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TECHNICAL WORKING PARTY FOR FRUIT CROPS

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ADDENDUM TO

MATTERS CONCERNING VARIETY DESCRIPTIONS

Document prepared by the Office of the Union

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1. The Annex to this document contains a presentation on “Experience with regard to variety descriptions and verifying the maintenance of the variety at the Community Plant Variety Office (CPVO) of the European Union” made by an expert of the European Union at the forty-sixth session of the Technical Working Party for Fruit Crops (TWF).

[Annex follows]



Experience with regard to variety descriptions and verifying the maintenance of the variety at the Community Plant Variety Office (CPVO)

1

Experience with regard to variety descriptions (VD)

- Legal basis: Article 87(4) 2100/94

“The Office may of its own motion and upon consultation with the holder adapt the official variety description in respect of the number and type of characteristics or of the specified expressions of those characteristics, when necessary, in the light of the current principles governing the description of varieties of the taxon concerned, in order to render the description of the variety comparable with the descriptions of other varieties of the taxon concerned.”

2

Experience with regard to variety descriptions

- Experience of the CPVO:
 - In the understanding of the CPVO: concerns only variety descriptions of the registers of the CPVO
 - Updates are exceptional cases
 - Changing the variety description is a formal decision of the CPVO
 - Adapted description replaces the former description



Experience with regard to variety descriptions

- Discussion with examiners revealed wide-ranging understanding of the status of variety descriptions
- CPVO seeks to develop a common understanding
- Survey amongst examination offices



Experience with regard to variety descriptions

- CPVO provisionally defined 3 types of Variety Description:
 1. "Original VD": approved upon granting or listing (possibly several original variety descriptions if variety underwent several procedures)
 2. "Official VD": either original or adapted version of an original variety description
 3. "Working VD": any other variety description



Survey amongst European Union examination offices

1. Do you prepare a (full) working variety description of each variety grown for reference purpose?
 - 1.1. If yes, do you (fully) describe the reference variety each time the variety is grown as reference?
 - 1.2. If you do not (fully) describe reference varieties each time do you re-describe them (primarily for working purpose) when a new Technical Protocol becomes applicable?



Survey amongst European Union examination offices

2. When mentioning a reference variety as similar variety under point 16 of the Official Variety Description, do the notes there reflect the state of expression of the year the candidate variety is assessed, or are the notes taken from the Official Variety Description that was part of the title of protection (or the basis for registration in the National/Common Catalogue)?



Survey amongst European Union examination offices

3. Do above-mentioned (question 1 and 2) descriptions replace Official Variety Descriptions? If so, are there particular conditions to be fulfilled?
4. Are there other circumstances when an Official Variety Description is amended? (*not to be confused with correcting errors in the Official Variety Description*)



Survey amongst European Union examination offices

5. What would be the procedure to change Official Variety Descriptions?

Is the CPVO/other Examination Offices/holder of
the right informed on such adaptations?

Do you publish adapted variety description?

6. In case you contribute to shared databases, which variety description(s) do you provide for shared databases? (Working Variety Description or Official Variety Descriptions?)



Survey amongst European Union examination offices

7. When a report is provided for a take-over, which variety description is provided?

- the Official Variety Description as attached to the
national plant variety right/registration certificate ?
- the latest Working Variety Description?



Survey amongst European Union examination offices

8. If a characteristic was not observed at the time the Official Variety Description was prepared but becomes observable later, will these additional observations be added and thus be considered as an updated Working Variety Description?

Position of the CPVO to be developed based upon responses....



Verifying the maintenance of protected varieties

- Legal basis: Article 64 2100/94: Technical Verification
 - Not done systematically
 - When reference samples show problems or anomalies spotted in traded varieties **or are not submitted by the title holder when ordered as reference**
 - Conducted along lines of a DUS trial with plant material to be submitted by the holder of the rights
 - Only U (and S) checked **+ conformity with the VD**



Verifying the maintenance of protected varieties

- Technical Verifications:
 - CPVO Technical Protocol in force at the time of the **initial** technical examination is applied
 - If variety passes technical verification:
 - **Report certifies variety still U and S and conforms to its original variety description**
 - If variety fails the technical verification:
 - **CPVO cancels title of protection**
 - Examination office's remuneration 50% of the regular exam (no D test)
 - No fee from the holder of the rights



Board of Appeal cases on the matter

- In case of living collection
 - Comparison of the material received with the material in the collection
- In case of non living collection
 - The examination office has to rely on the description and other information stored (e.g. pictures, measurements) in order to assess whether the variety still matches its original description



Board of Appeal cases on the matter

- In case of non living collection
 - Various challenges:
 - The technical protocol may have changed since the time of establishment of the original description:
 - Reference varieties may no longer be available
 - Range of variation for QN characteristics may be different
 - Methods of observations may have changed (e.g. old version of the RHS colour chart)
 - Characteristics may largely be influenced by the environment (and for this reason have disappeared from more recent versions of the protocol)



Board of Appeal cases on the matter

- In case of non living collection
 - Various challenges:
 - When it is challenged, difficulty to defend that a variety remains unchanged when its updated description shows up to 3 notes difference compared to original description
 - 'Seimora' case: sound explanations of differences and expertise succeeded in convincing the CPVO Board of Appeal

