



Mr. Peter Button
Vice Secretary-General

**International Union for the
Protection of New Varieties of
Plants (UPOV)**

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ESA_11.0732

Subject: Comments of ESA European Seed Association on matters to be addressed by the CAJ-AG at its Sixth Session on October 18, 2011

Dear Mr. Button,

By the present letter ESA European Seed Association wishes to express its comments on a few issues that are scheduled to be addressed by the CAJ-AG at its Sixth Session to be held on October 18, 2011. Though ESA is an observer to the UPOV CAJ and Council - which bodies also address matters discussed formerly in the CAJ-AG - there are some topics of high importance on the agenda of the CAJ-AG at its upcoming sessions which is the reason why ESA feels it important to contribute to these discussions already at the CAJ-AG level.

1. Possible development of explanatory notes on the notion of “propagation and propagating material”

ESA supports the proposal made by CIOPORA in a letter dated October 4, 2010 addressed to the members of the CAJ-AG (as also referred to in the minutes of the CAJ session of April 7, 2011 (document CAJ/63/9 point 34)) whereby CIOPORA suggests clarifying the meaning of the notion “propagating material”.

As stated by CIOPORA “propagating material” – although not defined in the UPOV Convention – is indeed a key concept of the Convention. It comes very clear from both the letter of CIOPORA and the Annex to document CAJ-AG/11/6/6 that the definitions corresponding to “propagating material” which can be found in the national PVP laws of different UPOV members provide significant differences as regards the scope covered by this notion. Given these differences, we believe that explanatory notes on this important concept would constitute a benefit for all users of the UPOV Convention. ESA is looking forward to the outcomes of the first discussion within the CAJ-AG on this topic and to the draft explanatory notes that may come out of it.

2. Draft explanatory notes on EDVs

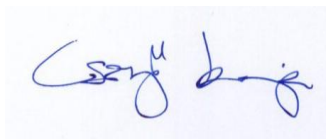
Varieties obtained by mutation

ESA does not support the proposition made by CIOPORA to the CAJ-AG – as outlined in the report of the meeting of the CAJ-AG of October 18, 2010 (document CAJ-AG/10/5/7 point 14) - according to which varieties obtained by mutation should be considered to be EDVs irrespective of the number of differences. ESA is of the view that the selection methods named in Article 14 (5) (c) UPOV 1991 (selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering) do indeed very often - in the case of mutants most likely - but not automatically result in an essentially derived variety. In order to assess whether a variety is essentially derived an individual evaluation of each suspected case in the light of the applicable rules and regulations is needed. In other words, the criterion of differences should be applied in each and every case and it is clear from the definition as well as from the notes of the Diplomatic Conference (see for instance paragraph 1084 of the Records of the Diplomatic Conference (1992, Geneva)) that an EDV has to be judged on its similarity to the initial variety and not on the breeding method by which it was obtained.

ESA trusts that the above expressed comments can be transmitted to the participants of the Sixth Session of the CAJ-AG and that they will give due consideration to these matters in their discussions on October 18, 2011.

We thank you very much in advance for your attention.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Szonja Csörgő', is centered on a light blue rectangular background.

Szonja Csörgő

Manager Intellectual Property and Legal Affairs