

# EAPVPF International Seminar on Plant Variety Protection System

## Concept of EDV in UPOV

Yolanda Huerta  
Legal Counsel and  
Director of Training and Assistance, UPOV

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International Union for the Protection of New Varieties of Plants



## UPOV MISSION STATEMENT

**“To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society”**

## Scope of breeders' rights

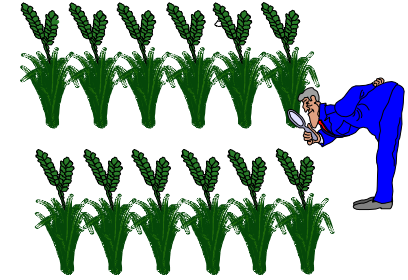
- a) Acts covered
- b) Material covered
- c) Varieties covered



Essentially Derived  
Varieties (EDV)

# VARIETIES COVERED (Art. 14(5) (a) 1991 Act)

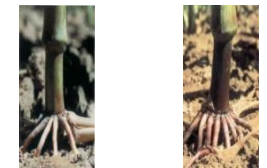
(ii) varieties which are **not clearly distinguishable** in accordance with Article 7 from the protected variety



(iii) varieties whose production requires the **repeated use of the protected variety**

*e.g. hybrids produced using a protected variety*

(i) varieties which are **essentially derived** from the protected variety, **where the protected variety is not itself an essentially derived variety**

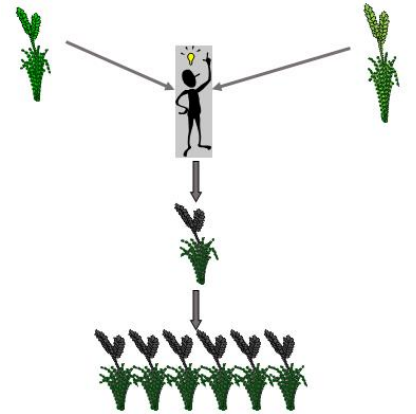


# Essentially Derived Varieties

## PURPOSE:

to ensure sustainable plant breeding development by:

- providing effective protection for the breeder
- and
- encouraging cooperation between breeders and developers of new technologies such as genetic modification



# Essentially Derived Varieties

## Article 14

### Scope of the Breeder's Right

(5)[*Essentially derived and certain other varieties*]

(a) [...]

(b) For the purposes of subparagraph (a)(i), a variety shall be deemed to be **essentially derived from another variety (“the initial variety”)** when

- (i) it is **predominantly derived from the initial variety**, or from a variety that is itself predominantly derived from the initial variety, **while retaining the expression of the essential characteristics** that result from the genotype or combination of genotypes of the initial variety,
- (ii) it is **clearly distinguishable** from the initial variety and
- (iii) **except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics** that result from the genotype or combination of genotypes of the initial variety.

# Essentially Derived Varieties – Art. 14(5)(c) of the 1991 Act

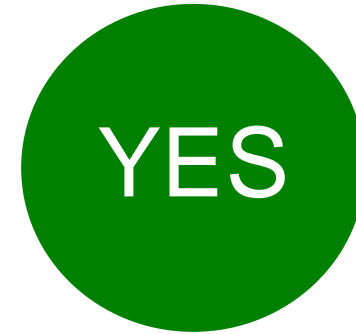
*May be obtained for example by:*

- **selection** of a natural or induced **mutant**
- **selection** of a **somaclonal variant**
- **selection** of a **variant individual** from plants of the initial variety
- **back-crossing**
- transformation by **genetic engineering**

# Essentially Derived Varieties

**Can EDVs be protected in their own right?**

- same criteria for protection

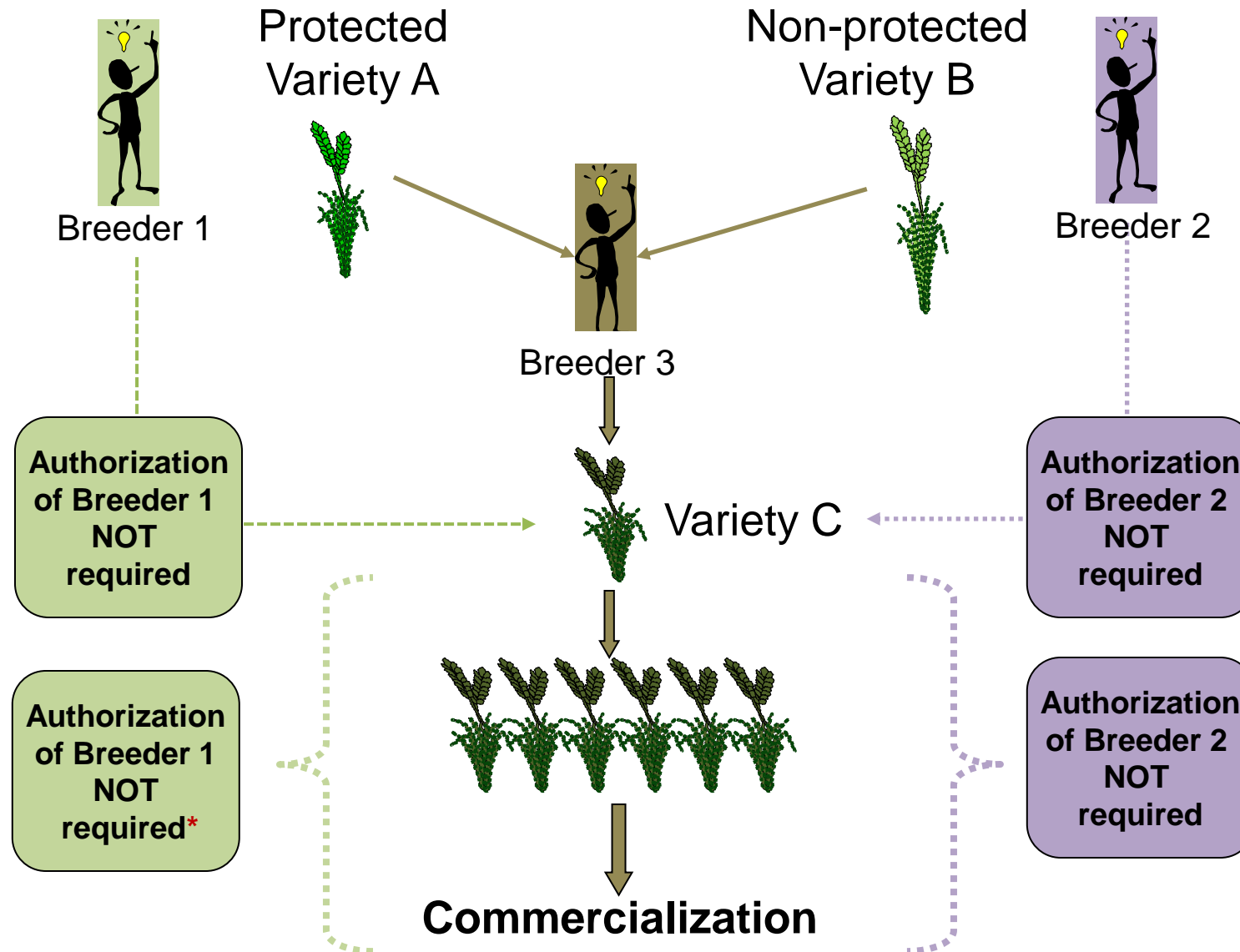


**Can EDVs be commercially exploited?**

Requires the authorization of the PBR holder of the  
INITIAL VARIETY and the PBR holder of the EDV



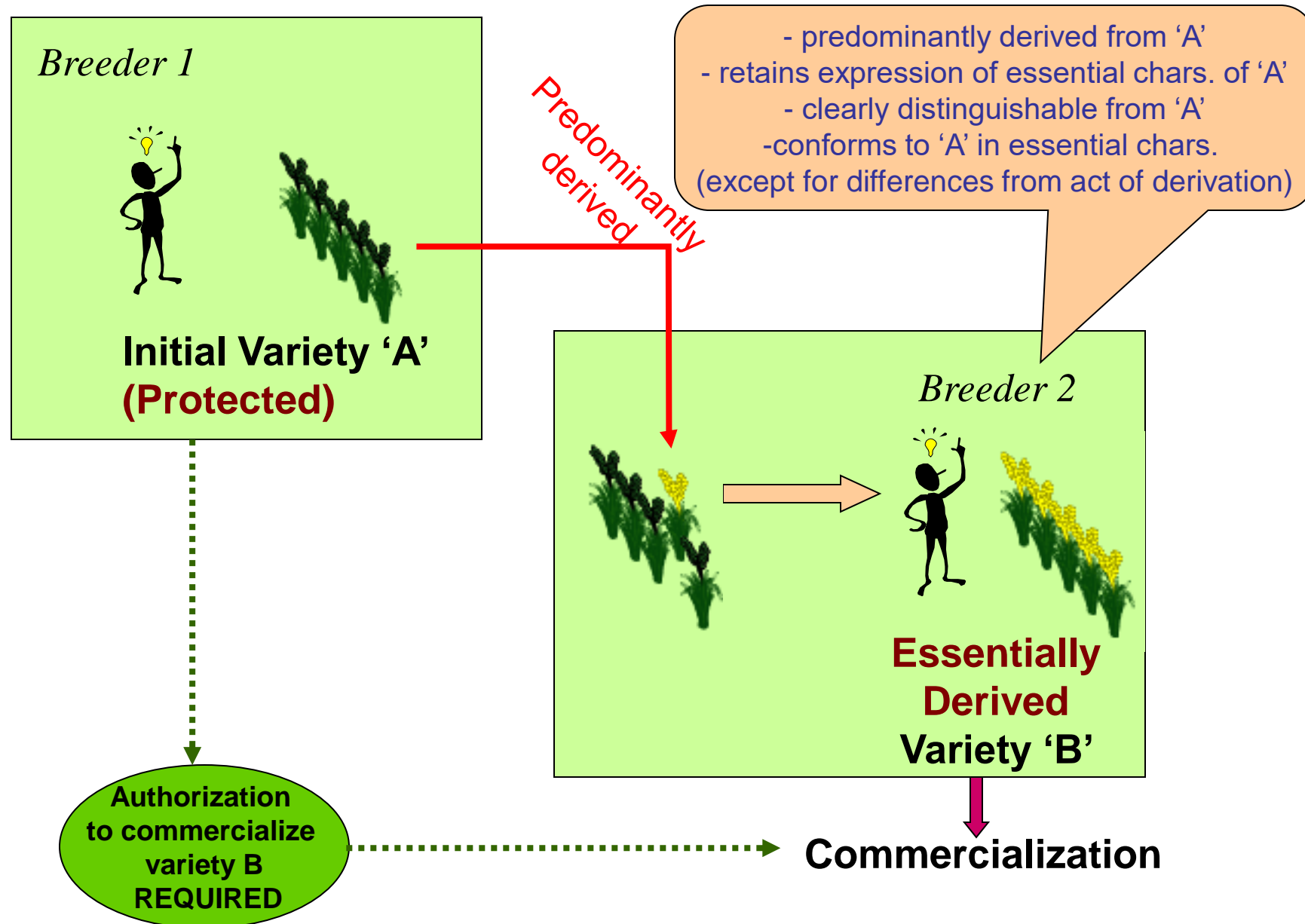
# Breeder's exemption



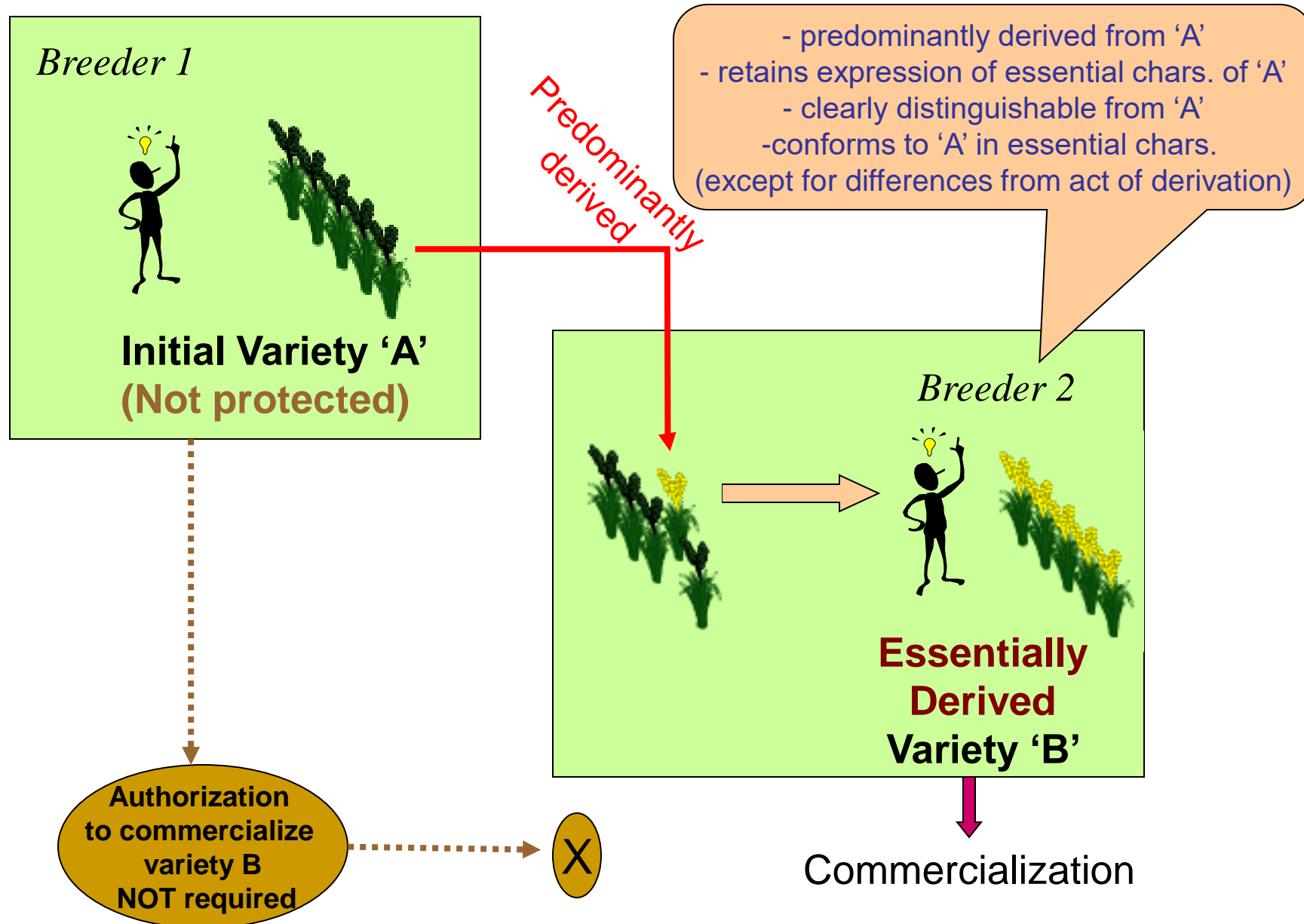
\* Except for:

- (i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (ii) varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and
- (iii) varieties whose production requires the repeated use of the protected variety.

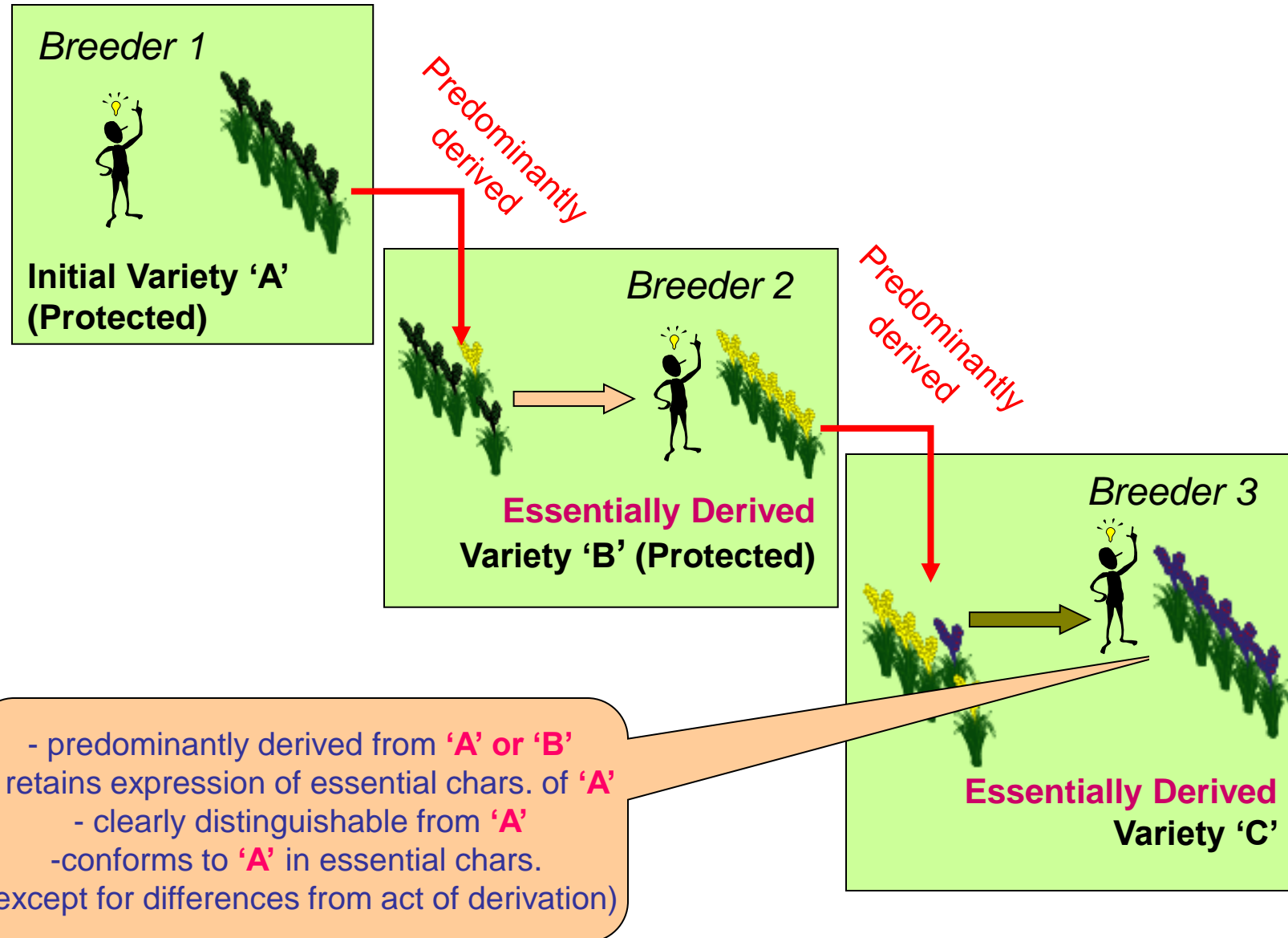
# Essentially Derived Varieties



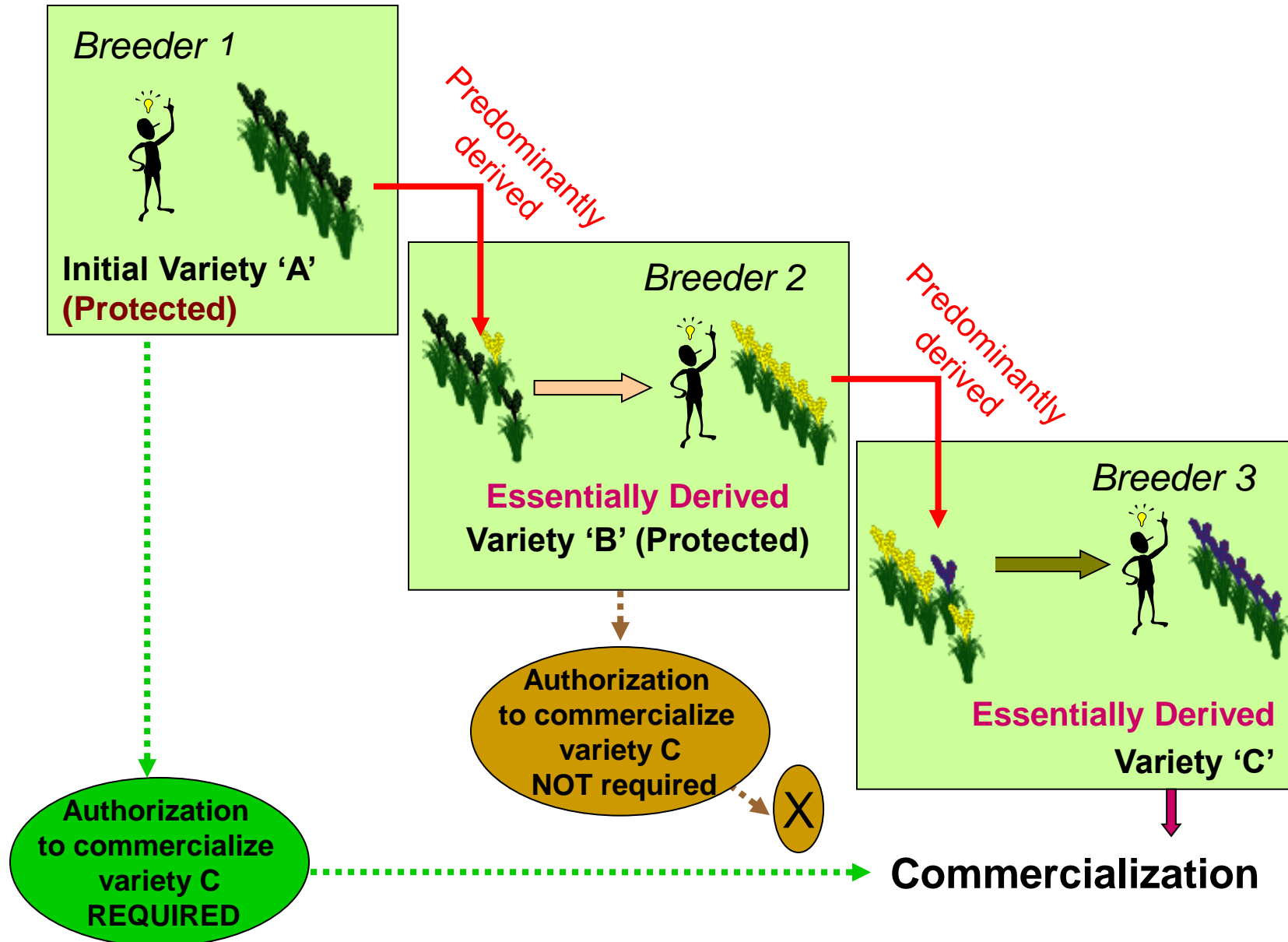
# Essentially Derived Varieties



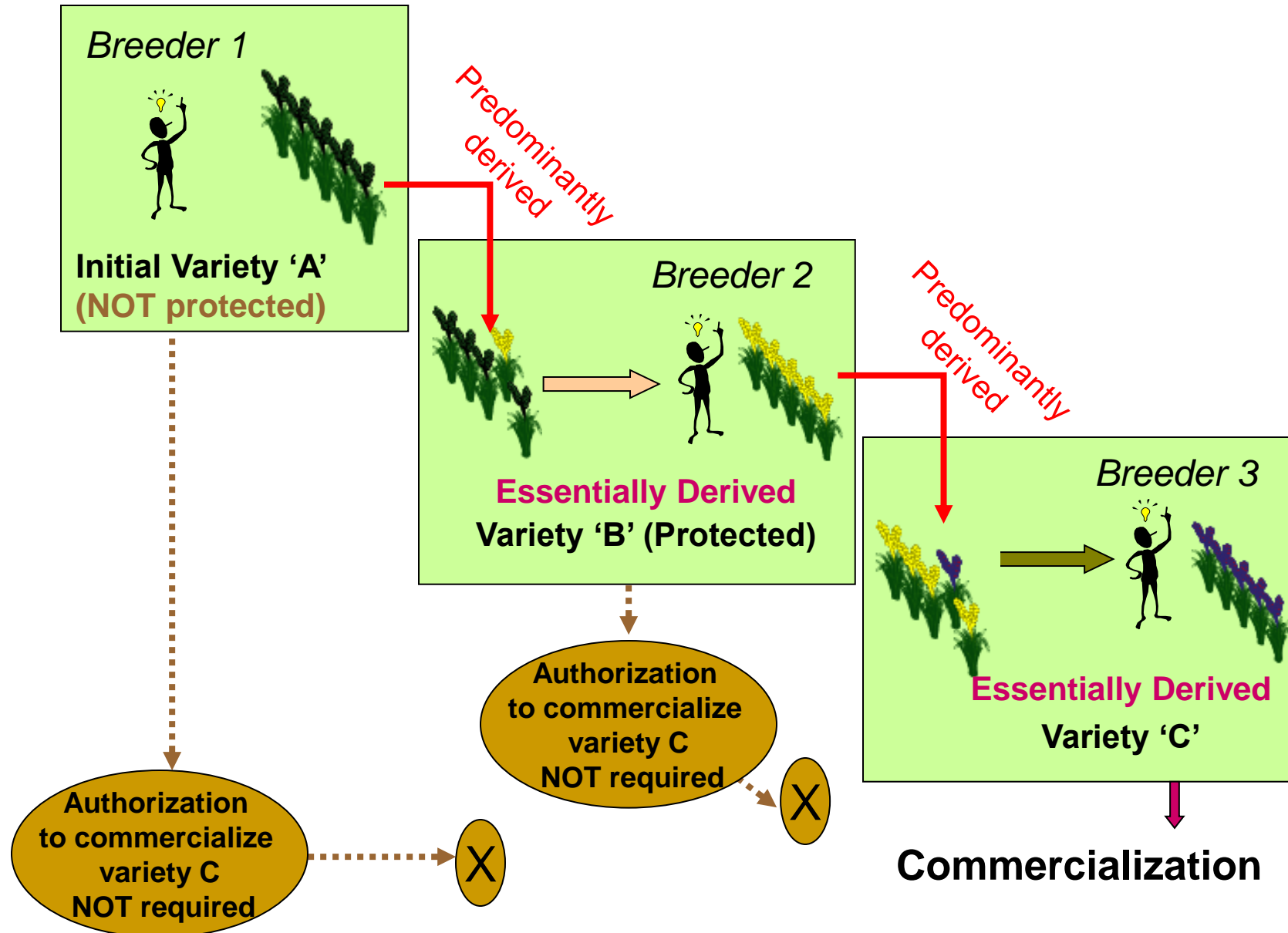
# Essentially Derived Varieties



# Essentially Derived Varieties



# Essentially Derived Varieties



# Seminar on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy in 2019



## UPOV EDV Seminar - Summary

- Evidence that the current UPOV guidance does not reflect the practice amongst breeders in the understanding of essentially derived varieties (EDV).
- ***Evolution of breeding techniques has created new opportunities/incentives for predominately deriving varieties from initial varieties, more rapidly and at a lower cost.***
- Clear indication from presentations and discussions that the understanding and implementation of the EDV concept influences breeding strategy – therefore, it is ***important that UPOV guidance is tuned to maximize benefits to society in terms of maximizing progress in breeding.***

# Essentially Derived Varieties

Seminar on the  
Impact of Policy on Essentially Derived Varieties (EDVs)  
on Breeding Strategy



October 2019



**Working Group on Essentially  
Derived Varieties (WG-EDV)**

to draft a **revision** of the  
**Explanatory Notes on  
Essentially Derived Varieties**  
for consideration by the  
Administrative and Legal Committee (CAJ).

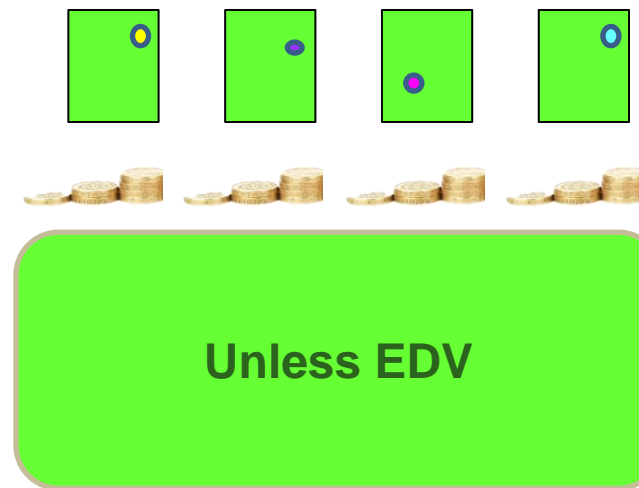
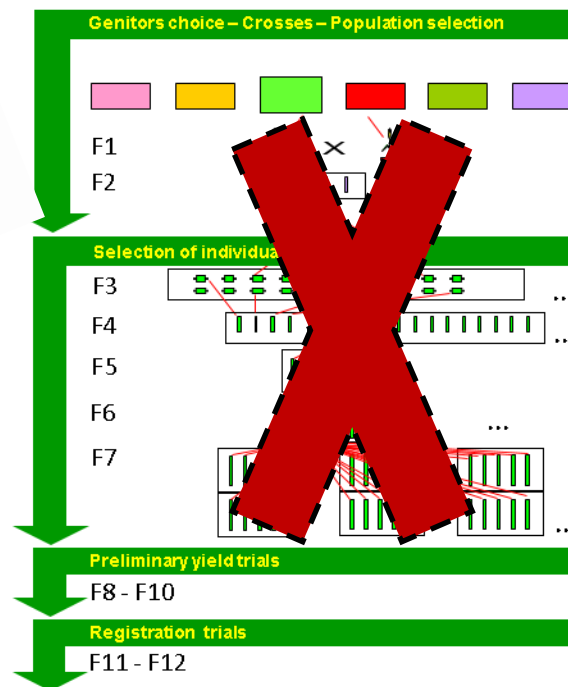
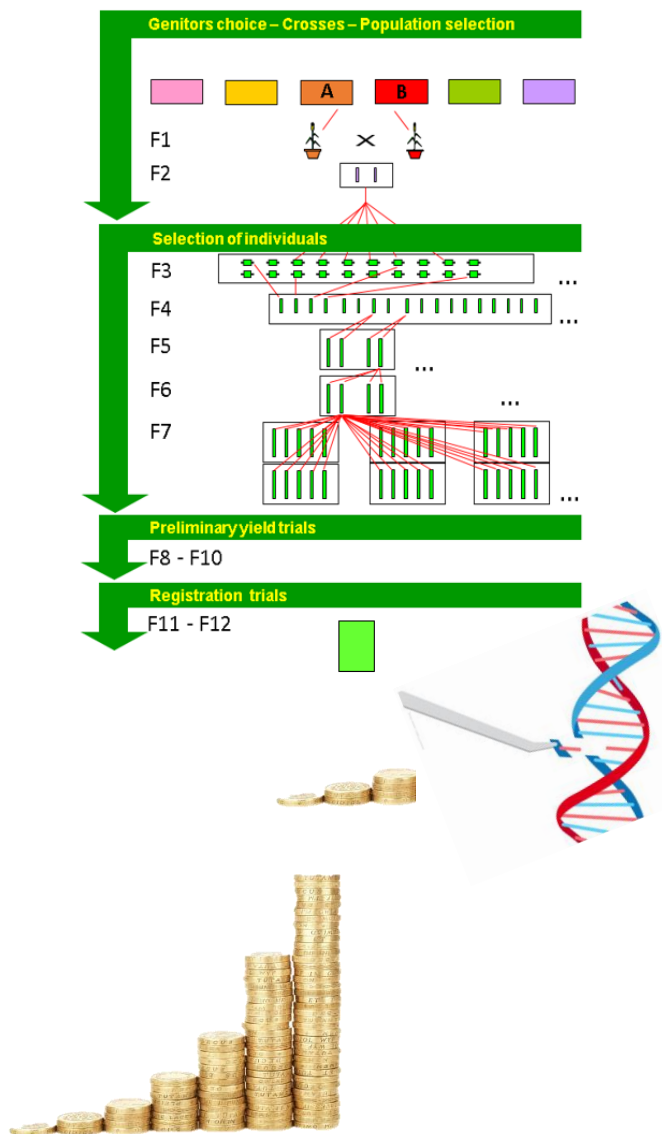
***...plus* EDV information session**

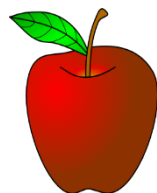
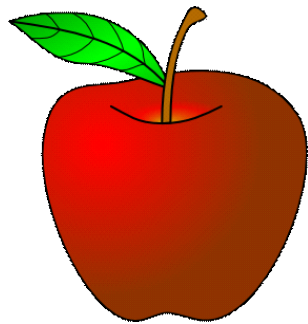
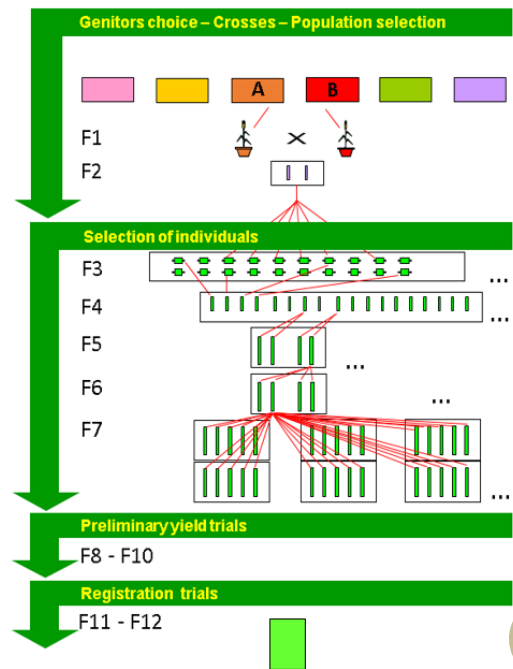
# Policy objectives in the revision of document UPOV/EXN/EDV/2 ToRs for the WG-EDV

In drafting the revision of document UPOV/EXN/EDV/2, the WG-EDV to consider:

(i) the **outcome of the 2019 Seminar** on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy:

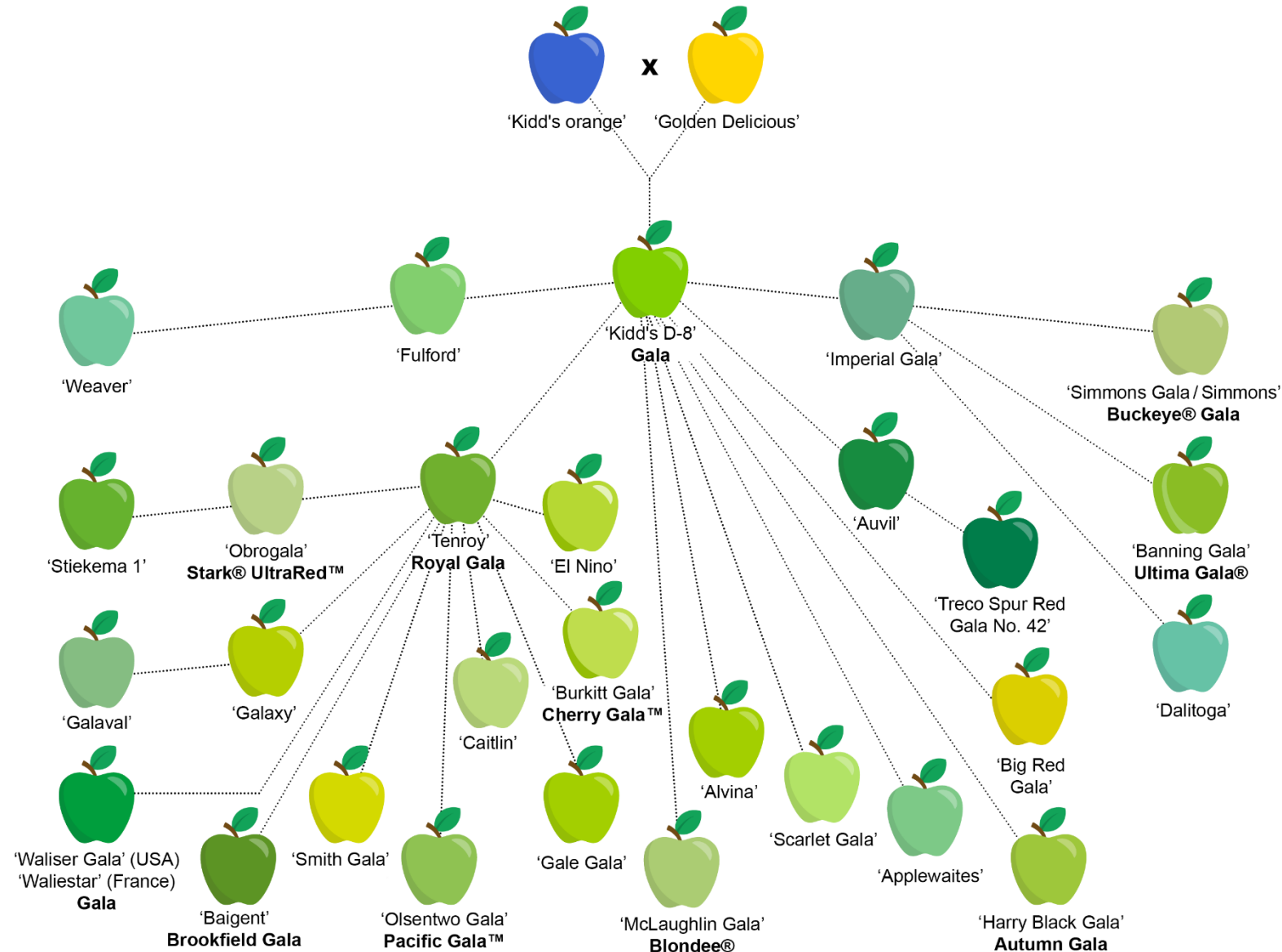
- Evidence that the current **UPOV guidance does not reflect the practice amongst breeders** in the understanding of essentially derived varieties;
- **Evolution of breeding technologies** has created new opportunities/incentives for predominantly **deriving varieties from initial varieties, more rapidly and at a lower cost**;
- Clear indication from presentations and discussions that the understanding and implementation of the **EDV concept influences breeding strategy** – therefore, it is important that UPOV guidance is tuned to maximize **benefits to society** in terms of maximizing progress in breeding.





# Mono-parental EDV example in Apple

A subset of naturally-occurring mutations of 'Kidd's D-8 apple (marketed as 'Gala')



# Background

- Process started by the Administrative and Legal Committee (CAJ) in **2018**, EDV Seminar in 2019, CAJ established WG-EDV and WG-EDV met 4 times 2019-**2021**:

The WG-EDV agreed the following timeline:

<u>February 4, 2021</u>	Second Meeting of the WG-EDV (by virtual means): <ul style="list-style-type: none"><li>- Joint presentation by breeders' organizations and discussion in relation to issues for consideration. (presentation to be posted at least 1 week in advance of the second meeting)</li></ul>
<u>April/May 2021</u> [date to be decided]	Third Meeting of the WG-EDV (by virtual means): <ul style="list-style-type: none"><li>- consideration by the WG-EDV of a preliminary draft text for revision of UPOV/EXN/EDV/2 (to be posted at least 4 weeks before the third meeting)</li></ul>
<u>June/July 2021</u> [date to be decided]	Consideration of UPOV/EXN/EDV/3/Draft 1 by correspondence (6 weeks for comments)
<u>October 2021</u> [date to be decided]	Fourth Meeting of the WG-EDV (at the fringes of the CAJ session) <ul style="list-style-type: none"><li>- consideration of UPOV/EXN/EDV/3/Draft 2 (to be posted 6 weeks before the fourth meeting in English)"</li></ul>

## Latest developments on the Revision of the Explanatory Notes on EDV

- The **CAJ on October 27, 2021**, approved the proposed revision of document UPOV/EXN/EDV/2 “Explanatory Notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention”.
- The **Council, on October 29, 2021**, agreed that a draft of document UPOV/EXN/EDV/3 (Document UPOV/EXN/EDV/3 Draft 3), as approved by the CAJ, be circulated for approval by the Consultative Committee and adoption by the Council by correspondence (see document C/55/18 “Report”, paragraph 47).
- **Document UPOV/EXN/EDV/3 Draft 3 and C/56/9 document with relevant information** on developments during the procedure by correspondence will be posted on the UPOV website and will part of the agenda of the **Consultative Committee on October 27 and the Council on October 28, 2022**
- [https://www.upov.int/meetings/en/details.jsp?meeting\\_id=67788](https://www.upov.int/meetings/en/details.jsp?meeting_id=67788)