

Technical Working Party for Ornamental Plants and Forest Trees **TWO/51/9****Fifty-First Session**
Christchurch, New Zealand, February 18 to 22, 2019**Original:** English
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CLASSIFICATION: TREE/VINE VERSUS SHRUB*Document prepared by an expert from the European Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. The Technical Working Party for Ornamental Plants and Forest Trees (TWO), at its fiftieth session, held in Victoria, British Columbia, Canada, from September 11 to 15, 2017, agreed to discuss at its fifty-first session “Experiences with defining trees, shrubs and vines, on the basis of a document to be prepared by the European Union and documents invited (see document TWO/50/14 “Report”, paragraph 146).
2. The annex to this document contains a copy of a presentation on the “Classification: Tree/Vine versus Shrub” by an expert from the European Union, to be made at the fifty-first session of the TWO.

[Annex follows]



Classification: Tree/Vine vs. Shrub

1. Relevance of the subject

No definition for "tree", "vine" or "shrub" found in neither the UPOV Convention nor the EU PVP Act.

	Trees and Vine	Shrubs (or 'other')
Grace period for Novelty (max. time of first commercialization outside the EU)	6 years	4 years
Duration of protection	30 years (EU)	25 years (EU)

Breeders will be confused if the terms "tree" and "vine" are interpreted differently by different UPOV contracting parties.



2. Definitions

- Generic definitions found in botanical literature

In the EU:

- Classification of a given species as "tree", "vine" or "shrub" in botanic literature, e.g. "RHS Dictionary of Gardening" or the "Zander – Encyclopedia on plant names"
- Classification as "vine" on species level and limited to all species of *Vitis* L. *Actinidia* Lindl. and to *Humulus lupulus* L.



3. Difficulties encountered

1. A species is classified botanically as "shrub or small tree" → to be considered for PVR purpose as shrub or as tree?
2. A species is classified botanically as tree; however:
 - all varieties applied for PVP are used in the EU as a pot plant
 - some varieties are used as cut flower (cut branches) → appearance as a shrub
 - a particular mutant variety lost its tree-like growing habit
3. Interspecific crossing between tree and shrub species
 - Application filed before breeder has seen fully grown plants → plant morphology in adult stage unknown
 - Plants of the candidate variety are assessed for 2 (max. 3) years → plant habit not fully developed to decide on the basis of morphological characteristics



4. Legal Framework

Novelty, UPOV convention and EU PVP Act:

"The *variety* shall be deemed to be new if, ..., in the case of trees or of vines, ..."

→ tree-or-shrub question to be decided on variety level, not on species level; variety use irrelevant

Duration of Protection, UPOV convention:

"... For trees and vines, ..." → tree-or-shrub question to be decided on species or on variety level?

EU PVP Act:

"... in case of tree and vine *species* ..." → tree-or-shrub question to be decided on species level



5. Practice at the CPVO

1. Botanical literature classifies as species "shrub or small tree" → generally treated as tree
2. Species botanically classified as tree but:
 - all varieties applied for PVP are used in the EU as a pot plant → generally not treated as tree
 - some varieties are used as cut flower (cut branches) → variety not treated as tree
 - a particular mutant variety lost its tree-like growing habit → generally not treated as tree
3. Interspecific crossing between tree and shrub species
 - where morphological characteristics cannot be assessed → benefit of the doubt → variety treated as a tree
4. Classification as tree/vine or 'other' counts for both: novelty and duration of protection





The CPVO would like to learn how other
authorities classify "tree"/"shrub and "vine"

Thank you!

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[End of Annex and of document]