

International Association of Horticultural Producers (AIPH)

Comments in relation to the policy issues in conjunction with the breeders' customs and practices presented in Annex III of Circular E-20/093



Mr. Peter Button
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Date: 6th August, 2020

AIPH contribution in response to UPOV Circular E-20-093 (ToR for WG-EDV and expressions of interest, EDV issues and practices)

Dear Mr. Button,

Thank you for the clear overview concerning the responses UPOV has received in reaction on UPOV's Circular E-19/233.

With reference to ANNEX III of UPOV Circular E-20/093 dated July 9, 2020, AIPH would like to give to following reactions.

In relation to issues numbers 5 and 10 concerning specific aspects of the current explanatory notes:

AIPH does appreciate as such that UPOV has classified some of AIPH's input in the issues 5 and 10.

However, these sentences included in issues 5 and 10 were part of the general introduction (letter dated: May 27, 2020, RE: AIPH contribution in response to UPOV Circular E-19/233). With reference to the last paragraph on page 2 (continuing on page 3) of said letter, AIPH mentioned; *'Discussions about mutants falling under the scope of the EDV, especially if the mutant was found by a grower (the customer of the breeder), were hot topics in former decades, but with interest in alternative dispute resolutions put in place by trade associations, the increase of worldwide trade, and the development of upcoming of new breeding techniques, there have been shifts in the emphasis of EDV discussions'*.

Subsequently in AIPH's letter of 27 May 2020, we listed the issues which we consider should receive attention now (on page 3 and see note 1 below). For this reason, AIPH desires the focus to be on this list and not on the issues mentioned in issues 5 and 10 in UPOV's Annex III. AIPH would prefer to delete them both. AIPH apologises for the apparent lack of clarity on this point.



In relation to the other issues concerning specific aspects of the current explanatory notes:

- AIPH is of the opinion that the following issues are very important, and it would like these issues -if possible - to be discussed further: 9, 23, 28, 31, 32, 33.
- AIPH supports retaining the following issues and -if needed- to discuss them further, as it considers these to be both of high importance and high priority: 12, 16, 18, 47, 48, 50.
- AIPH does not support the following issues as it considers these to be incorrect or confusing: 4, 35, 36, 38, 39, 41, 42, 43, 46, 53, 56.

AIPH hopes to contribute to a fruitful exchange of information in the re-opening of the EDV-explanatory note (document UPOV/EXN/EDV/2) for revision, as it considers it of high relevance for the UPOV-system.

Because of the summer holiday season and associated employee absences, AIPH is asking UPOV for some delay to August 14th, 2020, to inform UPOV about AIPH's possible interest in participation in the working group.

Thanking you in advance for your time,

AIPH is very willing to provide further response if needed,

Yours sincerely

Tim Briercliffe
Secretary General



Note 1:

In AIPH's opinion the emphasis is now on:

- further clarity on 1. the EDV concept itself 2. on genetic thresholds and 3. on essential characteristics would be very welcome.
- concerns have been raised as regards the multiple interpretations of how to apply the EDV concept in different jurisdictions.
- that the concept of EDV does not restrict biodiversity, but rather enhances it as breeders are incentivised to work with broader germplasm if they want to avoid developing an EDV.
- that without a good EDV policy the value of the PVR system will be considerably lower. Protection would be sought through a restricted licensing policy in which the new varieties might no longer be available for small growers.
- breeders consider it negative or very negative if varieties developed with latest breeding methods (NBTs such as CRISPR-Cas 9 or other recombinant DNA technologies) and differing in at least one characteristic from the protected initial variety, were not considered as EDVs. They are of the opinion that this would give the users of these new technologies (which could also be biotech firms that are no part of the agricultural or horticultural industry) a very easy route to take over varieties, and this would diminish the incentive to develop new varieties. In countries with low PBR enforcement or countries that are still member of UPOV 1978 (EDV Concept is absent), domestic breeders and especially breeders from abroad (owners of the initial variety) could be left empty handed and see their long term investments compromised.
- It does not matter whether the characteristic(s) in which the EDV differs from the protected initial variety is of economic, agronomic or societal importance. The breeders emphasise, that as long as the variety is predominantly derived from the initial variety, it remains "derived from" and should be treated as an EDV.