Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

———

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

———

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

———

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

BMT/4/6
ORIGINAL: English
DATE: January 28, 1997

UPOV

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

WORKING GROUP ON BIOCHEMICAL AND MOLECULAR TECHNIQUES AND DNA-PROFILING IN PARTICULAR

Fourth Session
Cambridge, United Kingdom, March 11 to 13, 1997

POSITION PAPER ON THE USE OF DNA-PROFILING FOR ASSESSING GENOMIC CONFORMITY

Document prepared by ASSINSEL

POSITION PAPER ON THE USE OF DNA PROFILING FOR ASSESSING GENOMIC CONFORMITY

(Adopted by the General Assembly of ASSINSEL on May 24, 1996, in Amsterdam)

1. Background information

The 1991 Act of the UPOV Convention has confirmed the "breeder's exemption" stating that the breeder's right shall not extend to "acts done privately for the purpose of breeding other varieties..." (Article 15(1)iii). ASSINSEL interprets this Article to mean that, in principle, a variety obtained by selection within the progeny of the F_1 cross of protected varieties would generally not be considered as essentially derived from one of these parental varieties.

The 1991 Act of the UPOV Convention has introduced into its Article 14(5) the concept of essentially derived varieties.

ASSINSEL interprets Article 14(5)(b) of the 1991 Act ("A variety should be deemed to be essentially derived from the initial variety (i.v.))" to mean that the essentially derived variety (e.d.v.) effectively has to meet the following three requirements in relation to the i.v. while retaining the expression of its essential characteristics:

i. clear distinction in the sense of article 7 of the 1991 Act
ii. predominant derivation
iii. genomic conformity.

According to the position adopted by ASSINSEL in Toronto in 1992, the decision on whether or not a plant variety is an e.d.v. needs to be based upon scientifically reliable methods such as observation of phenotypic characteristics, molecular markers and/or combining ability. In general, no method alone should be sufficient to estimate essential derivation.

As regards genomic conformity assessed by using molecular markers, the genomic variability within a species as well as the genomic structure of this species should be taken into account. This will result in different thresholds being required to characterize essential derivation. The present document relates only to one of the possible methods for assessing essential derivation, i.e. the use of molecular markers.

2. The various Sections of ASSINSEL are presently in the process of considering the use of DNA for establishing thresholds to characterize essential derivation. Before entering the details on Section-by-Section and crop-by-crop levels, the following general guidance can be given:

a) In case molecular markers were used to assess genomic conformity, ASSINSEL Sections could propose, on a crop-by-crop basis, a first threshold below which a variety should be considered as non-derived from an initial variety.

b) Above that threshold, we might enter a zone where the essential derivation could be disputable and where the breeder of a putative e.d.v. might have to give, on request, information on the new variety. In such a case, consistent information on the actual origin of the new variety should be considered as determinant. However, should that information be not satisfactory, the breeder of the putative e.d.v. could be forced to open his breeding books on request of a court or of arbitrators and/or conciliators duly agreed upon by both parties.

c) ASSINSEL and its Sections should do their best to develop non-binding guidelines for decision making above the threshold proposed in paragraph 2.a). This should be done by using existing data on the variability among commercially available varieties within a species and on the breeding history of known cultivars and, if necessary, according to some species, by making model studies of cultivars agreed upon by the Sections. On a case-by-case basis the genomic distance between the parents should be taken into account.

3. ASSINSEL recommends to its members, in any case of dispute, to first enter into an arbitration or conciliation procedure (according to ASSINSEL Conciliation and Arbitration Procedure Rules) before taking legal action against a possible infringement.

[End of document]