

REPLY FROM THE OFFICE OF THE UNION TO
THE CONTRIBUTION RECEIVED FROM SWITZERLAND

From: mail, Upov <upov.mail@upov.int>
Sent: Monday, January 24, 2022 10:27 AM
To: peter.kupferschmied@blw.admin.ch

Dear Mr. Kupferschmied,

Thank you for the reply of December 16, 2021, to the UPOV Circular E-21/231, with the comments of Switzerland on document UPOV/EXN/EDV/3 Draft 3 (comments) and a request that the Working Group on Essentially Derived Varieties (WG-EDV) or the UPOV Secretariat submit written responses to your questions to the Consultative Committee before it approves the explanatory notes and submits them to the Council.

In relation to your request for the WG-EDV or the UPOV Office to provide responses to the comments from Switzerland, the Administrative and Legal Committee (CAJ), at its seventy-eighth session, held on October 27, 2021, agreed that the WG-EDV had successfully concluded its work (see document [CAJ/78/13](#) "Report", paragraph 19). Therefore, in order to address your request, the following responses have been prepared in consultation with the President of the Council.

In relation to the policy objectives and the reasoning behind the proposed revision in document UPOV/EXN/EDV/3 Draft 3, the terms of reference (ToRs) for the WG-EDV stated the following:

“(a) in drafting the revision of document UPOV/EXN/EDV/2, the WG-EDV to consider:

“(i) the outcome of the 2019 Seminar on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy:

“- Evidence that the current UPOV guidance does not reflect the practice amongst breeders in the understanding of essentially derived varieties;

“- Evolution of breeding technologies has created new opportunities/incentives for predominantly 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.

[...]”

At its first meeting, the WG-EDV agreed, as a first step in informing its work, to invite the international breeders' organizations to present, at its second meeting, an overview of the aspects of document UPOV/EXN/EDV/2 that they would wish to be reviewed to reflect the practice and understanding of breeders on essentially derived varieties and to present proposals on those aspects.

The key conclusions of the presentation by the international breeders' organizations are reproduced below:

- “The EXN EDV should affirm that predominant derivation is the key requirement and requires a genetic conformity which is higher than the genetic conformity typically obtained by crossing and selection with the [initial variety] IV.
- “Breeders need greater clarity and legal certainty upfront regarding the EDV status of new varieties bred by mono-parental derivation or by combining two or more varieties with repeated backcrossing.
- “The revised EXN should confirm that the number of differences between an EDV and its IV is not necessarily limited to one or very few, while taking into account different breeding methods and may also include differences in essential characteristics.”

At its second meeting, the WG-EDV agreed to request the UPOV Office to prepare a preliminary draft text for a revision of document UPOV/EXN/EDV/2 for consideration by the WG-EDV at its third meeting, on the basis of the proposals presented in the joint presentation by the international breeders' organizations, taking into account the points raised during the meeting by the Delegations of Argentina, Kenya and Sweden and the clarifications provided by the representatives of the breeders' organizations (documents of WG/EDV/2 available at https://www.upov.int/meetings/en/details.jsp?meeting_id=60928).

“Providing incentives for breeders to use genetic diversity” was part of the policy issues to be addressed in the proposed revision. In particular, policy issue 6 provides as follows:

“to consider the scope of the EDV concept in relation to the following policy matters ‘To a large group of the respondents, the EDV provision has proven to be valuable, nonetheless it is also clear that further clarification is needed. Any attempt to diminish its value by narrowing its scope or otherwise, would greatly endanger the breeding incentive for cross breeding and could possibly lead to a decrease in breeding effort, genetic variation and biodiversity. This will eventually result in fewer varieties for users which might threaten the whole UPOV system.’”

(see issues 5, 6, practices 4, 9, 24, which were part of the ToRs available at https://www.upov.int/meetings/en/doc_details.jsp?meeting_id=60508&doc_id=524217).

I would be glad to know if the above information is helpful in relation to the issues that you have raised and would welcome an opportunity to discuss what would be an appropriate next step in the process. If appropriate, I would be glad to arrange a virtual meeting to discuss how we might proceed.

Yours sincerely,

Peter Button
Vice Secretary-General



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