



Joint statement of breeders on EDV

- UPOV CAJ and Council -

- October 2022 -

Dear Mr. Chair, dear members of the CAJ / Council, today once more I speak on behalf of the entire breeding sector in respect of Essentially Derived Varieties.

We are deeply concerned about the development and the current result of the revision- process of the EXN on EDV, which started three years ago with the aim to develop further and make fit for the future this important EXN.

In the Seminar on EDV which took place here in 2019 it became clear that the current EXN on EDV is not fit for purpose to provide effective protection of breeders, that conventionally breed new varieties by crossing and selection.

The conclusions of the Seminar were:

- Evidence that the current UPOV guidance does not reflect the practice amongst breeders in the understanding of essentially derived varieties.
- Evolution of breeding techniques has created new opportunities/incentives for predominately deriving varieties from initial varieties, more rapidly and at a lower cost.

- Clear indication from presentations and discussions that the understanding and implementation of the EDV concept influences breeding strategy – therefore, it is important that UPOV guidance is tuned to maximize benefits to society in terms of maximizing progress in breeding.

During the last three years the breeding sector has contributed to the development of a revised draft of the EXN Draft 3. All major breeders' associations in the world, which represent the interests of thousands of companies, research institutes and universities active in research, breeding, production and marketing of agricultural, horticultural, ornamental and fruit plant varieties, joined forces and, united and with one voice, supported the development of the EXN Draft 3.

Despite the fact that the Draft 3 has been supported by the entire breeding sector and has been approved in the Working Group on EDV and in the UPOV CAJ in 2021, UPOV was not able to finally adopt this important EXN.

Today we request from the UPOV members once more to adopt in the Consultative Committee tomorrow and in the Council on Friday the Draft 3 as it came out of the WG, without changes. Anything else would not only cause harm to the breeders, farmers and growers, but also would damage the reputation of UPOV and its members.

The text of the current Explanatory Notes on EDV of 2017 suggests a very narrow scope of the EDV principle by indicating that one modification of an essential characteristic might lead to the new variety being out of the scope of the EDV principle.

This was not intended by the drafters of the EDV principle in 1991.

The basic purpose of incorporating the EDV principle into the UPOV 1991 Act was to provide effective protection to a breeder who developed an original genotype from crossing and selection.

At the time of the adoption of the UPOV 1991 Act the EDV principle was meant to affirm the scope of protection for breeders of protected Initial Varieties to include certain types of derived varieties with mutations, genetic engineering and changes developed by recurrent backcrossing.

New Breeding Technologies now enable both single and multiple modifications of an Initial Variety in one act of derivation, in a short period of time, and thus have the potential to undermine the protection of the Initial Variety, unless a sufficiently broad interpretation of the EDV principle is agreed upon between UPOV members.

For breeders, therefore, the following is indispensable:

- Predominant derivation is the key requirement for EDV.
- The number of differences between an EDV and its Initial Variety is not necessarily limited to one or very few differences and may include differences also in essential characteristics.

The main target of the EDV principle is not to prevent plagiarism. Those, who are eager to prevent plagiarism and copy-breeding shall refer to the concept of varieties, which are not clearly distinguishable from the protected variety, but not to the EDV principle.

In case the UPOV members are not able to adopt the Draft 3 without changes, the breeding sector requests from the UPOV members to repeal the current EXN on EDV of 2017. Keeping this EXN would mean to keep an interpretation of the EDV principle that clearly is not fit for purpose and would jeopardize the future of the conventional breeding.

Thank you for your attention!