

Seminar on Essentially Derived Varieties

Geneva, October 22, 2013

Essentially derived varieties under the 1991 Act of the UPOV Convention: a brief history

Raimundo Lavignolle
Director, Plant Variety Register Direction



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- 1 - Introduction: the mandate
- 2 – Development of EDV guidelines: following the mandate of the Diplomatic Conference
- 3 – Issues concerning the development of EDV varieties
- 4 – Development of UPOV/EXN/EDV

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1 - Introduction: the mandate

“Resolution on Article 14 (5)

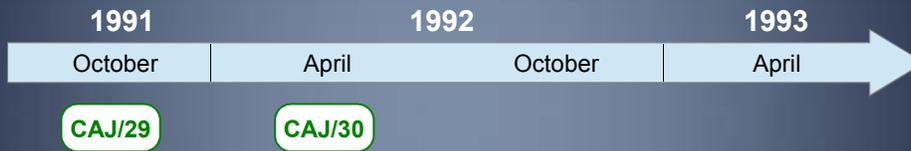
The **Diplomatic Conference** for the Revision of the International Convention for the Protection of New Varieties of Plants held from March 4 to 19, 1991, requests the Secretary-General of UPOV **to start work immediately** after the Conference on the **establishment of draft standard guidelines**, for the adoption by the Council, on essentially derived varieties.”

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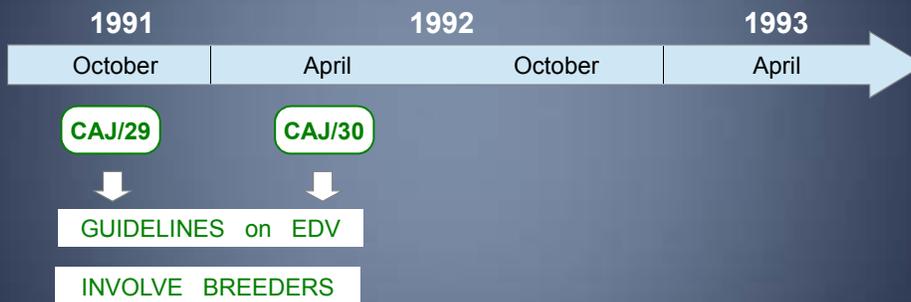
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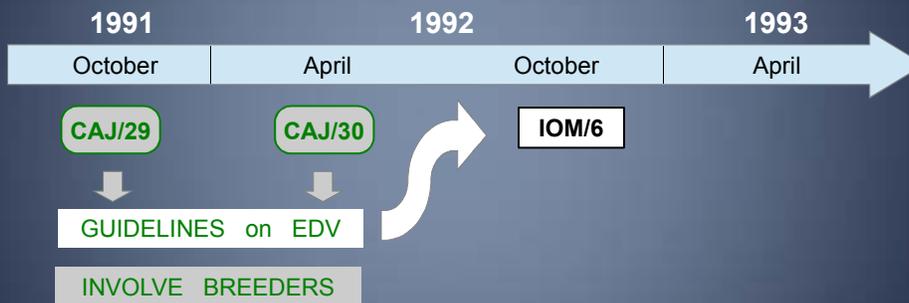
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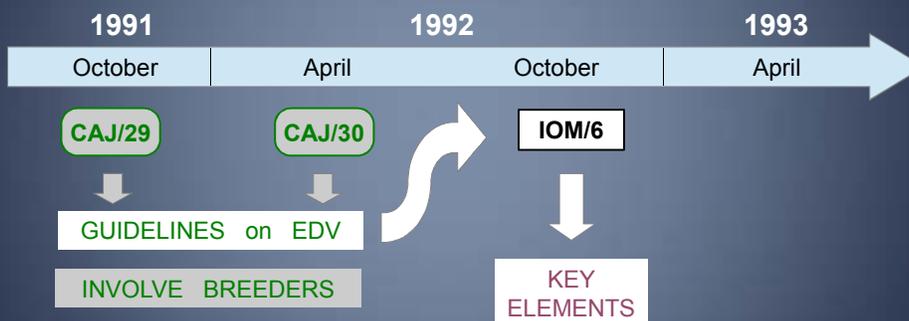
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2 - Development of EDV guidelines: following the mandate of the Diplomatic Conference



KEY ELEMENTS of the GUIDELINES ON EDV considered by IOM/6

- 2.1 - Nature of the Guidelines
- 2.2 Provisions on Essentially Derives Varieties
- 2.3 Establishing the essential derivation of a variety

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- 2.1 - Nature of the Guidelines
 - UPOV Guidelines: for authorities
 - EDV: Not criteria for granting PBR
 - Matter between breeders

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UPOV Guidelines: for authorities

EDV: Not criteria for granting PBR

Matter between breeders



Other type of TG

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KEY ELEMENTS of the GUIDELINES ON EDV
considered by IOM/6

2.2 Provisions on Essentially Derived Varieties

Dependency

Derivation - Art 14(5)(b)(i)

Distinctness – Art 14(5)(b)(ii)

Conformity – Art 14(5)(b)(iii)

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2.2 Provisions on Essentially Derives Varieties

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2.2 Provisions on Essentially Derived Varieties

Dependency

from the initial variety to its EDVs and not between EDVs

KEY ELEMENTS of the GUIDELINES ON EDV considered by IOM/6

2.2 Provisions on Essentially Derived Varieties

Derivation - Art 14(5)(b)(i)

derived while retaining

it retained virtually the whole genotype of the other variety

These characteristics should be those which were heritable genetically

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2.2 Provisions on Essentially Derived Varieties

Distinctness – Art 14(5)(b)(ii)

EDV protectable

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KEY ELEMENTS of the GUIDELINES ON EDV considered by IOM/6

2.2 Provisions on Essentially Derived Varieties

Conformity – Art 14(5)(b)(iii)

did not set a limit for the number of differences between the initial variety and the EDV

The examples made clear that the differences which resulted from the act of derivation should be one or very few.

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2.1 - Nature of the Guidelines

2.2 Provisions on Essentially Derives Varieties

2.3 Establishing the essential derivation of a variety

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2.3 Establishing the essential derivation of a variety

distinctness required no further comments

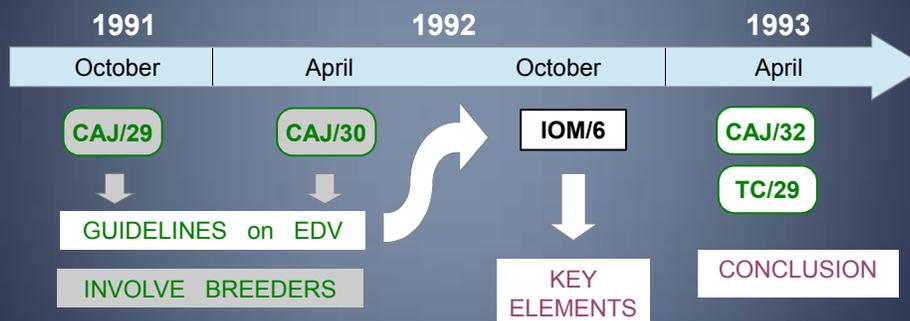
genetic origin, The UPOV Convention was silent concerning the question of the burden of the proof

similarity, the term "Essential" was considered to have the meaning of "fundamental" or "indispensable" to be assessed on the basis of the characteristics of the variety taken as a whole. It was further explained that the intended interpretation had not been that the result from a crossing between two varieties could lead to EDVs.

examples were presented

EDV assessment may require a different approach to that for distinctness

2 - Development of EDV guidelines: following the mandate of the Diplomatic Conference



KEY ELEMENTS of the GUIDELINES ON EDV considered by IOM/6

2.4 – Conclusion of CAJ/32 – TC/29

premature to set up examples at that time,
BMT could contribute to defining EDVs

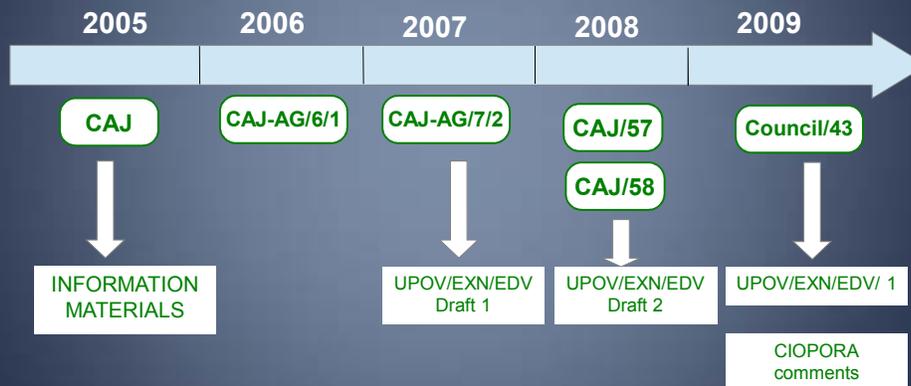
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3 – Issues concerning the development of EDV varieties



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4 – Development of UPOV/EXN/EDV
4.1 - Adoption of UPOV/EXN/EDV/1



4 – Development of UPOV/EXN/EDV
4.1 - Adoption of UPOV/EXN/EDV/1

SECTION I: PROVISIONS OF ESSENTIALLY DERIVED VARIETIES.....	4
<i>(a) Relevant provisions of the 1991 Act of the UPOV Convention.....</i>	<i>4</i>
<i>(b) Defining an essentially derived variety.....</i>	<i>6</i>
<i>(c) Scope of the breeder's right with respect to initial varieties and essentially derived varieties.....</i>	<i>8</i>
<i>(d) Transition from an earlier Act to the 1991 Act of the UPOV Convention.....</i>	<i>10</i>
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4 – Development of UPOV/EXN/EDV

4.2 – Further elements for discussion and development of UPOV/EXN/EDV/2

The key elements proposed by CIOPORA and ISF for further discussion were:

- All exemplified in Article 14(5)(c) led to essentially derived varieties;
- Relationship between Article 14(5)(b)(i) and (iii)
- To insert a Variety “D” into the scheme of indirect derivation

4 – Development of UPOV/EXN/EDV

4.2 – Further elements for discussion and development of UPOV/EXN/EDV/2

The key elements proposed by CIOPORA and ISF for further discussion were:

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4 – Development of UPOV/EXN/EDV

4.3 Summary of issues still under discussion

- Relationship between Article 14(5)(b)(i) and (iii)
 - Use of information of the initial variety for indirect derivation
 - Guidance on “non-protected” EDVs
 - Number of differences to be considered an EDV
-
- Establishing EDV?
 - PROVISIONS ON EDV: dependency - derivation – conformity ?

Thank
you