


The Development of the Provisions of Essentially Derived Varieties

Joel GUIARD
Chairman of the Technical Committee

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Essentially Derived Varieties: One of the most important amendments of the UPOV Convention in 1991

Contents of the presentation:

- ✓ Main elements considered by the stakeholders for introducing this concept
- ✓ The background of the definition

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Main elements considered by the stakeholders for introducing this concept (1):

Necessity to provide a stronger right to the breeders

- ✓ Parallel with the dependency in the patent system
- ✓ Development of new technologies such as gene transfer
- ✓ Varieties part of the claims of patents

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Main elements considered by the stakeholders for introducing this concept (2):

- ✓ Reduction of minimum distances between varieties
- ✓ Use of new tools to distinguish varieties
- ✓ Characteristics that establish distinctness are not linked to the value of the variety
- ✓ Cases of plagiarism

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The background of the definition


(i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

(ii) it is clearly distinguishable from the initial variety and

(iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

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- ✓ Essential derivation (EDV) is a technical concept
- ✓ Dependency which could result from essential derivation is a legal concept
- ✓ The definition of EDV is generic, covering a wide range of situations across species
- ✓ The paragraphs consider respectively the origin of the EDV, its distinctness and its conformity to the initial variety
- ✓ EDV refers to essential characteristics which are not necessarily those used to establish distinctness
- ✓ A variety can be an EDV from any variety but dependent only from the initial one

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The main points which have been discussed during the Diplomatic Conference are:

- ✓ The definition of EDV must stay generic, because it depends on species, their genetic variability, the breeding method, the evolution of technologies, ...
- ✓ The status of EDV cannot be only based on the breeding method used
- ✓ Conformity based on the phenotype of essential characteristics
- ✓ The EDV concept relies on small differences
- ✓ Guidelines to assess EDV must be established

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All these points have been deeply discussed after the revision of the Convention and are still source of discussion

The seminar is an illustration of the importance of this concept

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Thank you for your attention

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