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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

## TECHNICAL WORKING PARTY FOR VEGETABLES

### Forty-Eighth Session Paestum, Italy, from June 23 to 27, 2014

#### VARIETY DENOMINATIONS

*Document prepared by the Office of the Union*

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1. The purpose of this document is to provide an overview of developments concerning the possible revision of document UPOV/INF/12/4 “Explanatory Notes on Variety Denominations under the UPOV Convention”, the development of a UPOV similarity search tool for variety denomination purposes and potential areas for cooperation between the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission), the International Society for Horticultural Science Commission for Nomenclature and Cultivar Registration (ISHS Commission) and UPOV.

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2. The following abbreviations are used in this document:

CAJ: Administrative and Legal Committee

CAJ-AG: Administrative and Legal Committee Advisory Group

TC: Technical Committee

IUBS Commission: International Union of Biological Sciences Commission

ISHS Commission: International Society for Horticultural Sciences Commission

## I. POSSIBLE REVISION OF DOCUMENT UPOV/INF/12 “EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION”

### Work of the CAJ-AG on variety denominations

3. The CAJ-AG, at its eighth session, held in Geneva on October 21 and 25, 2013, considered document CAJ-AG/13/8/6 “Matters concerning variety denominations”

4. The CAJ-AG agreed to the development of guidance in relation to a request from a breeder to change a registered variety denomination in cases other than where the denomination of the variety was cancelled after the grant of the right, on the basis that such a request should be refused. However, the CAJ-AG agreed that changes would be appropriate in the following situations:

(a) if it was discovered that there was a prior right concerning the denomination which would have resulted in the rejection of the denomination (see Article 20(4) and (7) of the 1991 Act, Article 13(4) and (7) of the 1978 Act and document UPOV/INF/12/4, Note 7);

(b) if the denomination was unsuitable because it was contrary to the provisions of Article 20(2) of the 1991 Act and Article 13(2) of the 1978 Act; and

(c) if the denomination was subsequently refused in another member of the Union and, at the request of the breeder, the authority agreed to change the denomination to the one registered in the said other member of the Union.

5. The CAJ-AG agreed that the additional guidance should be considered as part of a possible revision of the “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/INF/12/4) (see document CAJ-AG/13/8/10 “Report”, paragraphs 69 to 71).

6. The above report on the ongoing work of the CAJ-AG on variety denominations was reported to the TC at its fiftieth session, held in Geneva from April 7 to 9, 2014, and to the CAJ at its sixty-ninth session held in Geneva on April 10, 2014 (see documents TC/50/36 “Report on the Conclusions”, paragraph 87 and CAJ/69/12 “Report on the Conclusions”, paragraph 71).

7. The TC at its fiftieth session, held in Geneva from April 7 to 9, 2014, considered document TC/50/14 “Variety Denominations”, Section I “Possible revision of document UPOV/INF/12 “Explanatory Notes on variety denominations under the UPOV convention”. The TC noted the ongoing work of the CAJ-AG concerning the development of guidance on variety denominations, as set out in paragraphs 3 to 6 of document TC/50/14 (see document TC/50/36 “Report on the Conclusions”, paragraph 87).

### Other developments

8. A trial run of the Distance Learning Program “Examination of applications for plant breeders’ rights” (DL 305) in English was conducted from November 11 to December 15, 2013, with nine experts that are tutors for the DL-205 course acting as students. The following comment was received from one of the students in relation to document UPOV/INF/12/4, paragraph 2.3.3(a)(i) (reproduced below for ease of reference):

#### “2.3.3 Identity of the variety

(a) As a general recommendation, a difference of only one letter or one number may be considered to be liable to mislead or cause confusion concerning the identity of the variety, except where the:

(i) difference of one letter provides for a clear visual or phonetic difference, e.g. if it concerns a letter at the beginning of a word:

*Example 1:* in the English language, ‘Harry’ and ‘Larry’ would not cause confusion; However, ‘Bough’ and ‘Bow’ might cause confusion (in phonetic terms);

*Example 2:* in the Japanese and Korean languages there is no difference between “L” and “R” sounds, thus “Lion” and “Raion” are exactly the same although these are distinguishable for English mother tongue speakers; [...]”

Comment:

“The sub-heading (i) difference of one letter provides for a clear visual or phonetic difference, e.g. if it concerns a letter at the beginning of a word: is followed by Example 1. The case of ‘Harry’ and ‘Larry’ illustrates well the point being made. My concern relates to the case of ‘Bough’ and ‘Bow’. These obviously could be confused with each other for phonetic reasons. They are not, however, an example of denominations that could be confused because of a difference of one letter – and to indicate they are could be distracting and confusing for students.

“Would the case of ‘Bough’ and ‘Bow’ be better covered under a separate sub-heading dealing with phonetic confusion? I guess that my criticism is directed to UPOV/INF/12 as well as to the Module wording.”

9. The TC, at its fiftieth session, held in Geneva from April 7 to 9, 2014, noted that the CAJ, at its sixty-ninth session, would be invited to consider whether it would be appropriate to amend document UPOV/INF/12, paragraph 2.3.3(a)(i), as reproduced in paragraph 8 of this document (see document TC/50/36 “Report on the Conclusions”, paragraph 88).

10. The TC agreed that the example “Bough” and “Bow” in document UPOV/INF/12, paragraph 2.3.3(i) should be replaced by a suitable example and further noted that the work on the possible development of a UPOV similarity search tool might be reflected in a review of document UPOV/INF/12. It also agreed that guidance on confusion for phonetic reasons should continue to be included in document UPOV/INF/12 (see document TC/50/36 “Report on the Conclusions”, paragraph 89).

11. The CAJ, at its sixty-ninth session in Geneva on April 10, 2014, noted the comments from the TC, at its fiftieth session, as reproduced in paragraph 10 of this document (see document CAJ/69/12 “Report on the Conclusions”, paragraph 72).

12. The CAJ, at its sixty-ninth session, considered that it would be appropriate to amend document UPOV/INF/12, paragraph 2.3.3(a)(i), as set out in document CAJ/69/5, and reproduced in paragraph 8 of this document (see document CAJ/69/12 “Report on the Conclusions”, paragraph 73).

13. *The TWV is invited to note the plans to revise document UPOV/INF/12.*

## II. POSSIBLE DEVELOPMENT OF A UPOV SIMILARITY SEARCH TOOL FOR VARIETY DENOMINATION PURPOSES

### Background

14. The CAJ, at its sixty-seventh session, held in Geneva on March 21, 2013, received a presentation from the Delegation of the European Union on the experience of the Community Plant Variety Office (CPVO) in the use of its denomination similarity search tool in the examination of proposed denominations. During the presentation, the CPVO proposed to explore the possibility to develop a UPOV similarity search tool for variety denomination purposes, which could be based on the CPVO search tool<sup>1</sup>. The CAJ welcomed the offer by the CPVO and agreed to include an item to consider that proposal at its sixty-eighth session, in October 2013 (see document CAJ/67/14 “Report on the Conclusions”, paragraphs 49 and 50).

15. The denomination search tab of the Plant Variety Database (PLUTO database) (<https://www3.wipo.int/pluto/user/en/index.jsp>) currently provides the following search types to find similar denominations:

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<sup>1</sup> The similarity factor was developed by the French *Group for Study and Control of Varieties and Seeds* (GEVES) and the Community Plant Variety Office of the European Union (CPVO)

- “(a) Similarity factor [CPVO search tool] This will perform an analysis of the denomination you entered on a combination of factors including letters in common, relative lengths of the words and positions of the common letters. This is the most complex comparison method, and the search may take a few seconds to complete. The similarity factor has been developed by the French GEVES and the Community Plant Variety Office of the European Union (CPVO). However, please note that the results of the search by the similarity factor in the PLUTO database require interpretation and do not provide a guarantee as to the suitability of variety denominations which needs to be decided upon by the authority where plant variety rights is applied for.
- A detailed explanation of the analysis is provided in the Annex to document TC/50/14 “Variety Denominations”.
- “(b) Fuzzy This will search for denominations that contain words spelled one or two characters differently from the terms you entered. This is similar to the Fuzzy match method in the Term Search tab.
- “(c) Phonetic This will search for denominations that contain words that sound similar to the terms you entered. This is similar to the Phonetic match method in the Term Search tab.
- “(d) Contains This will search for denominations that contain words that contain the same series of letters as the terms you entered. This is similar to the contains match method in the Term Search tab.
- “(e) Starts This will search for denominations that contain words that start with the same series of letters as the terms you entered. This is similar to the starts match method in the Term Search tab.
- “(f) Ends This will search for denominations that contain words that end with the same series of letters as the terms you entered. This is similar to the ends match method in the Term Search tab.”

16. In exploratory discussions with the Office of the Union on how to develop a UPOV similarity search tool for variety denomination purposes, the CPVO clarified that all options should be considered and that, in the light of advances in information technology, the best tool might not necessarily use the CPVO search tool as a starting point. The main consideration would be to develop a tool that could be used by all UPOV members in order to minimize differences in the decisions on the suitability.

#### Establishment of a working group

17. The CAJ, at its sixty-eighth session, held in Geneva, on October 21, 2013, considered document CAJ/68/9 “Possible development of a UPOV similarity search tool for variety denomination purposes” and approved the establishment of a working group to develop proposals for a UPOV similarity search tool for variety denomination purposes, as proposed in document CAJ/68/9, paragraphs 4 to 7, as follows (see document CAJ/68/10 “Report on the Conclusions”, paragraph 40):

“The composition of the group will be:

- “(a) Denomination examiners from members of the Union (3 to 6 experts);
- “(b) WIPO Global Databases Service (responsible for the PLUTO database);
- “(c) Community Plant Variety Office of the European Union (CPVO); and
- “(d) Office of the Union.

“The work plan of the working group will be established by the working group itself; however, it is anticipated that the first step will be to review the search types currently available in the denomination search tab of the PLUTO database, particularly the Similarity factor (CPVO search tool), and to review

search types in use in other situations (e.g. in relation to trademarks) that might provide an alternative basis for a UPOV similarity search tool.

“The review of the suitability of search types will, in particular, take into account document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention”. In that regard, the working group will need to refer to the CAJ for further guidance if its work indicates that a review of document UPOV/INF/12 would be necessary for the development of an effective UPOV similarity search tool.

“The meetings of the working group will be hosted by the Office of the Union in Geneva and will be chaired by the Office of the Union. The meetings will not be arranged to coincide with UPOV sessions and electronic participation by denomination examiners and the CPVO will be anticipated. Proposals developed by the working group will be presented to the CAJ and to the Technical Committee (TC), and the CAJ and TC will receive a brief report of the meetings of the working group.”

18. The CAJ, at its sixty-eighth session, noted the suggestion by the Delegation of the European Union for the inclusion in the working group of denomination examiners from the Netherlands and Spain and the importance of ensuring that there was sufficient coverage by the experts of the linguistic aspects of variety denominations (see document CAJ/68/10 “Report on the Conclusions”, paragraph 41).

19. The CAJ, at its sixty-eighth session, agreed that members and observers should be encouraged to provide suggestions on matters concerning the tasks of the working group (see document CAJ/68/10 “Report on the Conclusions”, paragraph 42). The first meeting of the working group will be arranged for June/July, 2014.

20. The TC, at its fiftieth session, noted the report concerning the possible development of a UPOV similarity search tool for variety denomination purposes provided in Section II of this document (see document TC/50/36 “Report on the Conclusions”, paragraph 90).

21. The TC welcomed the establishment of a working group for the development of a UPOV similarity search tool and invited experts to contribute to its work (see document TC/50/36 “Report on the Conclusions”, paragraph 91).

22. The TC agreed that there were some challenges concerning linguistic and alphabet aspects which should be considered by the working group when defining the objectives of its work (see document TC/50/36 “Report on the Conclusions”, paragraph 92).

23. The CAJ, at its sixty-ninth session, noted that the first meeting of the working group would be arranged for June/July, 2014, and a report would be made to the CAJ at its seventieth session, to be held in Geneva, on October 13 and 14, 2014 (see document CAJ/69/12 “Report on the Conclusions”, paragraphs 76 to 78).

*24. The TWV is invited to note the report concerning the possible development of a UPOV similarity search tool for variety denomination purposes and that the first meeting of the working group would be arranged for June/July, 2014.*

### III. DEVELOPMENTS CONCERNING POTENTIAL AREAS FOR COOPERATION WITH THE IUBS COMMISSION AND THE ISHS COMMISSION

25. The background to this topic is provided in document TWF/44/4 “Variety denominations”.

26. The TC, at its forty-eighth session, held in Geneva from March 26 to 28, 2012, noted the report by the Delegation of Japan that the IUBS Commission was in the process of initiating the revision of the International Code of Nomenclature for Cultivated Plants (ICNCP) and would make proposals to the IUBS Commission for the Nomenclature of Cultivated Plants in 2013. It agreed that the Office of the Union should contact ICNCP in order to explain the guidance provided by UPOV in document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention” (see document TC/48/22 “Report on the Conclusions”, paragraph 90).

27. The TC, at its forty-ninth session, held in Geneva from March 18 to 20, 2013, considered document TC/49/8 “Variety denominations”, and noted the developments concerning potential areas for

cooperation between UPOV, the IUBS Commission and the ISHS Commission, as set out in paragraphs 24 and 25 of document TC/49/8 (see document TC/49/41 "Report on the Conclusions", paragraph 89).

28. The CAJ, at its sixty-eighth session, held in Geneva on October 21, 2013, considered document CAJ/68/5 "Variety denominations". The CAJ noted that on July 19, 2013, in Beijing, China, the Office of the Union had participated as a speaker in the VI International Symposium on the Taxonomy of Cultivated Plants (ISTCP 2013), which was hosted by the Beijing Forestry University and Beijing Botanical Garden, under the auspices of the International Society for Horticultural Sciences (ISHS). The Office of the Union had explained the guidance provided by UPOV on variety denominations (see document CAJ/68/10 "Report on the Conclusions", paragraph 22).

29. The CAJ noted that on July 20 and 21, also in Beijing, the Office of the Union had participated, in an observer capacity, in the meetings of the IUBS Commission. At those meetings, the IUBS Commission had considered proposals to amend the Eighth Edition of the International Code of Nomenclature for Cultivated Plants (ICNCP). Those proposals were published in July 2013 in Volume 7 of the journal "Horticulturae" <http://www.rhs.org.uk/Plants/RHS-Publications/Journals/Horticulturae/Horticulturae-issues/Volume-7--June-2013>. The proposals agreed by the IUBS Commission will be reflected in the Ninth Edition of the ICNCP, which is expected to be published in 2014.

30. On that occasion, a proposal was made by the IUBS Commission to establish a working group, which would include UPOV, at the early stages of the preparatory work for the Tenth Edition of the ICNCP. At the fringes of the meetings in Beijing, an informal exchange took place between the Office of the Union and Ms. Janet Cubey, Chairperson of the ISHS Commission, with a view to discussing possibilities for greater harmonization of denomination classes. It was suggested to explore areas of cooperation on denomination classes in the proposed working group for the Tenth Edition of the ICNCP.

31. Preparatory work concerning the Tenth Edition of the ICNCP took place at a meeting between members of the IUBS Commission on March 4, 2014.

32. The TC at its fiftieth session, held in Geneva from April 7 to 9, 2014, noted the developments concerning potential areas for cooperation between the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission), the International Society for Horticultural Science Commission for Nomenclature and Cultivar Registration (ISHS Commission) and UPOV, as set out in this document, Section III (see document TC/50/36 "Report on the Conclusions", paragraph 93).

*33. The TWV is invited to note the developments concerning potential areas for cooperation between the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission), the International Society for Horticultural Science Commission for Nomenclature and Cultivar Registration (ISHS Commission) and UPOV, as set out in this document.*

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