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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

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Geneva, October 15 and 16, 1987

UPOV RECOMMENDATIONS ON VARIETY DENOMINATIONS

Document prepared by the Office of the Union

1. Following the work of the Administrative and Legal Committee, the discussions at the third meeting with international organizations and its own work, the Consultative Committee submits to the Council, for adoption, the draft UPOV Recommendations on Variety Denominations given at Annex..

2. The Council is invited to adopt the text given at Annex.

[Annex follows]

ANNEX

DRAFT NEW TEXT OF THE
UPOV RECOMMENDATIONS ON VARIETY DENOMINATIONS

The Council of the International Union for the Protection of New Varieties of Plants (UPOV) refers to Articles 6(1)(e) and 13 of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978, and in particular to the fact that, according to that Convention, a variety must be given a denomination destined to be its generic designation before a title of protection can be issued in respect of it.

The Council points out that, according to Article 13, a variety denomination must be suitable as a generic designation and must enable the variety to be identified; it must be not liable to mislead nor to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder.

The Council emphasizes that the main purpose of the rules laid down in Article 13 is to ensure that, as far as possible, protected varieties are designated in all member States by the same variety denomination, that the approved variety denominations establish themselves as the generic designations and that they are used in the marketing of reproductive or propagating material, even after the expiration of protection.

The Council considers that such an aim can only be achieved if the broadly worded provisions on variety denominations in Article 13 are uniformly interpreted and applied by the member States, and that the adoption of appropriate recommendations is therefore advisable.

The Council also considers that the adoption of such recommendations for the uniform interpretation and application of the provisions of Article 13 would be of assistance not only to the authorities of member States but also to breeders having to select variety denominations.

The Council, having regard to Article 21(h) of the Convention, under which it has the task of taking all necessary decisions to ensure the efficient functioning of the Union, and in the light of the experience acquired by member States in connection with variety denominations, recommends that the authorities of member States

(i) base their decisions on the suitability of proposed variety denominations on the recommendations set out in Part I below,

(ii) take into account, when assessing such suitability, the recommendations on the exchange of information and on procedure set out in Part II below,

(iii) give comprehensive information on the recommendations to the breeders so that they can take them into account when selecting variety denominations.

PART I

SUITABILITY OF PROPOSED VARIETY DENOMINATIONS

Recommendation 1

Designations that do not show clearly enough their status of variety denomination are not suitable as generic designations and thus also as variety denominations. This may be the case in particular with designations that are identical or may be confused with other indications, in particular those that are commonly used in trade.

Recommendation 2

(1) Designations that the average user cannot recognize or reproduce in speech and/or writing are not suitable as generic designations and thus also as variety denominations.

(2) In the case of varieties whose propagating material is exclusively marketed within a limited circle of specialists, as in the case of parent varieties for the production of hybrids, the average user should be taken to mean the average specialist in that circle.

Recommendation 3

Designations whose use is to remain free are not suitable as generic designations and thus also as variety denominations. This may be the case in particular with designations which consist exclusively or predominantly of terms in everyday language whose recognition as variety denominations would prevent others from using them when marketing reproductive or propagating material of other varieties.

Recommendation 4

Designations whose use may be forbidden in the marketing of propagating material of the variety are not suitable as generic designations and thus also as variety denominations. This may be the case in particular with:

(i) designations in which the applicant himself has some other right (for instance a right in the name or a trademark) which he could assert under the legislation of the member State concerned to oppose use of the--registered--variety denomination, either at any time or at least after the expiration of protection;

(ii) designations in which third parties have asserted a prior right;

(iii) designations that are contrary to public policy in the member State concerned.

Recommendation 5

Names and abbreviations of international organizations which are excluded by international conventions from use as trademarks or parts of trademarks are not suitable as generic designations and thus also as variety denominations.

Recommendation 6

A designation is not suitable as variety denomination on the ground of liability to mislead if there is a risk of it giving rise to misconceptions concerning the characteristics or value of the variety. This may be the case in particular with:

(i) designations that convey the impression that the variety has particular characteristics which in reality it does not have;

(ii) designations that refer to specific characteristics of the variety in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties of the species in question also have or may have the same characteristics;

(iii) comparative and superlative designations;

(iv) designations that convey the impression that the variety is derived from or related to another variety when that is not in fact the case.

Recommendation 7

A designation is not suitable as variety denomination on the ground of liability to mislead if there is a risk of it giving rise to misconceptions concerning the identity of the breeder.

Recommendation 8

(1) A designation is liable to cause confusion and/or to mislead, and therefore is not suitable, if it is identical or similar to a designation under which a variety of the same or a closely related botanical species has been made known or officially registered or under which reproductive or propagating material of that variety has been marketed.

(2) Paragraph (1) is not to be applied where the variety made known or registered earlier or already marketed is no longer cultivated and its denomination has not acquired any particular importance, except where special circumstances nevertheless might make it liable to mislead.

Recommendation 9

For the purposes of the fourth sentence of Article 13(2) of the Convention, all taxonomic units are considered closely related that belong to the same botanical genus or are contained in the same class in the list in Annex I to these Recommendations.

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PART II
PROCEDURE

Recommendation 10

(1) When rendering its decision on the suitability of a variety denomination, the authority referred to in Article 30(1)(b) of the Convention (hereinafter referred to as "the authority") should take into account all observations made by the authorities of other member States.

(2) The authorities should accept as far as possible a variety denomination established in another member State even if they have objections to it.

Recommendation 11

(1) The information exchanged between the authorities of member States on variety denominations and the communication of observations on proposed variety denominations, required in Article 13(6) of the UPOV Convention, should be effected by the exchange of the official gazettes published by the member States in accordance with Article 30(1)(c) of the UPOV Convention. The layout of those official gazettes should be based on the UPOV Model Plant Breeders' Rights Gazette (document UPOV/INF/5) and on any other recommendations made by UPOV; in particular, the chapters containing information on variety denominations should be appropriately identified in the table of contents.

(2) Each authority should send a mutually agreed number of copies of each issue of its official gazette immediately on publication to the authorities of the other member States.

Recommendation 12

(1) Each authority should examine the filed variety denominations published in the official gazettes of the other member States. If it finds a variety denomination to be unsuitable, it should proceed as follows:

(i) As soon as possible, but not later than three months after publication of the issue concerned, it should communicate its observations, together with its reasons, to the authority that has published the variety denomination, on the form reproduced in Annex II to these Recommendations. (In some countries, the statutory period for filing comments on a proposed denomination may be less than three months, after which time comments may no longer be acceptable for consideration.)

(ii) A copy of the above-mentioned communication should be sent at the same time to the authorities of the other member States.

(2) The authority that has published the filed denomination should immediately examine the observations communicated by the authorities of the other member States and should proceed as follows:

(i) If the observations refer to an obstacle to approval that according to the Convention applies to all member States, the authority should accept the observations in case of doubt and should reject the filed denomination. If it does not share the misgivings of the other authority, it should inform that other authority accordingly and should give its reasons. As far as possible the offices concerned should endeavor to reach agreement.

(ii) If the observation refers to a circumstance that is an obstacle to approval only in the member State whose authority has transmitted the observation, but not in the member State whose authority has published the filed denomination (e.g. the denomination is identical with someone else's trademark in the former State only), the latter authority, depending on the circumstances of the case, either should reject the filed denomination or should inform the applicant accordingly, requesting him to file another variety denomination if it is envisaged that protection will be applied for in the member State whose authority has transmitted the observation or if it can be expected that reproductive or propagating material of the variety will be marketed in that same State. If this procedure does not result in the filing of another variety denomination, no communication need be addressed to the authority that has transmitted the observation.

[Annexes to the draft Recommendations follow]

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ANNEX I [to the draft Recommendations]/
ANNEXE I [au projet de Recommendations]/
ANLAGE I [zu dem Entwurf von Empfehlungen]

LIST OF CLASSES FOR VARIETY DENOMINATION PURPOSES

(Recommendation 9)

LISTE DES CLASSES AUX FINS DE LA DENOMINATION DES VARIETES

(Recommandation 9)

KLASSENLISTE FÜR ZWECHE DER BEZEICHNUNG VON SORTEN

(Anleitung 9)

Note: Classes which contain subdivisions of a genus may lead to the existence of a complementary class containing the other subdivisions of the genus concerned (example: Class 9 (*Vicia faba*) leads to the existence of another class containing the other species of the genus *Vicia*).

Note : Les classes contenant des subdivisions d'un genre peuvent entraîner l'existence d'une classe complémentaire contenant les autres subdivisions du genre concerné (exemple : La classe 9 (*Vicia faba*) entraîne l'existence d'une autre classe contenant les autres espèces du genre *Vicia*).

Anmerkung: Klassen, die Unterteilungen einer Gattung enthalten, können zum Bestehen einer zusätzlichen Klasse führen, die die anderen Unterteilungen der betreffenden Gattung enthält (Beispiel: Klasse 9 (*Vicia faba*) führt zum Bestehen einer anderen Klasse, die die sonstigen Arten der Gattung *Vicia* enthält).

Class 1 / Classe 1 / Klasse 1

Avena, Hordeum, Secale, Triticale, Triticum

Class 2 / Classe 2 / Klasse 2

Panicum, Setaria

Class 3 / Classe 3 / Klasse 3

Sorghum, Zea

Class 4 / Classe 4 / Klasse 4

Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum

Class 5 / Classe 5 / Klasse 5

Brassica oleracea

Class 6 / Classe 6 / Klasse 6

Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis

Class 7 / Classe 7 / Klasse 7

Lotus, Medicago, Ornithopus, Onobrychis, Trifolium

Class 8 / Classe 8 / Klasse 8

Lupinus albus L., L. angustifolius L., L. luteus L.

Class 9 / Classe 9 / Klasse 9

Vicia faba L.

Class 10 / Classe 10 / Klasse 10

Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima

Class 11 / Classe 11 / Klasse 11

Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: Beta vulgaris L. var. rubra L.), Beta vulgaris L. var. cicla L., Beta vulgaris L. ssp. vulgaris var. vulgaris

Class 12 / Classe 12 / Klasse 12

Lactuca, Valerianella, Cichorium

Class 13 / Classe 13 / Klasse 13

Cucumis sativus

Class 14 / Classe 14 / Klasse 14

Citrullus, Cucumis melo, Cucurbita

Class 15 / Classe 15 / Klasse 15

Anthriscus, Petroselinum

Class 16 / Classe 16 / Klasse 16

Daucus, Pastinaca

Class 17 / Classe 17 / Klasse 17

Anethum, Carum, Foeniculum

Class 18 / Classe 18 / Klasse 18

Bromeliaceae

Class 19 / Classe 19 / Klasse 19

Picea, Abies, Pseudotsuga, Pinus, Larix

Class 20 / Classe 20 / Klasse 20

Calluna, Erica

Class 21 / Classe 21 / Klasse 21

Solanum tuberosum L.

Class 22 / Classe 22 / Klasse 22

Nicotiana rustica L., N. tabacum L.

Class 23 / Classe 23 / Klasse 23

Helianthus tuberosus

Class 24 / Classe 24 / Klasse 24

Helianthus annuus

Class 25 / Classe 25 / Klasse 25

Orchidaceae

Class 26 / Classe 26 / Klasse 26

Epiphyllum, Rhipsalidopsis, Schlumbergera, Zygocactus

Class 27 / Classe 27 / Klasse 27

Proteaceae

[Annex II [to the draft Recommendations] follows/
L'annexe II [au projet de Recommandations] suit/
Anlage II [zu dem Entwurf von Empfehlungen] folgt]

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ANNEX II [to the draft Recommendations]/
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ANLAGE II [zu dem Entwurf von Empfehlungen]

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From/De/Von

Your ref./Votre réf./Ihr Zeichen

Our ref./Notre réf./Unser Zeichen

Observations on a Submitted Variety Denomination
Observations sur une dénomination variétale déposée
Bemerkungen zu einer angemeldeten Sortenbezeichnung

To/A/An

Variety Denomination:
Dénomination variétale:
Sortenbezeichnung:

Species (Latin name):
Espèce (nom latin):
Art (botanische
Bezeichnung):

Bulletin:
Amtsblatt:

(Year/Année/Jahr) (Month/Mois/Monat) (Page/Seite)

Applicant:
Demandeur:
Anmelder:

Observations:
Bemerkungen:

If the observations refer to a trademark or another right, name and address of the holder thereof (if possible):
Si les observations se réfèrent à une marque de fabrique ou à un autre droit, nom et adresse de son titulaire (si possible):
Falls sich die Bemerkungen auf ein Warenzeichen oder ein anderes Recht beziehen, Name und Anschrift des Inhabers (falls möglich):

Copies to the competent authorities of the other UPOV member States.
Copies aux services compétents des autres Etats membres de l'UPOV.
Kopien an die zuständigen Behörden der anderen UPOV-Verbandsstaaten.

Date/Datum:

Signature/Unterschrift:

[End of document/
Fin du document/
Ende des Dokuments]