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**REPORT ON COURT CASES DEALING WITH TECHNICAL MATTERS***Document prepared by an expert from the European Union**Disclaimer: this document does not represent UPOV policies or guidance*

The annex to this document contains a copy of a presentation “Court Case of General Interest *Allium cepa* L. ‘SK20”, to be made by an expert from the European Union, at the fifty-seventh session of the TWO:

[Annex follows]



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Court Case of General Interest  
*Allium cepa* L. 'SK20'

UPOV-TWO 2025

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## UPOV Convention Article 1 (Definitions)

[...]

(vi) "variety" means a plant grouping within a single botanical taxon of the lowest known rank, [...], can be

- defined by the expression of the characteristics [...],
- distinguished from any other plant grouping by the expression of at least one of the said characteristics [...]

Identical definition in the European Legislation

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## The variety *Allium cepa* L. 'SK20'

- Lachrymatory factor significantly reduced → no induction of tears, low pungency
- Pyruvic acid level significantly decreased: pungency easy to measure
- Lachrymatory factor and pyruvic acid level are not characteristics in the Test Guidelines
- Applicant requested to include these characteristics into the official variety description (e.g. as additional characteristics)
- Variety could be declared distinct without assessing the lachrymatory factor and pungency

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## "Career" of the Application

- Grant of PBR → variety description remained silent on the low lachrymatory factor and the pyruvic acid level
- Appeal to the CPVO's Board of Appeal → dismissed
- Further appeal to the General Court of the EU → dismissed
- No further appeal to the Court of the EU lodged → PBR granted remains valid → variety descriptions remains silent on the low lachrymatory factor and the pyruvic acid level

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## Arguments of the Appellant (Breeder)

- Rights were granted with a narrower protection than requested by the breeder
- The fact that the characteristics “Lachrymatory factor” and “Pyruvic acid level” (or pungency) were requested to be tested obliges the Office to test them

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## Arguments by the Office (Defendant)

- The grant of the PBR as such was not challenged
- Additional characteristics may be included but only if distinctness cannot be assessed without their use

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## Main reasons of the Court (1)

- The grant of a PBR does not require an exhaustive assessment of all characteristics resulting from the variety's genotype but only those of particular importance to its protectability, in particular, its distinctness
- The grant of protection to a new variety is in no way conditional upon the presence of characteristics having intrinsic commercial value
- The official description is not intended to reflect the expression of all characteristics resulting from the variety's genotype but only certain specific characteristics which suffice to demonstrate compliance with the distinctness requirement

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## Main reasons of the Court (2)

- Even if the characteristics had been included in the variety description it would have no bearing on the protection conferred; new varieties showing the same reduced lachrymatory factor and low level of pyruvic acid would still be protectable as long as it displays other differences

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## Link to the Decisions



CPVO's Board of Appeal: [Decision no A018/2021 of 1 July 2022](#)

General Court of the EU: [JUDGMENT OF THE GENERAL COURT \(Third Chamber\) of 28 February 2024 in Case T-556/22](#)

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## Conclusions for the TWO



- A variety is represented by its material, not by its description
  - has a description limited probative value to identify a variety?
  - is an official sample required to identify a variety?
- The scope of protection is not defined by the description
- The variety description (VD) merely substantiates the distinctness assessment
  - notes describing similar varieties must therefore come from the same trial as the ones describing the candidate
- For the Test Guidelines: to keep the list of char. short and focus on discriminating char.
- As the VD does not need to list all char. can we limit listing the char. in which the candidate is clearly distinct from its most similar variety/-ies even further to only one or some char. being most distinctive?
  - TWO agreed to report *only the most distinctive* differences in Test Guidelines characteristics
  - TWF agreed to report *all* differences in Test Guidelines characteristics

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