

Consultative Committee**CC/98/3****Ninety-Eighth Session
Geneva, October 28, 2021****Original:** English
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to be considered by correspondence

REPORTING ON UPOV PRISMA FINANCING*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 to address the recommendations in the External Auditor's Report on the 2019 UPOV Financial Statements.
2. The Consultative Committee is invited to consider 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 this document.

RECOMMENDATIONS OF THE EXTERNAL AUDITORS

3. The External Auditor's Report on the 2019 UPOV Financial Statements (see document C/54/6 "Report of the External Auditor", Annex) contained the following recommendations:

"R1: To enhance transparency and to inform future decision making, we recommend that UPOV consider separate reporting on the costs and revenues relating to UPOV PRISMA, and that they reflect the most realistic and prudent assumptions around costs and revenues.

"R2: We recommend that UPOV ensures there is clarity over the funding source for any deficit in the operation of UPOV PRISMA, and where necessary agree appropriate transfers or identify where costs are seen as providing wider benefits to be funded from regular budgets."

BACKGROUND

4. UPOV PRISMA is an on-line tool to assist in making plant breeders' rights (PBR) applications to plant variety protection (PVP) offices of participating members of the Union. A summary of the key developments concerning the financing of UPOV PRISMA, initially referred to as the Electronic Application Form (EAF), are presented in the Annex to this document.
5. The Consultative Committee anticipated that applicants would be required to cover the costs involved in the operation of UPOV PRISMA once it reached its full capacity (see document CC/91/4, paragraph 46 and CC/91/11 "Report", paragraph 25). Furthermore, in response to the recommendation presented in the World Intellectual Property Organization (WIPO) Internal Oversight Division (IOD) "Evaluation of the International Union for the Protection of New Varieties of Plants (UPOV)", conducted in 2016, the Consultative Committee approved the development of a Strategic Business Plan to address the IOD Evaluation Report recommendation for UPOV to diversify its revenue portfolio to maintain and enhance the sustainability of existing activities and services. UPOV PRISMA is an important component for diversifying UPOV's revenue portfolio.

6. However, UPOV PRISMA was not developed to operate as an independent commercial service and was initially developed on the basis that it would provide an important contribution to UPOV's work in support of its members. A key element of UPOV's Strategic Business Plan 2021-2025 (see document CC/97/3, Annex II), is the development of a package of compatible tools that will provide coherent and comprehensive assistance in the implementation of the UPOV system of plant variety protection, of which UPOV PRISMA is a major component. Furthermore, a number of members of the Union have highlighted wider policy considerations that should be taken into account when considering the financing of UPOV PRISMA. For example (see document CC/95/8 Rev., paragraph 33), it has been noted that facilitating PBR applications will enable farmers and growers to have greater access to improved new varieties and that UPOV PRISMA can offer particular benefits because it:

1. provides a system that can be used as a national, online electronic application system without the need for PVP offices to develop their own. This may be of particular relevance for small PVP offices.
2. facilitates applications, particularly by SMEs¹, in more territories through:
 - a. Single, online source for current application forms
 - b. Multilingual forms with automated translation of certain information
 - c. Information on agents that can be used in the territory of application (where appropriate) (future feature)
 - d. Information on next steps after data submission (future feature).
3. provides support for members of the Union that wish to increase the number of applications by breeders from other territories through:
 - a. Online procedure
 - b. Multilingual forms with automated translation of certain information
 - c. Information on agents that can be used in the territory of application (where appropriate) (future feature)
 - d. Information on next steps after application form submission (future feature).

PROPOSAL

External Auditor Recommendation 1

To enhance transparency and to inform future decision making, we recommend that UPOV consider separate reporting on the costs and revenues relating to UPOV PRISMA, and that they reflect the most realistic and prudent assumptions around costs and revenues.

External Auditor Recommendation 2

We recommend that UPOV ensures there is clarity over the funding source for any deficit in the operation of UPOV PRISMA, and where necessary agree appropriate transfers or identify where costs are seen as providing wider benefits to be funded from regular budgets.

7. It is proposed that the measures to address the External Auditor recommendations recognize the role of UPOV PRISMA: (i) to act as an income source and to cover all costs when at full capacity; and (ii) to form part of the development of a package of compatible tools that will provide coherent and comprehensive assistance in the implementation of the UPOV system of plant variety protection, as set out in the Strategic Business Plan 2021-2025.

8. On that basis, it is proposed that the Consultative Committee be invited to consider, annually:

- (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.

¹ Small & Medium-sized Enterprises

9. It is further proposed that a recommendation by the Consultative Committee for the UPOV PRISMA fee be made to the Council in conjunction with the Council's consideration of the draft Program and Budget for future biennia, starting from the draft Program and Budget 2024-2025.

10. The Consultative Committee is invited to consider 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 this document.

[Annex follows]

ANNEX

KEY DEVELOPMENTS CONCERNING THE FINANCING OF UPOV PRISMA,
INITIALLY REFERRED TO AS THE ELECTRONIC APPLICATION FORM (EAF)

1. The Administrative and Legal Committee (CAJ), at its sixty-sixth session held in Geneva on October 29, 2012, endorsed the development of a prototype electronic form for interested members of the Union (see document CAJ/66/9 "Report", paragraph 26).
2. The aim of the project was to develop a multilingual electronic form containing questions relevant for plant breeders' rights (PBRs) applications. As a first step a prototype electronic form was to be developed, covering all relevant information required for a PBR application in the members of the Union concerned and with questions translated in the relevant languages for the members of the Union concerned (see document CAJ/66/5 "Electronic Application Systems", paragraph 2).
3. The Consultative Committee, at its ninetieth session, held in Geneva on October 28 and 29, 2015, agreed to consider the possible implementation of an operational system. The Consultative Committee noted that the Sixth Meeting on the Development of an Electronic Application Form (EAF/6 meeting) had agreed that the prototype electronic application form Version 1 (PV1) had demonstrated the feasibility of the project. Successful development of prototype electronic application form Version 2 (PV2) would enable an operational system to be launched after October 2016. Therefore, in parallel with the development of PV2, the Consultative Committee agreed to consider legal, administrative and financial aspects in relation to the operation of a system on the basis of information to be provided by the Office of the Union, at its ninety-first session, to be held in March 2016. In particular, consideration could be given to the arrangements between the Office of the Union and the participating UPOV members for: (a) information to be collected by the Office of the Union from applicants and distributed to members of the Union; and (b) payment by applicants to cover the development and operation of an electronic form service (see document CC/90/20, paragraphs 67 to 75).
4. The Consultative Committee, at its ninety-first session, held in Geneva on March 17, 2016, considered document CC/91/4, which included the following proposal concerning payment to cover the costs of the EAF:

"Payment to cover the costs of the EAF"

"46. It is anticipated that applicants would be required to cover all the costs involved in the operation of the EAF system once it reaches its full capacity. It is anticipated that the initial development costs would not start to be covered, by a surplus of income over operational costs, until after the EAF system reaches full capacity. On that basis, the following proposal has been developed for consideration by the participants at the EAF/7 meeting:

- (i) Number of crops: it is anticipated to launch the system in late 2016 or early 2017 with the five crops developed for PV2. It is then foreseen to increase the number of crops available in the system annually, with the aim of covering 50 crops/species for which UPOV has developed Test Guidelines by 2022.
- (ii) Number of participating Offices: it is anticipated to launch the system in 2017 with the PVP Offices from within the 26 UPOV members participating in the development of PV2 that wish to participate. It is anticipated that the number of PVP Offices would increase to 50 UPOV members by 2022, on the basis that participation in the EAF only requires PVP Offices to provide copies of their forms and prepare translations, if appropriate, and would enable PVP Offices to receive applications in their current formats.
- (iii) Number of applications covered by EAF: This number is estimated on the basis of total number of plant breeders' rights applications in 2014 (14,436) (see document C/49/7 "Plant Variety Protection Statistics for the Period 2010-2014"), the number of crops covered by the EAF and the number of participating PVP Offices in the EAF.
- (iv) Percentage of applications expected via EAF: It is anticipated that 10 % of the potential number of applications that could be made via the EAF will use the EAF in 2017, rising to 15% in 2018 as breeders become more aware of the EAF.
- (v) Number of applications expected via EAF: This is calculated on the basis of (iii) "Number of total applications covered in by the EAF", multiplied by (iv) "(iv) Percentage of applications expected via the EAF". In 2017, it is anticipated that around 180 applications would be made via the EAF, corresponding to an income of about 25,000 Swiss francs, as projected in the Program and Budget for the 2016-2017 Biennium (see document C/49/4 Rev., Section 3. "Proposed Budget" paragraph 3.18). By 2020-2021 it is anticipated that around 1,500 applications per annum would be

made via the EAF system, corresponding to 10% of the total number of plant breeders' rights applications in 2014 (14,436), as presented in document C/49/7 "Plant Variety Protection Statistics for the Period 2010-2014".

- (vi) UPOV charge: A charge of 150 Swiss francs per application is proposed for the first two years of the system (2017-2018) to encourage participation, to reflect the limited number of crops available and the limited number of PVP offices. It is anticipated to increase this charge to 250 Swiss francs by 2019 in order to cover all costs for the operation of the EAF by 2020.
- (vii) EAF operation costs: The costs for the development and operation of the EAF are budgeted in the Program and Budget for the 2016-2017 Biennium (document C/49/4 Rev.). The EAF operation costs are forecast to be the following, from 2017:

Item	Cost/annum (Swiss francs)
IT Officer (one person)	160,000
Administrative Officer (one person)- part time	60,000
IT Development/ infrastructure/ maintenance costs and user support	70,000
Total	290,000

- (viii) Income: The estimated income for 2017 (27,405 Swiss francs) corresponds closely to the 25,000 Swiss francs income budgeted in the Program and Budget for the 2016-2017 Biennium (see document C/49/4 Rev., Section 3. "Proposed Budget" paragraph 3.18)

"47. The following proposal will be presented for consideration at the EAF/7 meeting and the comments of the EAF/7 will be reported to the Consultative Committee, at its ninety-first session.

	(i)	(ii)	(iii)	(iv)	((iv)*(v))	(vi)	(vii)	(viii)	(ix)
Year	Number of crops	Number of participating Offices	Number of applications covered by EAF	Percentage of applications expected via EAF	Number of applications expected via EAF	UPOV charge (CHF)	EAF operation costs (CHF)	Income (CHF)	Balance
2017	5	26	1827	10	183	150	290'000	27'405	-262'595
2018	10	30	4676	15	701	150	290'000	105'216	-184'784
2019	15	35	6786	15	1018	250	290'000	254'475	-35'525
2020	30	40	8841	15	1326	250	290'000	331'524	41'524
2021	40	50	10272	15	1541	250	290'000	385'193	95'193
2022	50	50	11296	15	1694	250	290'000	423'581	133'581

5. On the above basis the Consultative Committee agreed for payment to cover the costs of the EAF, including UPOV charge per application, as follows (see document CC/91/11 "Report", paragraph 25):

- CHF 150 / submitted application in 2017/2018;
- CHF 250 / submitted application from 2019 on.

6. The Council, at its fiftieth ordinary session, held in Geneva on October 28, 2016, approved the launch of the Electronic Application Form (EAF) in January 2017 for rose, soya bean, lettuce, apple fruit varieties and potato. The EAF charge was set at CHF150 / submitted application in 2017/2018 and CHF 250 / submitted application from 2019 on (see document C/50/20 "Report", paragraph 10).

7. The Consultative Committee, at its ninety-third session, held in Geneva on April 6, 2017 (see document CC/93/8), was informed that the use of the system had been substantially lower than expected in the first weeks since its launch. After consultation with PVP Offices and potential users, the low use had been attributed to inertia of users in the adoption of new technological tools and the lower than anticipated geographical coverage of the EAF. On the basis of feedback received from PVP Offices and breeders, it had been concluded that it might be useful to take measures in the short-term to enhance uptake of the EAF in the light of the inertia experienced and relatively narrow coverage of the EAF. One measure that was identified was to use a lower EAF charge, including the possibility to offer the EAF without charge for a certain period, until the EAF use was well-established and coverage was wider in terms of members of the Union.

8. On the above basis, the Consultative Committee recommended to the Council to allow the Office of the Union to have flexibility in the charge to be made for use of the EAF in 2017, but not to make the EAF free of charge. The Consultative Committee requested the Office of the Union to report to the Consultative Committee, at its ninety-fourth session, on the measures taken in 2017 and seek approval on the pricing policy for the 2018-2019 Biennium in accordance with its consideration of the draft Program and Budget for the 2018-2019 Biennium (see document CC/93/10 "Report", paragraphs 37 and 38). The Council, at its thirty-fourth extraordinary session, held in Geneva on April 6, 2017, decided to allow the Office of the Union to have flexibility in the charge to be made for use of the EAF in 2017, but not to make the EAF free of charge.

9. The Consultative Committee, at its ninety-fourth session, held in Geneva on October 25, 2017, noted that the success of the EAF would depend on maximizing the number of UPOV members participating in the EAF for all crops and species and on members of the Union promoting the EAF to their applicants. The Consultative Committee approved and recommended to the Council to approve the UPOV charge for the EAF at CHF150 per application for the 2018-2019 biennium, but further agreed that the EAF could be made free of charge for an introductory period if the budgeted costs of the EAF were funded by means other than the regular budget. In that regard, the Consultative Committee noted that the Office of the Union had received a letter from the Secretary General of the International Seed Federation (ISF) offering to contribute CHF20,000 in order to increase the use of the EAF during the launch period and to extend the system to a larger number of crops and UPOV members. It further noted that Canada and Australia would be interested to explore the possibility of funding the EAF in the form of an annual subscription. The Consultative Committee requested the Office of the Union to report on developments concerning the EAF at its ninety-fifth session and further agreed to follow the use and analyze the benefits of the electronic application form for users and to review the arrangements for funding of the EAF at its ninety-fifth session (see document CC/94/19 "Report", paragraphs 71 to 73).

10. The Council, at its fifty-first ordinary session, held in Geneva on October 26, 2017, approved the UPOV charge for the EAF at CHF150 per application for the 2018-2019 biennium, but agreed that the EAF could be made free of charge for an introductory period if the budgeted costs of the EAF were funded by means other than the regular budget.

11. The Consultative Committee, at its ninety-fifth session, held in Geneva on November 1, 2018, considered document CC/95/8 Rev. (see document CC/95/18 "Report", paragraphs 65 to 69), which included the following information on policy considerations with regard to the EAF charge:

Policy considerations

"33. The launch of the EAF (now UPOV PRISMA) in 2017 was introduced on the basis that fees from applicants would ultimately cover the costs of the service. However, a number of participating members of the Union have highlighted wider policy considerations that should be taken into account when considering the financing of UPOV PRISMA. For example, it has been noted that facilitating PBR applications will enable farmers and growers to have greater access to improved new varieties and that UPOV PRISMA can offer particular benefits because it:

1. Provides a system that can be used as a national, online electronic application system without the need for PVP offices to develop their own. This may be of particular relevance for small PVP offices.
2. Facilitates applications, particularly by SMEs¹, in more territories through:
 - a. Single, online source for current application forms
 - b. Multilingual forms with automated translation of certain information
 - c. Information on agents that can be used in the territory of application (where appropriate) (future feature)
 - d. Information on next steps after data submission (future feature).
3. For UPOV members that wish to increase the number of applications by breeders from other territories, UPOV PRISMA provides support through:
 - a. Online procedure
 - b. Multilingual forms with automated translation of certain information
 - c. Information on agents that can be used in the territory of application (where appropriate) (future feature)
 - d. Information on next steps after application form submission (future feature).

¹ Small & Medium-sized Enterprises

“34. Members of the Union can use UPOV PRISMA to support particular policy objectives, e.g. to increase the number of domestic applications, by using UPOV PRISMA to create an online system and by making their application forms available in native and non-native languages and/or to increase the number of applications by domestic breeders in other territories by supporting the introduction of their native language as a navigation language.

“35. The policy objective of increasing the number of PBR applications may also be taken into consideration for the fee to be charged to applicants. For example, an annual subscription model could provide a greater incentive to make a larger number of PBR applications than a unit cost per submission.

“36. Document CC/94/8 “Electronic Application Form” reported that some members of the Union had had some initial discussions on how to ensure that UPOV PRISMA could continue and could bring the benefits that they wish to obtain from UPOV PRISMA without the cost to breeders becoming an obstacle. Therefore, it was proposed to consider with relevant members of the Union and organizations representing breeders how a fund or funding arrangements might be developed to enable UPOV PRISMA to be available at a reduced fee, or free of charge.

“37. In addition to the financial support provided by ISF, CIOFORA and CropLife International, the Ministry of Agriculture, Nature and Food Quality of the Netherlands via the PVP Development Program (Toolbox), will provide EUR 5,000. Canada has also indicated its wish to develop an annual subscription model to enable UPOV PRISMA to be made free of charge when used for making PBR applications to Canada and has indicated that it would propose to make an annual contribution of CHF5-10,000 for such a possibility.”

12. The Consultative Committee noted that more time was needed to increase the number of UPOV PRISMA users in order to achieve a reliable survey of the suitability of financing options and also to ensure reliability for users. With regard to a survey of financing options, the Vice Secretary-General confirmed the intention to survey users that had submitted applications via UPOV PRISMA, registered entities, newsfeed subscribers and possibly other potential users. The survey would be structured to enable the results of the different categories to be analyzed separately.

13. The Consultative Committee recommended to the Council to approve the use of UPOV PRISMA free of charge in 2019.

14. On the above basis, the Consultative Committee requested the Office of the Union to present options to the Consultative Committee, at its ninety sixth session, for the financing of UPOV PRISMA, including: fee per submission; fee per variety; subscription model(s) for applicants; subscription model(s) for members of the Union and package(s) of UPOV services (see document CC/95/5 “Strategic Business Plan”).

15. Based on the recommendations of the Consultative Committee reported in document C/52/17, the Council decided to make the use of UPOV PRISMA free of charge in 2019 (see document C/52/20 “Report”, paragraph 12 (a)).

16. In order to assess the value of the service provided and to determine a suitable fee for UPOV PRISMA, the Office of the Union organized an independent survey by ADquation of registered users of UPOV PRISMA. On the basis of the information obtained from the survey, the following recommendations were made by ADquation, in relation to a fee for UPOV PRISMA:

- (a) fee per application was the most popular and considered the fairest, whilst not being favored by all;
- (b) fairest payment solution would be to share the cost with PVP offices, who will also benefit from the tool; and
- (c) to set a fee per application between CHF100 (93 €) and CHF170 (150 €), subject to smooth functioning of the tool and some expectation of sharing of that cost by PVP offices (e.g. discounted application fee when UPOV PRISMA is used).

17. The Consultative Committee, at its ninety-sixth session, held in Geneva on October 31, 2019, considered document CC/95/5. On the basis of the results of the survey and the coverage of UPOV PRISMA, a proposal was made to introduce a UPOV PRISMA fee per application at 90 Swiss Francs, starting in January 2020, on the following basis:

- (a) the actions to address technical issues and improve the user experience are completed; and
- (b) members of the Union make best endeavors to:
 - join UPOV PRISMA and offer coverage for all crops and species for which protection is available;
 - promote the use of UPOV PRISMA for their applicants;

- provide incentives for applicants to use UPOV PRISMA (e.g. discounted application fee when UPOV PRISMA is used);
- ensure that information and forms in UPOV PRISMA are complete and up-to-date;
- process applications received using UPOV PRISMA in a timely way;
- consider opportunities to harmonize forms where appropriate and use the UPOV Test Guidelines Technical Questionnaires.

18. The Consultative Committee recommended to the Council to introduce a UPOV PRISMA fee per application at 90 Swiss Francs, starting in January 2020, subject to resolution of the technical issues and improvements being made to the user experience, before a fee was introduced. It further agreed that, where the same variety was submitted for both plant breeders' rights and national listing in the same participating member of the Union, a single UPOV PRISMA fee would be charged at the time of the first submission for the variety (see document CC/96/14 "Report", paragraph 65). The Council decided to accept this recommendation at its fifty-third ordinary session, held in Geneva on November 1, 2019 (see document C/53/15 "Report", paragraph 23).

[End of Annex and of document]