

**Administrative and Legal Committee**

**CAJ/78/11**

**Seventy-Eighth Session  
Geneva, October 27, 2021**

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*to be considered by correspondence*

**EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION**

*Document prepared by the Office of the Union*

*Disclaimer: this document does not represent UPOV policies or guidance*

**EXECUTIVE SUMMARY**

1. The purpose of this document is to provide information to assist the Administrative and Legal Committee (CAJ) in its consideration of the revision of document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations under the UPOV Convention”, as presented in document UPOV/EXN/DEN/1 Draft 6.

2. The CAJ is invited to:

(a) note the developments concerning the revision of document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations under the UPOV Convention”, as reported in this document;

(b) note the comments received in response to Circular E-21/106, concerning document UPOV/EXN/DEN/1 Draft 5, reproduced in Annex II to this document and the changes made in UPOV/EXN/DEN/1 Draft 6 in response to those comments;

(c) consider the proposed revision of document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations under the UPOV Convention”, on the basis of document UPOV/EXN/DEN/1 Draft 6; and

(d) note that, subject to agreement by the CAJ, an agreed draft of document UPOV/EXN/DEN/1 will be presented for adoption by the Council in 2021.

3. The structure of this document is as follows:

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## BACKGROUND

4. The Administrative and Legal Committee (CAJ), at its seventy-seventh session, held via electronic means on October 28, 2020, requested the Office of the Union to prepare a draft of document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/EXN/DEN/1 Draft 5), for comments by the CAJ by correspondence. Based on the comments received, the Office of the Union would prepare a new draft of document UPOV/EXN/DEN (document UPOV/EXN/DEN/1 Draft 6) and document CAJ/78/11 for consideration by the CAJ in 2021 in the procedure by correspondence (see document CAJ/77/10 “Report”, paragraph 23 and UPOV Circular E-21/063).

5. The full background to this matter is provided in Annex I to this document.

## DEVELOPMENTS SINCE THE SEVENTY-SEVENTH SESSION

### Circular E-21/106 of July 9, 2021 (document UPOV/EXN/DEN/1 Draft 5)

6. On July 9, 2021, the Office of the Union issued Circular E-21/106 to the designated persons of the members and observers in the CAJ, inviting comments on document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/EXN/DEN/1 Draft 5) by August 8, 2021.

7. In reply to Circular UPOV Circular E-21/106, comments were received jointly from Euroseeds and the International Seed Federation (ISF), which are reproduced in Annex II to this document.

8. In relation to the joint comments received from Euroseeds and ISF, the following changes to the text in document UPOV/EXN/DEN/1 Draft 5 are proposed (in revision mode) in document UPOV/EXN/DEN/1 Draft 6:

- to modify the text in Section 2.3.3. (a) and (b) of document UPOV/EXN/DEN/1 Draft 5, as follows:

(a) As a general recommendation, a difference of one letter or one number may be considered not to be liable to mislead or cause confusion concerning the identity of the variety. However, the following are examples of a difference of only one letter that may be considered to be liable to mislead or cause confusion: ~~A difference of one letter does not provide a clear~~ because of phonetic similarity difference or without a widely-recognizable difference in meaning: [...]

(b) As a general recommendation, a difference of two or more than two letters may be considered not to be liable to mislead or cause confusion concerning the identity of the variety. However, the following are examples of a difference of two letters or more letters that may be considered to be liable to mislead or cause confusion concerning the identity of the variety if it does not provide a clear ~~because of phonetic difference similarity without~~ or a widely-recognizable difference in meaning: [...]

- to delete the examples shown in strikethrough below, which were provided Section 2.3.3. (b) in document UPOV/EXN/DEN/1 Draft 5:

#### *Examples:*

~~E[...]E and EE[...] ('Charlene' and 'Charleen');  
IE and Y ('Billie' and 'Billy');  
PH and F ('Sophie' and 'Sofie');  
'Caravella' <-> 'Karavel';  
'Cascada' and 'Kaskad';  
'Kapitan' and 'Capitaine';  
'Phenomena' and 'Fenomen';  
'Joannita' and 'Juanita';  
'Panther' and 'Pantera';  
'Piedraraja' and 'Pietrarossa';  
'Sindirella' and 'Cinderella';  
'Solstizio' and 'Solstice'.~~

CONSIDERATION OF THE “EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION” (DOCUMENT UPOV/EXN/DEN/1 DRAFT 6)

9. The CAJ is invited, in the procedure by correspondence (see UPOV Circular E-21/123 of August 23, 2021) to consider document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/EXN/DEN/1 Draft 6).

10. Subject to agreement of a draft of document UPOV/EXN/DEN/1 by the CAJ, on the basis of document UPOV/EXN/DEN/1 Draft 6, an agreed draft of document UPOV/EXN/DEN/1 “Explanatory Notes on Variety Denominations under the UPOV Convention” will be presented for adoption by the Council in 2021.

11. *The CAJ is invited to:*

*(a) note the developments concerning the revision of document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations under the UPOV Convention”, as reported in this document;*

*(b) note the comments received in response to Circular E 21/106, concerning document UPOV/EXN/DEN/1 Draft 5, reproduced in Annex II to this document and the changes made in UPOV/EXN/DEN/1 Draft 6 in response to those comments;*

*(c) consider the proposed revision of document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention”, on the basis of document UPOV/EXN/DEN/1 Draft 6; and*

*(d) note that, subject to agreement by the CAJ, an agreed draft of document UPOV/EXN/DEN/1 will be presented for adoption by the Council in 2021.*

[Annexes follow]

BACKGROUND

The CAJ, at its seventy-seventh session, held on October 28, 2020, via electronic means, agreed the matters in the following paragraphs (see below extracts from document CAJ/77/10 “Report”, paragraphs 19 to 23):

*“UPOV/EXN/DEN: Explanatory Notes on Variety Denominations under the UPOV Convention (documents CAJ/77/3 Rev., CAJ/77/9 and UPOV/EXN/DEN/1 Draft 4)”*

“19. The CAJ considered documents CAJ/77/3 Rev., CAJ/77/9 ‘Outcome of consideration of documents by correspondence’ and document UPOV/EXN/DEN/1 Draft 4.

“20. The CAJ noted the replies received from members of the Union in response to Circular E-20/017, reproduced in Annex I to document CAJ/77/3 Rev..

“21. The CAJ agreed with the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1 (see paragraph 25 of document CAJ/77/3 Rev.).

“22. The CAJ noted the comments received on document UPOV/EXN/DEN/1 Draft 4 in response to Circular E 20/120 of August 21, 2020, as presented in Annex I to document CAJ/77/9.

“23. The CAJ, on the basis of the comments in Annex I to document CAJ/77/9 and the expressions of support at its seventy-seventh session, invited the Office of the Union to prepare a draft of document UPOV/EXN/DEN ‘Explanatory Notes on Variety Denominations under the UPOV Convention’ (document UPOV/EXN/DEN/1 Draft 5), for comments by the CAJ by correspondence; and based on the comments received, the Office of the Union to prepare a new draft of document UPOV/EXN/DEN for consideration at the seventy-eighth session of the CAJ, to be held in 2021.”

[Annex II follows]

COMMENTS RECEIVED FROM EUROSEEDS AND THE INTERNATIONAL SEED FEDERATION (ISF)  
IN REPLY TO UPOV CIRCULAR E-21/106 OF JULY 9, 2021

Euroseeds and ISF provided the following comments in reply to UPOV Circular E-21/106 of July 9, 2021:

“In response to the circular E-21/106 dated July 9, Euroseeds and ISF would like to provide you with the following comments on document UPOV/EXN/DEN/1 Draft 5.

“First of all, we would like to acknowledge that the current text as it stands is a result of several years of discussions and rounds of comments both oral and written and we would like to thank the UPOV Secretariat for coordinating this matter which is very important in the day-to-day business of breeders. In the present letter we would like to focus on two remaining points that in our view requires further clarification. Both points relate to section 2.3.3. (*Identity of the variety*) of the aforementioned document.

“Under point 2.3.3. a), the second and third paragraphs, before the examples, read as follows:

‘However, the following are examples of a difference of only one letter that may be considered to be liable to mislead or cause confusion:

‘A difference of one letter provides for does not provide a clear visual or phonetic difference, e.g. if it concerns or a widely-recognizable difference in meaning letter at the beginning of a word: Example 1: in the English language, ‘Harry’;

“From the context and the formulation of the sentence we deduct that it means that in case a difference of one letter provides a clear phonetic difference or a widely-recognizable difference in meaning, the difference of one letter will not be liable to mislead or cause confusion. However, the word “visual” has been deleted from the sentence which leaves some uncertainty as to the acceptability of a denomination where the one letter difference provides a clear visual difference. We assume that in such case the denomination would be acceptable and propose to clarify this in the text in order to avoid potential different interpretations by UPOV members.

“Under point 2.3.3. b) we agree with the proposed text and approach nevertheless, we have some doubts regarding the examples as provided. We understand that the examples mentioned in the document would be examples of unsuitable denominations. We are of the view however that several of these examples are rather borderline cases and would require a more careful, case-by-case consideration. For example, the examples ‘Caravella’ <> ‘Karavel’; ‘Cascada’ and ‘Kaskad’; ‘Phenomena’ and ‘Fenomen’; ‘Panther’ and ‘Pantera’ do present a clear phonetic difference as in all cases on denomination has an extra syllable compared to the other one, which – in our view – provides for a sufficiently clear phonetic difference. Further on, we also are of the view that ‘Piedrarroja’ and ‘Pietrarrossa’ as well as ‘Solstizio’ and ‘Solstice’ are quite different from a phonetic point of view. Therefore, we suggest taking these examples out from the list and either limit the list to the remaining examples, or provide other examples which are less disputable.

“Lastly, we would like to thank you for this additional opportunity to provide comments on the draft document and trust that our above-expressed comments will get duly considered in the remaining part of the process.”

[End of Annex II and of document]