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FOR SELECTION ACHIEVEMENTS TEST AND PROTECTION

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To: UPOV Office

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Subj: Commentary under document UPOV /EXN/EDV/2 Draft 1 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”

Dear Mr. Button,
Dear colleagues,

Herewith I would like to express my opinion concerning document UPOV /EXN/EDV/2 Draft 1 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” and ask you to consider possible to learn my commentary below.

1. Paragraph 9 of the document shall be deleted. Hybrid whose production requires the repeated use of the protected parent line (of the protected parental component) come within protection of that parent line (of that parental component) as provided by Article 14(5)(iii) of the 1991 Act of the UPOV Convention.
2. Section II: Assessment of Essentially Derived Varieties

I can't agree with wording of paragraphs 16 and 17 of the document.

The UPOV Convention (Article 15(1)(iii) provides to use a variety protected for the purpose of breeding new variety including essentially derived variety. Breeder of the essentially derived variety is eligible to file application and be PBR granted. However PBR on acts mentioned in Article 14(1) – (4) in respect of essentially derived variety (in respect of its commercialization) arises for breeder of an initial variety too (Article 14(5)(i)). Meanwhile, territory of PBR' force for the initial variety and essentially derived variety shall be the same.

From this follows that authority may grant PBR to applicant of essentially derived variety only under conditions its:

novelty,
distinctness,
uniformity,
stability,
applicable denomination and if
the applicant has license (contract) provided by the breeder of the initial variety concerning authorization for commercialization of the essentially derived variety (i.e., on acts mentioned in Article 14(1) – (4)).

The license (contract between the breeders of the initial variety and essentially derived variety) may provide possibility of commercialization of the essentially variety by the breeder himself under conditions stipulated in the license.

Relation availability between essentially derived variety and initial variety shall be ascertained by the authority delegated to occur PBR granting procedure in the territory concerned. Such relation shall be ascertained on the base of Technical Questionnaire materials and DUS-testing results.

Authority publication in respect of protection of essentially derived variety shall include data concerning actual PBR holders as well as license conditions for the third parties to authorize acts in respect of the variety propagating material.

Coincidence of territory of PBR force for the variety protected also matters for its using for a variety which is not clear differ from the variety protected (Article 14 (5) (ii)), as well as for a variety whose production requires the repeated use of the protected variety (Article 14 (5) (iii)).

It should be explained the situation where territory of the variety protected and territory of essentially derived and other varieties (Article 14(5)) do not coincide.

It should be also explained the situation where an initial variety "A" includes a gene of resistance (for example, to *Leptinotarsa decemlineata*) protected by a patent law. In this case essentially derived variety is additionally covered by patent law granted for the gene of resistance to *Leptinotarsa decemlineata*.

Thank you for your attention.

Yours sincerely,

Y. Rogovskiy,
Deputy Chairman