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LIENS ENTRE UNE VARIÉTÉ HYBRIDE ET SES CONSTITUANTS
DU POINT DE VUE DE LA NOUVEAUTÉ

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POSITION DE L'ASSINSEL

Document établi par le Bureau de l'Union

L'annexe jointe (disponible en anglais seulement) contient une note de position présentée par l'Association internationale des sélectionneurs (ASSINSEL) au Bureau de l'Union en vue des discussions sur les liens entre une variété hybride et ses constituants du point de vue de la nouveauté. [Il y est également fait référence à l'“exception en faveur de l'obtenteur” qui fait l'objet du point 7 de l'ordre du jour.]

[L'annexe suit]

ASSINSEL Position Paper on Protection of Parental Lines
adopted by the Executive Committee of ASSINSEL

According to the UPOV Convention, to get protection a variety must be:

- new
- distinct
- uniform
- stable
- designated by an "acceptable designation"

The grant of the breeder's right shall not be subject to any further or different conditions.

a) Novelty

The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety within specific time limits in or outside the territory of filing.

These conditions should apply for all kinds of varieties, be they sexually or asexually reproduced, pure lines, populations, hybrids of different kinds. Hybrid parental lines as well should be considered as subject to these conditions as are any other plant varieties.

For several reasons, and in particular to receive best effective protection for the most important achievements of plant breeding and for strengthening their rights by the implementation of the concept of essential derivation, plant breeders are most interested in the protection of parental lines.

Some offices are arguing that parental lines of hybrids which have already been produced and/or sold are not novel on the ground that the seed of the hybrid variety represents "the harvested material of the parental lines".

ASSINSEL considers that interpretation as not correct:

- Obviously it is not valid for the male parent.
- It is not valid either for the line used as the female parent of the hybrid as, if we plant the product harvested on the female parental line, the progeny will not be the female parental line itself. That means that the interpretation considering that the hybrid variety represents the harvested material of the parental lines is not consistent with the UPOV definition of a variety, considered as a unit with regard to its suitability to be propagated unchanged.

Of course parental lines have to fulfil the normal novelty criteria as do any other varieties: they have not been sold or otherwise disposed of to others, by or with consent of the breeder, for purposes of exploitation of the variety.

b) Breeders' privilege

Article 15.1 of the UPOV Convention provides for exceptions to the Breeders' Rights and in particular for "acts done for the purpose of breeding other varieties" and except in case of essential derivation for commercialization of the new variety (ies) obtained (so-called Breeder's Privilege).

ASSINSEL considers that exception as meaning that a plant breeder can use, for further breeding, protected varieties he has had access to lawfully.

As parental lines are very often not put on the market as such, some protection offices argue that one of the conditions for granting plant breeder's rights to that kind of varieties should be the putting at the disposal of third parties, on request, of the seed of the variety.

ASSINSEL opposes strongly that interpretation on the following grounds:

- Legally speaking to impose an additional condition for the granting of plant breeder's rights would be contrary to the UPOV Convention which states that no further or different conditions than in article 5 of the 1991 Act must be required. The parallel made with "enabling disclosure" in the patent laws is irrelevant, one of the main differences between plant breeder's rights and patents being in fact the breeder's privilege.
- Technically the objective of the breeder's privilege is to give access to the genetic variability. In fact the genetic variability is available to any breeder via the hybrid(s) which is (are) on the market. In addition breeding a distinct variety from an already protected variety needs several breeding cycles, whereas using a parental line to produce a new hybrid, which can be done very rapidly, would obviously be an infringement of the rights of the owner of that parental line, when done by a third party.

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