UPOV

International Union for the Protection of New Varieties of Plants

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Technical Committee **TC/54/28**

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MATTERS CONCERNING VARIETY DESCRIPTIONS

Document prepared by the Office of the Union

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EXECUTIVE SUMMARY

1. The purpose of this document is to consider draft guidance on the role and status of the variety description developed at the time of the grant of the breeder's right and the role of plant material used as the basis for the DUS examination.

2. The TC is invited to consider the draft guidance in the Annex to this document as the basis for a revision of document TGP/5 Section 6 "UPOV Report on Technical Examination and UPOV Variety Description."

3. The following abbreviations are used in this document:

CAJ:	Administrative and Legal Committee
CAJ-AG	Administrative and Legal Committee Advisory Group
TC:	Technical Committee

BACKGROUND

4. The background to this matter is provided in document TC/53/22 "Matters concerning variety descriptions".

5. The TC, at its fifty-third session, held in Geneva from April 3 to 5, 2017, considered document TC/53/22 (see document TC/53/31 "Report", paragraphs 188 and 189).

6. The TC considered whether new guidance on the role of the variety description and plant material should be drafted, taking into consideration (a) the purpose of the variety description developed at the time of the grant of the breeder's right; (b) 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 (c) 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

7. The TC noted the existence of different elements that could support the identification of plant material, such as the original and other official variety descriptions, including molecular markers. The TC agreed to invite the European Union to elaborate further guidance on the role of the variety description and role of plant material used as the basis for the DUS examination, but incorporating unchanged the text of document TC/53/22, Annex, and also taking into account the following aspects:

(a) the purpose of the variety description developed at the time of the grant of the breeder's right;
(b) 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
(c) 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 shared databases

PROPOSAL

8. In response to the invitation by the TC, the European Union has provided draft guidance on the purpose of the variety description developed at the time of the grant of the breeder's right and 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, in the Annex to this document.

9. It is proposed that the TC consider the draft guidance in the Annex to this document as the basis for a revision of document TGP/5 Section 6 "UPOV Report on Technical Examination and UPOV Variety Description."

10. The TC is invited to consider the draft guidance in the Annex to this document as the basis for a revision of document TGP/5 Section 6 "UPOV Report on Technical Examination and UPOV Variety Description."

[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, 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

CONCLUSIONS OF THE EUROPEAN UNION

The TC agreed to invite the European Union to compile further guidance on the role of the variety description and role of plant material used as the basis for the DUS examination. It was in particular requested to provide the Conclusion the European Union drew from a survey conducted amongst the examination offices working on behalf of the CPVO.

(i) Notes of similar varieties in official variety descriptions

In the survey conducted about 50% of the CPVO examination offices reported that the notes to describe the state of expression of similar varieties listed in the description of the candidate were taken over from the official variety description. The other 50% of the examination offices reported that all notes are describing the reference variety as it appeared when it was grown side-by-side to the candidate.

It was concluded that the purpose of listing similar varieties in the description is not to substantiate the continued existence unchanged of the reference variety but to corroborate the distinctness declaration made in the examination report. Therefore, the notes describing the similar varieties shall reflect the expression of the relevant characteristics as observed in the growing trial of the candidate variety.

(ii) Amending variety descriptions

Document TGP/4 “Constitution and Maintenance of Variety Collections” explains in section 3.1.1: “*With regard to descriptions based on the relevant UPOV Test Guidelines, it is important to note that UPOV Test Guidelines may be revised (see document TGP/7), possibly leading to the introduction of some new characteristics and the deletion of some others from the table of characteristics. Furthermore, the states of expression of a characteristic may be amended. Therefore, descriptions which have been prepared using different versions of the UPOV Test Guidelines for the same species or group of species may not be fully compatible. In these cases, the descriptions should be aligned as far as possible.*”

The legislation on plant variety rights in the European Union foresees the possibility to adapt the official variety description in the light of the current principles in order to render the description of a variety for which plant breeder’s rights were granted in the past comparable with descriptions of other varieties. As such amendments have official character all stakeholders need to be aware: the title holder receives a document, the plant variety rights authorities and the general public are informed on the amended official variety descriptions in the same way as on the initial official variety description. This means for the CPVO, a publication in the official Gazette and public access to the document upon request. In practice, however, the CPVO has hardly ever made use of this possibility provided by the legislator.

Irrespective of amendments of official variety descriptions, examination offices do regularly update their descriptive data to reflect the evolution of test guidelines. Such updates are made for working purpose and have no impact on the official variety description.

(iii) Variety descriptions in shared databases

The purpose of shared databases is to provide examiners with information on varieties so that relevant reference varieties can be identified efficiently. Where the examiner has not yet grown the reference variety in question information from other official sources may be very useful.

The survey conducted by the CPVO amongst its Examination Offices revealed different approaches. Some Examination Offices are providing only official variety descriptions whereas others provide all descriptive data collected over several growing seasons which may include also data collected after the grant of plant breeder’s rights. Storing the official variety descriptions may be simple; however, the variety in question has been described in a specific year under specific environmental conditions and its description may thus not be

truly representative for other locations. Examiners from other plant breeder's rights authorities are mostly not aware of the conditions under which the description of a given variety was prepared and may consequently be misled. By contrast, where such database is regularly fed with data for a specific variety, descriptive data collected over several years provide valuable information on the range of variation that a variety may express.

It was therefore concluded that a shared database can fulfil its purpose – supporting the efficient selection of relevant reference varieties – only under the condition that the content (the data) to be provided is clearly defined and agreed upon amongst the users and furthermore that all users of such database are aware of precautions to be taken with regard to the comparability of the data.

[End of Annex and of document]