



Essential Derivation from a Not-Yet Protected Variety and Dependency

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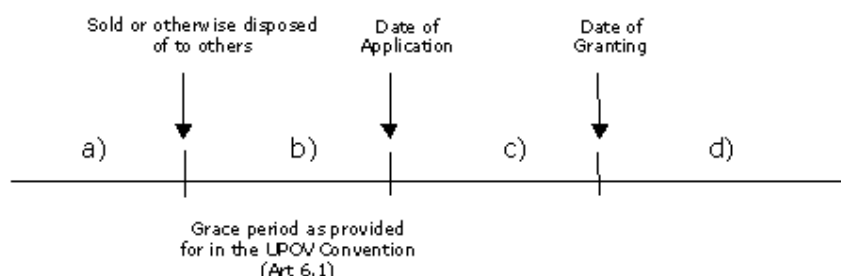
Essential derivation, to be decided upon on a case-by-case basis, according to the following principles:

- clear distinctness in the sense of the UPOV Convention
- conformity to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety
- predominant derivation from an initial variety

is a fact.

Dependency¹ depends on the status of the initial variety:

- If the initial variety is not protected, the concept of dependency does not apply
- If the initial variety is protected, the essentially derived variety shall be dependent from the initial variety
- If the initial variety was not protected at the time of the act of essential derivation but is granted protection afterwards, according to the following graph, the following conclusions shall apply:



The graph is divided in four periods as regards the initial variety:

- a) Before the date of commercialisation (start of the grace period)
- b) Between the start of the grace period and the date of application
- c) Between the date of application and the date of granting
- d) After the date of granting

If the act of derivation is made during the periods b) and c), dependency will start at the date of granting. However, the breeder of the initial variety will, at least, be entitled to an equitable remuneration in line with article 13 on provisional protection of the 1991 Act of the UPOV Convention if the EDV is commercialised during periods b) and c).

Access during period a) needs careful consideration. Access with the consent of the breeder of the initial variety may destroy the novelty of the putative initial variety (ref. article 6 of the UPOV Convention). Any other access may be considered as illegal.

¹ "Dependency" means, according to article 14(5) of the 1991 Act of the UPOV Convention, that acts as defined by article 14(1) in respect of the propagating material of the essentially derived variety shall require the authorization of the breeder of the initial variety.