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Comments on EDV examples

Dear Colleagues

Finally we got round to study the examples concerning EDVs. Following our thoughts and comments regarding this matter:

a. **Examples provided in document IOM/6/2 “Essentially Derived Varieties”**

These examples are a translation of the description in the UPOV-Convention into an abstract form. They may help to understand the legal text. However they don't answer the crucial question: when does a variety comply with article 14 (5) (b) (ii) **and** (iii) of the convention. In the given answers it is always a **condition** that the derived variety complies with article 14 (5) (b) (ii) **and** (iii) in order to be considered as an EDV. In addition, it is mentioned several times, that this is a value judgment.

b. **Examples provided by Australia in the EDV Seminar**

The Australian value judgment (made by the administration) consists in deciding if the distinct feature is “important” or “cosmetic”. Australia made a very interesting approach to decide whether a variety is an EDV or not. Although, in our opinion, this differentiation won't always work properly. According to the UPOV-Convention it is not the added value, which is decisive but the (phenotypic) expression of the essential characteristics. Biotechnical methods allow to insert a specific gene into a protected variety. The “new” variety may have an important new feature (e.g. pest- or disease-resistance), but still expresses all the essential characteristics of the protected variety and may therefore be considered as an EDV.

c. **Conclusion:**

Since all depends on value judgment it seems impossible to us to find generally accepted examples of EDVs. Each case has to be considered individually and the result may be different from one UPOV-member to another UPOV-member.

Kind regards

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