Project Team) to explore a basis to prepare a first draft of the guidance;

"(b) subject to the above agreement, to request the Office of the Union:

"(i) to provide a copy of the Compendium to the Project Team, subject to the agreement of the observer State and observer organizations that contributed to the Compendium; and

“(ii) to make an oral report on the progress concerning the above consultations, at the ninety-eighth session of the Consultative Committee in 2021, under the agenda item 22 “Possible guidance concerning smallholder farmers in relation to private and non-commercial use” and to present a proposal for an updated procedure for the development of guidance for consideration by the Consultative Committee.

[comment of the Office of the Union: the above text in italics is an extract from Circular E 21/098 of June 25, 2021, inviting the Consultative Committee to modify the procedure agreed by the Consultative Committee in 2020, which was reproduced in the comments from the European Union]

“The EU and its Member States can agree on the proposed way forward.

“General position:

“As it is evident that there are issues in relation to informal seed exchange between small farmers, where the interrelations are not clearly understood, interpreted or communicated, it would be beneficial to clarify these issues. It should also be made clear that there are national (e.g. EU) rules on marketing of plant reproductive material - a separate legal framework from the variety protection rules – in which the general marketing requirements for seed are laid down.

“We can agree to the following suggestions:

“Action for UPOV

- “Amending the explanatory note on exceptions to the breeder's right under the 1991 Act of the UPOV convention ('private and non-commercial use').
- “Consequently improving the FAQs: further clarification of 'private and non-commercial use'.

“FAQ/explanatory note

“On the basis of above the EU and its Member States wish to make a recommendation to the Council to work on communication and explanations with the help of explanatory notes and FAQs.”

“Moreover, it could be reflected to amend a FAQs on farmers to make it more clear that farmers can be breeders, e.g. farmers who select their varieties according to their own agro-climatic and cultivation conditions, and to make a cross reference to the FAQ on breeders. In addition, in the FAQ on subsistence farmers their possibility to exchange seeds to vital goods in the local community could also be made clearer.”

65. The Office of the Union explained to the European Union that the proposals in paragraph 13 of document CC/98/11 would be considered by the Consultative Committee at its virtual session on October 28, 2021, in conjunction with the comments from the European Union.

66. The Consultative Committee is invited to note the approval of the Consultative Committee by correspondence on September 21, 2021, of the decisions contained in the following documents:

Extension of the appointment of the Vice Secretary-General and procedure for the appointment of a new Vice Secretary-General (document CC/98/14)

Adoption of documents (document C/55/3 Rev.);

UPOV/INF/6: Guidance for the preparation of laws based on the 1991 Act of the UPOV Convention (Revision) (Annex to document C/55/3 Rev.)

UPOV/INF/16: Exchangeable Software (Revision) (document UPOV/INF/16/10 Draft 2)

UPOV/INF/17: Guidelines for DNA-Profiling: Molecular Marker Selection and Database Construction (“BMT Guidelines”) (Revision) (document UPOV/INF/17/2 Draft 6)

UPOV/INF/22: Software and Equipment Used by Members of the Union (Revision) (document UPOV/INF/22/8 Draft 2)

UPOV/INF/23: UPOV Code System (document UPOV/INF/23/1 Draft 3)

UPOV/INF-EXN: List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/15 Draft 1)

TGP/5: Experience and Cooperation in DUS Testing, Section 2: UPOV Model Form for the Application for Plant Breeders' Rights (Revision) (document TGP/5: Section 2/4 Draft 1)

TGP/0: List of TGP documents and latest issue dates (Revision) (document TGP/0/13 Draft 1)

Explanatory Notes on Variety Denominations under the UPOV Convention (document C/55/11)

UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/EXN/DEN/1 Draft 6)

Financial statements for 2020 (document C/55/5)

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4)

Reporting on UPOV PRISMA financing (document CC/98/3)

Possible use of the Chinese language in UPOV (document CC/98/8)

Policy on translation (document CC/98/9).

67. *The Consultative Committee is invited to note the comments received in response to Circular E-21/124 of August 23, 2021, on the following documents that have not resulted in a revision of documents that were part of the procedure for approval by correspondence and are presented for information of the Consultative Committee:*

Draft Program and Budget for the 2022-2023 Biennium (document C/55/4).

Reporting on UPOV PRISMA financing (document CC/98/3)

Possible use of the Chinese language in UPOV (document CC/98/8).

68. *The Consultative Committee is invited to:*

(a) note that the responses received to Circular E-21/124 of August 23, 2021, also included comments on documents C/55/6 "Report of the External Auditor" and CC/98/5 "Communication strategy", which were not part of the procedure for approval by correspondence, and will be considered at the virtual session of the Consultative Committee in October 2021; and

(b) note that the comments received concerning those documents are presented in this document for information of the Consultative Committee.

69. The Consultative Committee is invited to consider the proposals in paragraph 13 of document CC/98/11 "Possible guidance concerning smallholder farmers in relation to private and non-commercial use" in conjunction with the comments received from the European Union in response to Circular E-21/124 (see paragraph 64)

[Annexes follow]

ANNEX I

PROGRAM FOR USE OF THE CHINESE LANGUAGE IN UPOV

approved by the Consultative Committee on September 21, 2021

1. The program below is based on circumstances related to the use of Chinese language, which includes in particular that Chinese is a working language of the World Intellectual Property Organization (WIPO). Furthermore, it is based on the existing language capacity of WIPO facilities. Therefore, this program should not be considered to be applicable to other additional languages without a separate analysis.

Provisions in Chinese language

Interpretation in Chinese at UPOV sessions in Geneva

2. Provision of interpretation services in the Chinese language at UPOV sessions in Geneva.

Translation of UPOV materials into Chinese

3. Translation of the following UPOV materials into Chinese:

(a) Key documents in the UPOV Collection:

- (i) UPOV Convention
- (ii) UPOV/INF document series
- (iii) Explanatory notes on the UPOV Convention
- (iv) General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants
- (v) TGP documents

(b) UPOV Distance Learning Courses

(c) Standard UPOV presentation materials from the Train the Trainer course

4. The key documents in the UPOV Collection materials would be made available on the UPOV website.

5. The UPOV Distance Learning Courses in Chinese would be hosted on the China Intellectual Property Training Center (CIPTC) of the China National Intellectual Property Administration (CNIPA) DL platform, with administration and support provided by the relevant authorities in China.

Chinese-speaking professional in the Office of the Union

6. The Office of the Union would accommodate a Chinese speaking professional in the Office of the Union and enable that professional to support training and assistance activities in Chinese.

Facilitating PBR applications

7. China is a participating member of the Union in UPOV PRISMA. UPOV PRISMA provides a Chinese-language navigation interface and pre-defined translated parts in Chinese of the Technical Questionnaire for supported crops by China.

Training center

8. The Office of the Union would provide available training materials in Chinese and guidance on the content of a suitable training course on the UPOV system of plant variety protection as a basis to develop a training center for Chinese-speaking participants, hosted by the a relevant institute in China. The support would also include the provision of lectures by the Chinese-speaking professional from the Office of the Union. The relevant authorities in China would be responsible for administration and participants' support for the UPOV Distance Learning Courses in Chinese.

Resourcing

9. Some of the components of the provisions above have direct costs. However, for all the provisions there are also overhead, or indirect costs, that would be incurred in terms of resources of the Office of the Union. Therefore, the following resource plan needs to be considered as a package from which individual items cannot be isolated.

10. The program would be resourced as follows:

1. *Units of contribution*

0.5 contribution units (CHF26,820) is required to sustain the direct costs associated with the provision of interpretation services in the Chinese language at UPOV sessions in Geneva, subject to the UPOV sessions being organized as a single set of sessions and would, for example, allow for occasional extra-ordinary sessions.

(Note: In 2019, China already increased its number of contribution units from one-half (0.5) to two (2.0) units, as from 2020.)

2. *Provision of Chinese-speaking professional*

A suitably qualified Chinese-speaking professional would be provided at no cost to the Office of the Union via the UN Junior Professional Officer Program or via the WIPO/UPOV Fellowship scheme. The duration of the assignment for each individual professional would be a minimum of 2 years and a succession of individual professionals would be provided continuously during the program.

3. *Translation of relevant UPOV materials in Chinese*

Option 1: Translations could be organized by UPOV via WIPO translation service subject to the direct costs being covered by China.

Option 2: Translations could be provided to the Office of the Union for coordination and consistency-checks.

4. *Training center*

The training center hosted by a relevant institute in China would be developed and funded by China and any other interested members of the Union.

5. *Participation in UPOV PRISMA*

Translations of relevant information into Chinese would be provided by China.

Income from UPOV PRISMA would be a critical part of the sustainable resourcing of the program. Therefore, continuous full participation of China in UPOV PRISMA would be necessary during the program and the sustainability of the program would depend on the level of use for relevant members of the Union.

[Annex II follows]

UPOV POLICY ON TRANSLATION
approved by the Consultative Committee on September 21, 2021

UPOV Convention and WIPO/UPOV Agreement

1. The UPOV requirements for translation are governed by the UPOV Convention in accordance with the decisions of the Council.

2. Article 28 of the 1991 Act of the UPOV Convention provides as follows:

“Article 28
“Languages

“(1) [Languages of the Office] The English, French, German and Spanish languages shall be used by the Office of the Union in carrying out its duties.

“(2) [Languages in certain meetings] Meetings of the Council and of revision conferences shall be held in the four languages.

“(3) [Further languages] The Council may decide that further languages shall be used.”

3. The Agreement signed between the World Intellectual Property Organization (WIPO) and UPOV on November 26, 1982 (“WIPO/UPOV Agreement” available at https://www.upov.int/edocs/infdocs/en/upov_inf_8.pdf) (Article 1 and Article 2) provides as follows:

“Article 1

“Requirements of UPOV

“(1) WIPO shall satisfy the requirements of UPOV as regards:
[...]

“(v) translation and reproduction of documents and publications produced by the Office of UPOV,
“[...]

“(2) The requirements of UPOV shall be met on a basis of strict equality with the requirements of the various Unions administered by WIPO.”

“Article 2

“Indemnification of WIPO

“(1) UPOV shall indemnify WIPO for any service rendered to, and any expenditure incurred on behalf of, UPOV.

“[...]

WIPO Policy on Translation²

4. The aim of the WIPO policy on translation is to ensure effective execution and quality control of translation work in line with WIPO standards and practice and the language policy adopted by WIPO Member States, to prevent duplication of work and unnecessary additional expenditure and to achieve rationalization and cost-containment measures.

5. UPOV applies WIPO policies and procedures *mutatis mutandis* except where specified in the “UPOV exceptions to the WIPO Policy on Translation”.

² On January 31, 2019, WIPO issued Office Instruction No. 5/2019 concerning the “Translation of Official WIPO Documentation” (OI) (reproduced in Annex I of document CC/97/10 Rev.). This Office Instruction formalizes the policy and procedures for the translation of all official WIPO documentation (“WIPO policy on translation”).

UPOV exceptions to the WIPO Policy on Translation

6. For UPOV purposes, the following exceptions to the WIPO Policy on Translation [see Annex I of document CC/97/10 Rev.] are applied.

Scope

7. In addition to the scope of the WIPO policy on translation of official documentation [see Annex I of document CC/97/10 Rev., paragraph 3], UPOV has the following translation requirements:

(a) Translations of laws or draft laws as part of the steps for the procedure before the Council (see Article 34(3) of the 1991 Act of the UPOV Convention); and

(b) Translation requirements of UPOV services, including for example UPOV PRISMA, PLUTO, GENIE, UPOV Lex, TG Template.

Language Regimes

8. In relation to the languages regimes in the WIPO policy on translation [see Annex I of document CC/97/10 Rev., paragraph 4], UPOV has the following language requirements in accordance with Article 28 of the 1991 Act of the UPOV Convention:

“Article 28
“Languages

“(1) [Languages of the Office] The English, French, German and Spanish languages shall be used by the Office of the Union in carrying out its duties.

“(2) [Languages in certain meetings] Meetings of the Council and of revision conferences shall be held in the four languages.

“(3) [Further languages] The Council may decide that further languages shall be used.”

9. Translation requirements in other languages will be in accordance with the programs adopted by the Council and will include a cost analysis (e.g. Program for the use of the Russian language in UPOV).

Document Rationalization and Control Measures

10. UPOV plans to apply the limit of words in the WIPO policy on translation [see Annex I of document CC/97/10 Rev., paragraph 5] as far as possible, in addition to the exceptions in the WIPO policy on translation [see Annex I of document CC/97/10 Rev., paragraph 6], the following examples might not be subject to such limitation on document length:

(a) Annual reports of the Secretary-General;

(b) Financial documents (e.g. UPOV program and Budget; Financial Statements; External Auditor's Reports);

(c) UPOV Test Guidelines;

(d) Laws or Draft Laws as part of the steps for the procedure before the Council (see Article 34(3) of the 1991 Act of the UPOV Convention).

Forecasting and Scheduling Translations

11. In relation to the timings for the forecasting and scheduling translations of the WIPO policy on translation [see Annex I of document CC/97/10 Rev., paragraphs 8 to 11], UPOV has the following requirements:

(a) Certain Technical Committee documents may be submitted for translation up to the week before the TC session because of the constraints of the dates of the sessions of the Technical Working Parties (TWPs) and the preparation of Test Guidelines; and

(b) Certain documents and circulars for the consideration of laws or draft laws by correspondence or at the relevant session may need to be translated in one week (see document UPOV/INF/13 at https://www.upov.int/edocs/infdocs/en/upov_inf_13.pdf).

General Principles

12. Certain publications, documents and materials have been translated by external suppliers in other languages than the UPOV languages (e.g. Impact Studies, videos, 1991 Act of the UPOV Convention; Guidance for the Preparation of Laws Based on the 1991 Act of the UPOV Convention (document UPOV/INF/6) – see <https://www.upov.int/about/en/languages.html>).

13. In relation to the procedure in the WIPO policy on translation [see Annex I of document CC/97/10 Rev., paragraph 16], UPOV has a requirement that certain publications and documents be translated by external suppliers in languages other than the UPOV languages.

Procedures and Services

14. The priorities in the WIPO policy on translation [see Annex I of document CC/97/10 Rev., paragraph 19] shall be set by UPOV.

Use of neural machine translation technologies

15. Neural machine translation technologies will be used to minimize translation costs, except where members of the Union specify that human translation is necessary, in accordance with the Annex to this Policy on Translation.

16. A testing phase of two years will be implemented for the use of neural machine translation of documents for the 2022 and 2023 UPOV sessions. During the testing phase, all machine translation will include light post editing. A report on the implementation phase will be presented to the Consultative Committee at its session in 2023. At that time, the Consultative Committee will decide whether to review or validate the policy for the use of machine translation.

[Appendix follows]

ANNEX II, APPENDIX

POLICY FOR THE USE OF MACHINE TRANSLATION
FOR ENGLISH, FRENCH, GERMAN AND SPANISH LANGUAGES

1. The overall strategy on the use of machine translation for UPOV documents and materials is as follows:

(a) human translation will be used for documents or part of documents, as specified by the members of the Union, that require high precision;

(b) machine translation with light post editing, as appropriate, will be used for other documents or parts of documents.

Light post-editing includes: correction of mistakes if they affect the meaning; and deleting translation alternatives generated by the engine.

2. As far as possible, the body of documents will contain only executive summaries and decision paragraphs, with other information presented in Annexes to the document in a format suitable for machine translation.

3. Documents for which high precision is required, as specified by members of the Union, will be translated with human translation. As far as possible, for such documents, the body of the document (i.e. executive summary and decision paragraphs) will be translated with human translation and the Annexes will be translated by machine translation with light post editing or machine translation only, as appropriate.

4. Documents other than those in 3, will be translated by machine translation with light post editing, as appropriate.

5. A suitable disclaimer will be added to the documents indicating that they are generated using machine translation, with light post editing, if applicable, and the accuracy cannot be guaranteed. Therefore, the text in the original language is the only authentic version.

[End of Annex II and of document]