

Administrative and Legal Committee

CAJ/78/4

**Seventy-Eighth Session
Geneva, October 27, 2021**

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EXPLANATORY NOTES ON ESSENTIALLY DERIVED VARIETIES UNDER THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

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EXECUTIVE SUMMARY

1. The purpose of this document is to report the developments concerning the revision of document UPOV/EXN/EDV/2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” and the work of the Working Group on Essentially Derived Varieties (WG-EDV) and to provide information to assist the Administrative and Legal Committee (CAJ) in its consideration of the revision of document UPOV/EXN/EDV/2, as presented in document UPOV/EXN/EDV/3 Draft 2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”, in conjunction with any additional recommendations by the WG-EDV.

2. The CAJ is invited to:

(a) note the developments concerning the revision of document UPOV/EXN/EDV/2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” and the work of the WG-EDV, as reported in this document;

(b) note that recommendations of by the WG-EDV, at its fourth meeting, to be held via electronic means on October 19, 2021, with regard to document UPOV/EXN/EDV/3 Draft 2 will be reported to the CAJ in document CAJ/78/4 Add.; and

(c) consider the proposed revision of document UPOV/EXN/EDV/2, on the basis of document UPOV/EXN/EDV/3 Draft 2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”, in conjunction with the recommendations of the WG-EDV.

3. The structure of this document is as follows:

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BACKGROUND

4. The CAJ, in 2020, agreed the matters in the following paragraphs (see documents CAJ/77/9 “Outcome of consideration of documents by correspondence”, paragraphs 36 to 40 and CAJ/77/10 “Report”, paragraphs 24 and 25):

“AGENDA ITEM 7: ESSENTIALLY DERIVED VARIETIES (DOCUMENT CAJ/77/4 REV.)

“36. The CAJ considered document CAJ/77/4 Rev.

“37. The CAJ agreed to establish the WG-EDV and approved the terms of reference for the WG-EDV, as set out in Annex II to document CAJ/77/4 Rev., in conjunction with the modified ‘Policy issues in conjunction with the breeders’ customs and practices’ in Annex I of document CAJ/77/4 Rev.

“38. The CAJ approved the following composition of the WG-EDV: Australia, Brazil, Chile, China, Ecuador, European Union, France, Japan, Kenya, Netherlands, Sweden, United Republic of Tanzania, United States of America, APSA, APBEBES, CIOPORA, CropLife International, Euroseeds, ISF and SAA.

“39. The CAJ agreed that the first meeting of the WG-EDV will take place on December 8, 2020, by virtual means.

“40. The CAJ agreed to request the WG-EDV to propose a timeline for its work at its first meeting, for consideration by the CAJ at its session in 2021.”

5. In addition to the members of the WG-EDV, the following members of the Union participated or have expressed an interest to participate in the meetings of the WG-EDV: Argentina, Canada, Dominican Republic, Egypt, Mexico, New Zealand, Poland, Spain and Viet Nam. In accordance with the terms of reference for the WG-EDV (ToR), those members of the Union were also invited to join the meetings of the WG-EDV.

DEVELOPMENTS SINCE THE SEVENTY-SEVENTH SESSION OF THE CAJ

First Meeting of the WG-EDV (December 8, 2020)

6. The WG-EDV, at its first meeting, held via electronic means on December 8, 2020, agreed the matters in the following paragraphs (see document UPOV/WG-EDV/1/3 “Report”, paragraphs 5 to 9):

“5. The WG-EDV considered document UPOV/WG-EDV/1/2 “Work Plan”.

“6. The WG-EDV agreed, as a first step in informing its work, to invite the breeders’ organizations to present 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.

“7. The WG-EDV agreed that the joint presentation by the international breeders’ organizations that were members of the WG-EDV, be made at its second meeting, followed by discussion and consideration of the presentation by the WG-EDV in relation to the issues identified in Annex II to document UPOV/WG-EDV/1/2.

“8. On the basis of the discussion at the second meeting of the WG-EDV, the WG-EDV agreed to request the Office of the Union to prepare a preliminary draft text for a revision of UPOV/EXN/EDV/2 for consideration by the WG-EDV at its third meeting.

“9. The WG-EDV agreed the following timeline:

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| <u>February 4, 2021</u> | Second Meeting of the WG-EDV (by virtual means): - Joint presentation by breeders’ organizations and discussion in relation to issues for consideration. (presentation to be posted at least 1 week in advance of the second meeting) |
| <u>April/May 2021</u> [date to be decided] | Third Meeting of the WG-EDV (by virtual means): - consideration by the WG-EDV of a preliminary draft text for revision of UPOV/EXN/EDV/2 (to be posted at least 4 weeks before the third meeting) |
| <u>June/July 2021</u> [date to be decided] | Consideration of UPOV/EXN/EDV/3/Draft 1 by correspondence (6 weeks for comments) |
| <u>October 2021</u> [date to be decided] | Fourth Meeting of the WG-EDV (at the fringes of the CAJ session) - consideration of UPOV/EXN/EDV/3/Draft 2 (to be posted 6 weeks before the fourth meeting in English)” |

7. The documents and report of the first meeting of the WG-EDV are available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=60508.

Second Meeting of the WG-EDV (February 4, 2021)

8. The WG-EDV, at its second meeting, held via electronic means on February 4, 2021, agreed the matter in the following paragraph (see document UPOV/WG-EDV/2/3 “Report”, paragraph 15):

“15. The WG-EDV agreed to request the Office of the Union 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.”

9. The documents and report of the second meeting of the WG-EDV are available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=60928.

Third Meeting of the WG-EDV (April 27, 2021)

10. The WG-EDV, at its third meeting, held via electronic means on April 27, 2021, agreed to request the Office of the Union to prepare a revision of document UPOV/EXN/EDV/2 (UPOV/EXN/EDV/3 Draft 1), on the basis of the text in Annex I of document UPOV/WG-EDV/3/2 incorporating the conclusions of the WG-EDV at its third meeting, for consideration by the WG-EDV by correspondence (see document UPOV/WG-EDV/3/3 “Report”, paragraph 35).

11. The WG-EDV, at its third meeting, agreed that, on the basis of the comments received on document UPOV/EXN/EDV/3 Draft 1, the Office of the Union would prepare a new draft of document UPOV/EXN/EDV/3 (UPOV/EXN/EDV/3 Draft 2), and possible recommendations from the WG-EDV to the CAJ, as appropriate, for consideration by the WG-EDV, at its fourth meeting:

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| <u>June/July 2021</u> [date to be decided] | Consideration of UPOV/EXN/EDV/3/Draft 1 by correspondence (6 weeks for comments) |
| <u>October 2021</u> [date to be decided] | Fourth Meeting of the WG-EDV (at the fringes of the CAJ session) - consideration of UPOV/EXN/EDV/3/Draft 2 (to be posted 6 weeks before the fourth meeting in English)” |

(see document UPOV/WG-EDV/3/3 “Report”, paragraph 36).

12. The documents and report of the third meeting of the WG-EDV are available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=61750.

Circular E-21/110 of July 21, 2021 (document UPOV/EXN/EDV/3 Draft 1)

13. On July 21, 2021, the Office of the Union issued Circular E-21/110 to the members of the WG-EDV, with a copy to other members of the Union that had participated or have expressed an interest to participate in the WG-EDV meetings, inviting comments on document UPOV/EXN/EDV/3 Draft 1 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” by September 1, 2021.

14. In reply to Circular UPOV Circular E-21/110, comments were received from the following members of the WG-EDV: Australia, Association for Plant Breeding for the Benefit of Society (APBREBES), and a joint contribution from the International Seed Federation (ISF), International Community of Breeders of Asexually Reproduced Horticultural Plants (CIOPORA), CropLife International, Asia and Pacific Seed Association (APSA), Seed Association of the Americas (SAA), African Seed Trade Association (AFSTA) and Euroseeds. Comments were also received from the following members of the Union: Mexico and Spain. The comments received are reproduced in the Annex to document UPOV/WG-EDV/4/2 “Revision of the Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”.

15. The proposals contained in the comments received in reply to Circular E-21/110 have been introduced in boxes in document UPOV/EXN/EDV/3 Draft 2.

Fourth Meeting of the WG-EDV (October 19, 2021)

16. The fourth meeting of the WG-EDV will be held via electronic means on October 19, 2021. Documents are available under: https://www.upov.int/meetings/en/details.jsp?meeting_id=64149.

CONSIDERATION BY THE CAJ OF THE “EXPLANATORY NOTES ON ESSENTIALLY DERIVED VARIETIES UNDER THE 1991 ACT OF THE UPOV CONVENTION” (DOCUMENT UPOV/EXN/EDV/3 DRAFT 2) IN CONJUNCTION WITH ANY ADDITIONAL RECOMMENDATIONS BY THE WG-EDV

17. The CAJ is invited to consider document UPOV/EXN/EDV/3 Draft 2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” in conjunction with the recommendations of WG-EDV/4. For reference purposes, document UPOV/EXN/EDV/3 Draft 2 “Marked version”, has been posted in the CAJ/78 webpage and presents in revision mode the changes in document UPOV/EXN/EDV/3 Draft 2 to the text of document UPOV/EXN/EDV/2.

18. Document UPOV/EXN/EDV/3 Draft 2 will be presented for consideration by the WG-EDV, at its fourth meeting, to be held via electronic means on October 19, 2021. The recommendations of the WG-EDV with regard to document UPOV/EXN/EDV/3 Draft 2 will be reported to the CAJ in document CAJ/78/4 Add..

19. *The CAJ is invited to:*

(a) note the developments concerning the revision of document UPOV/EXN/EDV/2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” and the work of the WG-EDV, as reported in this document;

(b) note that recommendations of by the WG-EDV, at its fourth meeting, to be held via electronic means on October 19, 2021, with regard to document UPOV/EXN/EDV/3 Draft 2 will be reported to the CAJ in document CAJ/78/4 Add.; and

(c) consider the proposed revision of document UPOV/EXN/EDV/2, on the basis of document UPOV/EXN/EDV/3 Draft 2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”, in conjunction with the recommendations of the WG-EDV.

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