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| International Union for the Protection of New Varieties of Plants |  |

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| Technical Committee  Fifty-Fifth Session Geneva, October 28 and 29, 2019 | TC/55/12  Original: English  Date: September 5, 2019 |

Characteristics which only apply to certain varieties

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# EXECUTIVE SUMMARY

The purpose of this document is to present a proposal to amend the current guidance in document TGP/7 “Development of Test Guidelines” to allow for the exclusion of the observation of a characteristic on the basis of a state of expression of a preceding quantitative or pseudo-qualitative characteristic.

The TC is invited to consider:

(a) the examples of quantitative and pseudo‑qualitative characteristics provided by the TWPs, at their sessions in 2019, to demonstrate how the proposed approach might be used in a way that would not present risks for decisions on distinctness, as set out in paragraph 20 of this document; and

(b) the proposal to amend the guidance in document TGP/7, Guidance Note 18 (GN 18), to allow the exclusion of a characteristic from observation on the basis of a state of expression of a preceding pseudo qualitative or quantitative characteristic, as set out in paragraph 21 of this document.

The following abbreviations are used in this document:

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

The structure of this document is as follows:

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BACKGROUND

The following guidance is provided in document TGP/7 on characteristics which only apply to certain varieties:

“GN 18 (TG Template: Chapter 7: column 3) – Presentation of Characteristics: Heading of a characteristic

[…]

*“3. Characteristics which only apply to certain varieties*

“In some cases, the state of expression of a preceding qualitative characteristic determines that a subsequent characteristic is not applicable e.g. it would not be possible to describe the shape of leaf lobes for a variety which did not have leaf lobes. In cases where this is not obvious, or where the characteristics are separated in the Table of Characteristics, the heading of the subsequent characteristic is preceded by an underlined reference to the types of varieties to which it applies, on the basis of the preceding characteristic, e.g.:

“‘Only varieties with flower type: single: Flower: shape’”

The TC, at its fifty-third session, held in Geneva from April 3 to 5, 2017, considered whether to amend document TGP/7, Guidance Note 18(3) “Characteristics which only apply to certain varieties”, to clarify that, in addition to the state of expression of a preceding qualitative characteristic, in some cases the state of expression of a preceding pseudo-qualitative or quantitative characteristic would also determine that a subsequent characteristic was not applicable (see document TC/53/31 “Report”, paragraphs 134 and 135).

The TC, at its fifty-fourth session, held in Geneva on October 29 and 30, 2018, considered document TC/54/15 “Characteristics which only apply to certain varieties” (see document TC/54/31 “Report”, paragraphs 213 to 216).

The TC, at its fifty-fourth session, considered the proposal to amend the guidance in document TGP/7, Guidance Note 18 (GN 18), to allow the exclusion of a characteristic from observation on the basis of a state of expression of a preceding pseudo‑qualitative or quantitative characteristic, as follows (proposed text deletions indicated by ~~highlighting and strikethrough~~ and insertions indicated by highlighting and underlining)):

*“3. Characteristics which only apply to certain varieties*

“In some cases, the state of expression of a preceding ~~qualitative~~ characteristic determines that a subsequent characteristic is not applicable e.g. it would not be possible to describe the shape of leaf lobes for a variety which did not have leaf lobes. In cases where this is not obvious, or where the characteristics are separated in the Table of Characteristics, the heading of the subsequent characteristic is preceded by an underlined reference to the types of varieties to which it applies, on the basis of the preceding characteristic, e.g.:

“Only varieties with flower type: single: Flower: shape”

The TC considered the proposal for the amendment to document TGP/7 GN 18 to be made in conjunction with the inclusion of a warning on the consequences of using the approach to read as follows:

“The exclusion of characteristics from observation on the basis of a preceding pseudo-qualitative or quantitative characteristic should be used with caution, taking into account the consequences for the examination of distinctness. A grouping table could be used to ensure that characteristics are only excluded from observation on a robust basis.”

The TC agreed that the grouping table was a complex example (see Annex to this document). The TC further agreed that it would be necessary for suitable examples of a quantitative and of a pseudo‑qualitative characteristic to be provided to demonstrate how the approach might be used in a way that would not present risks for decisions on distinctness. It would also be necessary to provide examples of unsuitable cases to demonstrate the risks.

# Comments by the technical working parties at their sessions in 2019

The TWO, at its fifty-first session, held in Christchurch, New Zealand, from February 18 to 22, 2019, the TWV, at its fifty-third session, held in Seoul, Republic of Korea, from May 20 to 24, 2019, and the TWF, at its fiftieth session, held in Budapest, Hungary, from June 24 to 28, 2019, considered document TWP/3/9 “Characteristics which only apply to certain varieties” (see documents TWO/51/12 “Report”, paragraphs 19 to 23, TWV/53/14 “Report”, paragraphs 12 to 16 and TWF/50/13 “Report”, paragraphs 11 and 13).

The TWO, TWV and TWF considered the request to provide suitable examples of quantitative and pseudo‑qualitative characteristics to demonstrate how the proposed approach might be used in a way that would not present risks for decisions on distinctness.

The TWO agreed that when a structure was “absent or very weak” on a plant part, the observation of further characteristics on that structure could be difficult or impractical. For example, it would not be practical to observe “hair: color” on a plant part with “presence of hairs: absent or very weak.”

The TWO agreed that the following pseudo-qualitative characteristic from the Test Guidelines for Dahlia (TG/226/1) was a suitable example to demonstrate how the proposed approach might be used in a way that would not present risks for decisions on distinctness.

(PQ) Characteristic 21: Flower head: type: single (1); semi-double (2); daisy-eyed double (3); double (4)

(QN) Characteristic 26: Only double and daisy-eyed double varieties: Flower head: height: short (3); medium (5); tall (7)

The TWO agreed that the header of the characteristic should preferably contain the exclusion and, if necessary, an explanation may be provided in the Test Guidelines.

The TWV agreed that when a structure was “absent or weak” on a plant part, the observation of further characteristics on that structure could be difficult. For example in the Test Guidelines for Lettuce (TG 13/11), characteristic 3: “Plant: degree of overlapping of upper part of leaves”, indicated as QN, with states (1) “absent or weak, (2) medium, (3) strong. However the TWV agreed that in combination with the table provided in Chapter 5.3 of the Test Guidelines it reduced the risks for decisions on distinctness, and therefore encouraged the use of such tables when needed.

The TWV agreed that the following pseudo-qualitative characteristic from the Test Guidelines for Leaf Chicory (TG/154/4) was a suitable example to demonstrate how the proposed approach might be used in a way that would not present risks for decisions on distinctness.

(PQ) Characteristic 16: “Plant: head formation: absent (1); open (2); closed (3)

(QN) Characteristic 17: “Only for varieties with head formation: Time of head formation: very early (1); early (3); medium (5); late (7); very late (9)”

The TWF agreed that the following quantitative characteristic from the Test Guidelines for Fig (TG/265/1) was a suitable example to demonstrate how the proposed approach might be used in a way that would not present risks for decisions on distinctness.

(QN) Characteristic 17: “Leaf: predominant type: entire (1); three-lobed (2); five-lobed (3)

(PQ) Characteristic 18: “Only varieties with predominant leaf type: entire: Leaf: shape: cordate (1); triangular (2); lanceolate (3); elliptic (4)”

Comments by the TWA, at its forty-eighth session, to be held in Montevideo, Uruguay, from September 16 to 20, 2019, and the TWC, at its thirty-seventh session, to be held in Hangzhou, China, from October 14 to 16, 2019, will be presented as an addendum to this document.

# PROPOSAL

On the basis of the comments by the TWPs, at their sessions in 2019, the TC is invited to consider the following characteristics as examples of quantitative and pseudo-qualitative characteristics to demonstrate how the approach might be used in a way that would not present risk for distinctness:

*Test Guidelines for Dahlia (TG/226/1):*

(PQ) Characteristic 21: Flower head: type: single (1); semi-double (2); daisy-eyed double (3); double (4)

(QN) Characteristic 26: Only double and daisy-eyed double varieties: Flower head: height: short (3); medium (5); tall (7)

*Test Guidelines for Leaf Chicory (TG/154/4):*

(PQ) Characteristic 16: “Plant: head formation: absent (1); open (2); closed (3)

(QN) Characteristic 17: “Only for varieties with head formation: Time of head formation: very early (1); early (3); medium (5); late (7); very late (9)”

*Test Guidelines for Fig (TG/265/1):*

(QN) Characteristic 17: “Leaf: predominant type: entire (1); three-lobed (2); five-lobed (3)

(PQ) Characteristic 18: “Only varieties with predominant leaf type: entire: Leaf: shape: cordate (1); triangular (2); lanceolate (3); elliptic (4)”

On the basis of the comments by the TWPs, at their sessions in 2019, the TC is invited to consider the proposal to amend the guidance in document TGP/7, Guidance Note 18 (GN 18), to allow the exclusion of a characteristic from observation on the basis of a state of expression of a preceding pseudo‑qualitative or quantitative characteristic, as follows (proposed text deletions indicated by ~~highlighting and strikethrough~~ and insertions indicated by highlighting and underlining):

*3. Characteristics which only apply to certain varieties*

In some cases, the state of expression of a preceding ~~qualitative~~ characteristic determines that a subsequent characteristic is not applicable e.g. it would not be possible to describe the shape of leaf lobes for a variety which did not have leaf lobes.

In cases where this is not obvious, or where the characteristics are separated in the Table of Characteristics, the heading of the subsequent characteristic is preceded by an underlined reference to the types of varieties to which it applies, on the basis of the preceding characteristic.

The following examples demonstrate how the proposed approach might be used for QL, PQ and QN characteristics in a way that would not present risks for decisions on distinctness

(QL) Only varieties with flower type: single: Flower: shape

[to be completed]

The following are examples of cases of PQ and QN characteristics where it would not be appropriate to exclude subsequent characteristics for the reasons explained.

[to be completed]

The exclusion of characteristics from observation on the basis of a preceding pseudo-qualitative (PQ) or quantitative (QN) characteristic should be used with caution, taking into account the consequences for the examination of distinctness.

The TC is invited to consider:

(a) the examples of quantitative and pseudo‑qualitative characteristics provided by the TWPs, at their sessions in 2019, to demonstrate how the proposed approach might be used in a way that would not present risks for decisions on distinctness; as set out in paragraph 20 of this document; and

(b) the proposal to amend the guidance in document TGP/7, Guidance Note 18 (GN 18), to allow the exclusion of a characteristic from observation on the basis of a state of expression of a preceding pseudo qualitative or quantitative characteristic, as set out in paragraph 21 of this document.

[Annex follows]

Extract from document TG/13/11 (LETTUCE)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Type** | **Example varieties** | **Plant: degree of overlapping of upper part of leaves (Char. 3)** | **Leaf: number of divisions (Char. 6)** | **Leaf: thickness (Char. 17)** | **Leaf: undulation of margin (Char. 20)** | **Leaf: venation  (Char. 25)** | **Only varieties with Plant: degree of overlapping of upper part of leaves: medium or strong: Head: shape in longitudinal section (Char. 27)** |
| Butterhead type | Clarion, Maikönig, Sartre | medium to strong | absent or very few | thin to thick | absent to weak | not flabellate | circular or narrow oblate |
| Novita type | Norvick | absent or weak | absent or very few | thin to medium | very weak to medium | flabellate | - |
| Iceberg type | Great Lakes 659, Roxette, Saladin, Vanguard 75 | strong | absent or very few | thick | absent to medium | flabellate | circular or narrow oblate |
| Batavia type | Aquarel, Curtis, Funnice, Felucca, Grand Rapids, Masaida, Visyon | absent or weak to strong | absent or very few | medium to thick | weak to very strong | flabellate | broad elliptic, circular or narrow oblate |
| Frisée d'Amérique type | Bijou, Blonde à couper améliorée | absent or weak | absent or very few | thin | absent to strong | flabellate or not flabellate or semi | - |
| Lollo type | Lollo rossa, Revolution | absent or weak | absent or very few | thin | strong to very strong | flabellate | - |
| Oakleaf type | Catalogna, Kipling, Muraï, Salad Bowl | absent or weak | few to many | thin | absent to weak | flabellate or not flabellate or semi | - |
| Multi-divided type | Curletta, Duplex, Jadigon, Rodagio | absent or weak | medium to very many | thin | weak to very strong | flabellate | - |
| Frillice type | Frilett | absent or weak | absent or very few | thick | weak to strong | flabellate | - |
| Cos type | Actarus,  Blonde maraîchère, Pinokkio | absent or weak to medium | absent or very few | medium to thick | absent to weak | not flabellate | narrow elliptic |
| Gem type | Craquerelle du Midi, Sucrine, Xanadu | absent or weak to medium | absent or very few | medium to thick | absent to weak | not flabellate | broad elliptic, circular or narrow oblate |
| Stem type | Celtuce, Guasihong | absent or weak | absent or very few | thin to medium | absent to weak | not flabellate | - |

[End of Annex and of document]