Opening remarks for first meeting of UPOV WG on EDV, 8 December 2020

My thanks to the Chair for this opportunity to share some opening remarks on behalf of the plant breeding and seed industry associations with representatives attending today.

CIOPORA, the International Seed Federation, Crop Life International, Euroseeds, the Asia and Pacific Seed Alliance and the African Seed Trade Association greatly appreciate the considerable progress made since our letter to the Vice Secretary General, Mr. Peter Button, in August 2019, leading to the recent establishment of the Working Group on EDV by the UPOV CAJ and Council. We would like to thank the UPOV Secretariat and UPOV members for the opportunity to participate in this Working Group on EDV.

In the past 18 months our plant breeding and seed industry associations have cooperated intensively with the goal to develop a joint understanding of the EDV principle. We take this opportunity, dear members of the Working Group, to share with you some reflections and key expectations for the Working Group on EDV resulting from our cooperation.

It has been nearly 30 years since the 1991 Act was adopted formally codifying the EDV principle to broaden the scope of plant variety protection for breeders and for the benefit of farmers and society. Despite years of experience, a number of important uncertainties regarding the implementation and enforcement of EDV-related provisions remain to be fully and effectively clarified.

The adoption of the Explanatory Notes on Essentially Derived Varieties in 2017, particularly part b) “Defining an essentially derived variety” has raised deep concerns among the breeding industries. The current text of the EXN EDV suggests a very narrow scope of the EDV principle, inter alia by indicating that one modification of an essential characteristic might lead to the new variety being out of the scope of the EDV principle. This would greatly
endanger the breeding incentive and could possibly lead to a narrowing of the genetic diversity available to breeders, a diminution of breeding efforts, and eventually result in fewer choices available for the users of varieties and so, threaten the whole UPOV system.

Aware of the danger by narrowing the scope of the EDV principle, which would be contrary to the original intention of the EDV principle put in place in 1991, the breeding industries would like to request that the next explanatory notes on EDV clearly affirms the following guiding principles in respect of EDV:

- predominant derivation is a key requirement for a variety to be considered an EDV,
- predominant derivation from an Initial Variety requires the use of material of the Initial Variety as its major source, which is reflected in the genetic conformity between the Initial Variety and the EDV,
- an EDV must be distinct from its Initial Variety,
- the EDV principle was not introduced to only prevent plagiaristic or cosmetic breeding,
- important changes in the characteristics of an Initial Variety, even in essential characteristics, do not automatically lead to a new variety escaping from being an EDV.

The EDV principle relates to the scope of protection. Therefore, the existence of a relationship of essential derivation between protected varieties should be a matter for the holders of plant breeders’ rights in the varieties concerned. The technical expertise of PVP authorities can be of assistance in case of conflicts.

Our industry representatives look forward to this important opportunity to engage with the other Working Group EDV members to discuss, address and resolve the remaining EDV-related questions and issues to ensure consistent and effective implementation and enforcement of EDV conditions and provisions to secure the strength of the plant breeder’s right. Finally, we very much support the proposal to give a joint presentation in the second meeting of the WG on 4 February and will prepare such presentation accordingly.

Thank you very much!

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