

Technical Committee

TC/53/22

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MATTERS CONCERNING VARIETY DESCRIPTIONS

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EXECUTIVE SUMMARY

1. The purpose of this document is to consider matters concerning the verification of the conformity of the maintenance of the variety and concerning variety descriptions, which were referred to the Technical Committee by the Administrative and Legal Committee, and to consider the role of the plant material used as basis of the DUS examination in relation to those matters.

2. The TC is invited to consider whether new guidance on the role of the variety description and plant material should be drafted, taking into consideration the elements presented in paragraph 20 of this document.

3. The following abbreviations are used in this document:

- CAJ: Administrative and Legal Committee
- TC: Technical Committee
- TC-EDC: Enlarged Editorial Committee
- TWA: Technical Working Party for Agricultural Crops
- TWC: Technical Working Party on Automation and Computer Programs
- TWF: Technical Working Party for Fruit Crops
- TWO: Technical Working Party for Ornamental Plants and Forest Trees
- TWV: Technical Working Party for Vegetables
- TWPs: Technical Working Parties

4. The structure of this document is as follows:

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BACKGROUND

5. The complete background to this matter is provided in document TC/52/21 “Matters concerning variety descriptions”.

6. The TC, at its fifty-second session, held in Geneva from March 14 to 16, 2016, agreed to invite experts to present to the TWPs, at their sessions in 2016, their experiences with regard to the role of plant material used as the basis for the DUS examination in relation to the following matters (see document TC/52/29 Rev. “Revised Report”, paragraph 142):

(a) use of information, documents or material provided by the breeder for verifying the maintenance of the variety, as set out in paragraph 15 of document CAJ-AG/13/8/4 “Matters concerning cancellation of the breeder’s right”, with an explanation that the information, documents or material could be maintained in a different country;

(b) use of Test Guidelines for verifying the maintenance of the variety that were different from the Test Guidelines used for the examination of Distinctness, Uniformity and Stability (“DUS”);

(c) the status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for the purposes of:

(i) verifying the maintenance of the variety (Article 22 of the 1991 Act, Article 10 of the 1978 Act);

(ii) the examination of distinctness, uniformity and stability (“DUS”) of candidate varieties;

(d) the status of a modified variety description produced, for example, as a result of:

(i) a recalibration of the scale in the Test Guidelines (particularly for non-asterisked characteristics);

(ii) variation due to the environmental conditions of the years of testing for characteristics that are influenced by the environment;

(iii) variation due to observation by different experts; or

(iv) the use of different versions of scales (e.g. different versions of the RHS Colour Chart); and

(e) situations where an error is subsequently discovered in the initial variety description.

7. On April 12, 2016, by means of Circular E-16/095, the TC and TWP experts were invited to make presentations to the TWPs, at their sessions in 2016, on their experiences with regard to the role of plant material used as the basis for the DUS examination in relation to matters presented in paragraph 6 of this document.

COMMENTS BY THE TECHNICAL WORKING PARTIES

8. At their sessions in 2016, the TWC, TWO, TWV, TWA and TWF considered documents TWC/34/14; TWO/49/14 and TWO/49/14 Add.; TWV/50/14 and TWV/50/14 Add.; TWA/45/14, TWA/45/14 Add. and TWA/45/14 Add.2; and TWF/47/14 “Matters concerning variety descriptions”, respectively (see documents TWC/34/32 “Report”, paragraphs 102 to 105; TWO/49/25 Rev. “Revised Report”, paragraphs 47 to 52; TWV/50/25 “Report”, paragraphs 68 to 75; TWA/45/25 “Report”, paragraphs 52 to 58; and TWF/47/25 “Report”, paragraphs 56 to 62).

Technical Working Party on Ornamental Plants

9. The TWO, at its forty-ninth session, held in Gimcheon City, Republic of Korea, noted the following presentations made by experts on their experiences with regard to the role of plant material used as the basis for the DUS examination in relation to matters presented in paragraph 6 of this document (in alphabetical order):

Australia	Role and functions of variety descriptions in Australia
European Union	Updating Variety Descriptions - Outcome of the Survey
Germany	The Role of Plant Material Used As Basis For The DUS Examination

10. The TWO noted that the presentations by the experts from the European Union and from Germany were available as Annexes I and II to document TWO/49/14 Add. The TWO noted that the presentation by the expert from Australia would be made available as document TWO/49/14 Add.2.

Technical Working Party for Vegetables

11. The TWV, at its fiftieth session, held in Brno, Czech Republic, considered the following presentations made by experts on their experiences with regard to the role of plant material used as the basis for the DUS examination in relation to matters presented in paragraph 6 of this document:

European Union	Updating Variety Descriptions - Outcome of the Survey
France	Variety descriptions – role of plant material for DUS examination

12. The TWV noted that copies the presentations by the experts from the European Union and from France, were provided in document TWV/50/14 Add.. The TWV agreed that for identification purposes a standard sample was preferred, as a variety description was only a source of information which might be updated internally.

13. The TWV agreed that guidance for variety descriptions would be useful and noted that the information in document TWV/50/14, paragraph 28, as reproduced in the Annex to this document, and the conclusions provided by the expert from the European Union in document TWV/50/14 Add., Annex II, slide 19, transcribed below, could be a good basis.

- Notes of similar varieties shall come from the same growing trial as for the candidate variety
- To inform parties concerned on amendments for the Official VD (variety description)
- Agreement on data supplied to share databases

14. The TWV suggested to the TC to consider available guidance on variety description and to consider whether new guidance on the role of the variety description and plant material should be drafted.

Technical Working Party for Agricultural Crops

15. The TWA, at its forty-fifth session, held in Mexico City, agreed that the description of a variety had limitations due to its link to the circumstances of the DUS examination but agreed that it was an important element of the plant variety protection system.

16. The TWA noted the following presentations made by experts on their experiences with regard to the role of plant material used as the basis for the DUS examination in relation to matters presented in paragraph 6 of this document (in alphabetical order):

Australia	Variety Descriptions in Australia
European Union	Updating Variety Descriptions - Outcome of the Survey
Germany	Development and Use of Variety Descriptions

17. The TWA noted that the presentations by the experts from the European Union and from Germany were available in Annexes I and II to document TWA/45/14 Add., and the presentation by the expert from Australia was available in the Annex to document TWA/45/14 Add.2.

Technical Working Party for Fruit Crops

18. The TWF, at its forty-seventh session, held in Angers, France, noted the following presentations made by experts on their experiences with regard to the role of plant material used as the basis for the DUS examination in relation to matters presented in paragraph 6 of this document:

European Union	Updating Variety Descriptions - Outcome of the Survey
France	The role of plant material used as the basis for the DUS examination for fruit species

19. The TWF noted that copies of the presentations was provided in the Annexes to document TWF/47/14 Add..

PROPOSAL

20. On the basis of the comments by the TWPs, at their sessions in 2016, it is proposed that the TC consider whether new guidance on the role of the variety description and plant material should be drafted, taking into consideration (1) the purpose of the variety description developed at the time of the grant of the breeder's right; (2) the status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for enforcement of the breeder's right; and (3) the conclusions provided by the expert from the European Union in document TWV/50/14 Add., Annex II, slide 19, as follows:

- Notes of similar varieties shall come from the same growing trial as for the candidate variety
- To inform parties concerned on amendments for the Official VD (variety description)
- Agreement on data supplied to share databases

21. The TC is invited to consider whether new guidance on the role of the variety description and plant material should be drafted, taking into consideration the elements presented in paragraph 20 of this document.

[Annex follows]

ANNEX

PURPOSE OF THE VARIETY DESCRIPTION DEVELOPED AT THE TIME OF THE GRANT OF THE BREEDER'S RIGHT AND STATUS OF THE ORIGINAL VARIETY DESCRIPTION IN RELATION TO THE VERIFICATION OF THE CONFORMITY OF PLANT MATERIAL TO A PROTECTED VARIETY FOR ENFORCEMENT OF THE BREEDER'S RIGHT

The CAJ, at its seventy-first session, endorsed the conclusion of the CAJ-AG, at its ninth session, on the:

(i) purpose(s) of the variety description developed at the time of the grant of the breeder's right (original variety description), as follows:

The CAJ-AG agreed that, on the basis of document TGP/5 "Experience and Cooperation in DUS Testing", Section 6 "UPOV Report on Technical Examination and UPOV Variety Description", the purpose of the variety description developed at the time of the grant of the breeder's right (original variety description) might be summarized as follows:

- (a) to describe the characteristics of the variety; and
- (b) to identify and list similar varieties and differences from these varieties; combined with the information on the basis for (a) and (b), namely:
 - Date and document number of UPOV Test Guidelines;
 - Date and/or document number of Reporting Authority's test guidelines;
 - Reporting Authority;
 - Testing station(s) and place(s);
 - Period of testing;
 - Date and place of issue of document;
 - Group: (Table: Characteristics; States of Expression; Note; Remarks);
 - Additional Information:
 - (a) Additional Data
 - (b) Photograph (if appropriate)
 - (c) RHS Colour Chart version used (if appropriate)
 - (d) Remarks."

and

(ii) status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for enforcement of the breeder's right, as follows:

The CAJ-AG considered the status of the original variety description in relation to the verification of plant material of a protected variety for the purposes of enforcement of the breeder's right and noted that UPOV guidance on the enforcement of breeders' rights contained in document UPOV/EXN/ENF/1 "Explanatory notes on the enforcement of breeders' rights under the UPOV Convention" explains as follows:

"SECTION II: Some possible measures for the enforcement of breeders' rights

"While the UPOV Convention requires members of the Union to provide for appropriate legal remedies for the effective enforcement of breeders' rights, it is a matter for breeders to enforce their rights."

The CAJ-AG agreed that, in relation to the use of the original variety description, it should be recalled that the description of the variety characteristics and the basis for distinctness from the most similar variety are linked to the circumstances of the DUS examination, as set out in paragraph 10 (c) of this document, namely:

- Date and document number of UPOV Test Guidelines;
- Date and/or document number of Reporting Authority's test guidelines;
- Reporting Authority;
- Testing station(s) and place(s);
- Period of testing;
- Date and place of issue of document;
- Group: (Table: Characteristics; States of Expression; Note; Remarks).

- Additional Information:
 - (a) Additional Data
 - (b) Photograph (if appropriate)
 - (c) RHS Colour Chart version used (if appropriate)
 - (d) Remarks

[End of Annex and of document]