

Council

C/56/9

**Fifty-Sixth Ordinary Session
Geneva, October 28, 2022**

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EXPLANATORY NOTES ON ESSENTIALLY DERIVED VARIETIES UNDER THE 1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

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EXECUTIVE SUMMARY

1. The purpose of this document is to provide information to assist the Council in its consideration of the revision of document UPOV/EXN/EDV2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”.
2. The Council is invited to:
 - (a) note the developments concerning the consideration of document UPOV/EXN/EDV/3 Draft 3 by correspondence; and
 - (b) consider document UPOV/EXN/EDV/3 Draft 3 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”, in conjunction with the recommendations by the Consultative Committee.

3. The structure of this document is as follows:

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BACKGROUND

4. The Council, at its fifty-fifth ordinary session, held via electronic means on October 29, 2021, agreed that a draft of document UPOV/EXN/EDV/3, as approved by the Administrative and Legal Committee (CAJ), be circulated for approval by the Consultative Committee and adoption by the Council by correspondence (see document [C/55/18](#) “Report”, paragraph 47).

DEVELOPMENTS SINCE THE FIFTY-FIFTH ORDINARY SESSION OF THE COUNCIL

Consultative Committee Circular E-21/231 of November 19, 2021 (document UPOV/EXN/EDV/3 Draft 3)

5. In accordance with the decision of the Council, at its fifty-fifth ordinary session, the Office of the Union issued Circular E-21/231 of November 19, 2021, inviting the Consultative Committee to approve document

UPOV/EXN/EDV/3 Draft 3 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention” by correspondence. Document UPOV/EXN/EDV/3 Draft 3 is available at: https://www.upov.int/meetings/en/details.jsp?meeting_id=67788.

6. In reply to Circular E-21/231, comments were received from Morocco and Switzerland.
7. Morocco proposed the deletion of paragraph 26 of document UPOV/EXN/EDV/3 Draft 3 to avoid confusion with regard to the figures contained in the document.
8. Switzerland noted that the proposed explanatory notes contained major amendments in key areas in relation to the currently adopted Explanatory Notes on Essentially Derived Varieties. Before giving its approval for the adoption of the revised explanatory notes, Switzerland wished to know the basis for the new interpretation of EDV, whether it was compatible with the legal provisions of the UPOV Convention and what impact on breeding and the market was expected. It therefore requested that the Working Group on Essentially Derived Varieties or the UPOV Secretariat submit written responses to the those questions to the Consultative Committee before it approved the explanatory notes and submitted them to the Council. The Office of the Union responded to Switzerland on January 24, 2022, with an explanation of the process that had resulted in document UPOV/EXN/EDV/3 Draft 3.
9. The comments received from Morocco and Switzerland and the reply of the Office of the Union to the comments of Switzerland were published on the CC/99 webpage and are available on the C/56 webpage at: https://www.upov.int/meetings/en/details.jsp?meeting_id=67788.

Informal consultation meeting of March 25, 2022

10. By Circular E-22/025 of February 22, 2022, the Office of the Union invited members of the Union to participate in an informal consultation meeting by electronic means on March 25, 2022, in order to consider the comments from Morocco and Switzerland on document UPOV/EXN/EDV/3 Draft 3.
11. The following members of the Union expressed their interest in participating in the informal consultation meeting: Australia, Canada, Chile, China, Colombia, Czech Republic, European Union, France, Japan, Mexico, Morocco, New Zealand, Poland, Romania, Serbia, Spain, Sweden, Switzerland, United Kingdom and the United States of America.
12. Comments on document UPOV/EXN/EDV/3 Draft 3 were received from Belarus, Jordan and Turkey on the morning of March 25, 2022. The comments were circulated to the Consultative Committee and published on the Consultative Committee website prior to the informal consultation meeting. The comments are available on the C/56 webpage at: https://www.upov.int/meetings/en/details.jsp?meeting_id=67788.
13. On the basis of the discussions at the informal consultation meeting, it was concluded that it would not be possible to reach agreement in relation to document UPOV/EXN/EDV/3 Draft 3, at that time, and that the matter would need to be considered by the Consultative Committee, at its ninety-ninth session, together with a document explaining developments during the procedure by correspondence. It was also agreed that document UPOV/EXN/EDV/3 Draft 3 and the document explaining the developments during the procedure by correspondence should be presented to the Council, at its fifty-sixth ordinary session.

CONSIDERATION OF DOCUMENT UPOV/EXN/EDV/3 DRAFT 3

14. The Consultative Committee, at its ninety-ninth session, to be held on October 27, 2022, will be invited to consider document UPOV/EXN/EDV/3 Draft 3 in conjunction with the report on developments during the procedure by correspondence. The recommendations of the Consultative Committee concerning document UPOV/EXN/EDV/3 Draft 3 will be presented for consideration by the Council, at its fifty-sixth ordinary session, to be held on October 28, 2022, in document C/56/13 “Report by the President on the work of the ninety-ninth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee”.

15. *The Council is invited to:*

(a) *note the developments concerning the consideration of document UPOV/EXN/EDV/3 Draft 3 by correspondence; and*

(b) *consider document UPOV/EXN/EDV/3 Draft 3 "Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention", in conjunction with the recommendations by the Consultative Committee.*

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