

Technical Working Party for Vegetables

Fifty-Fourth Session

Brasilia, Brazil, May 11 to 15, 2020

TWP/4/6

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Technical Working Party for Ornamental Plants and Forest Trees

Fifty-Second Session

Roelofarendsveen, Netherlands, June 8 to 12, 2020

Technical Working Party for Agricultural Crops

Forty-Ninth Session

Saskatoon, Canada, June 22 to 26, 2020

Technical Working Party for Fruit Crops

Fifty-First Session

Nîmes, France, July 6 to 10, 2020

Technical Working Party on Automation and Computer Programs

Thirty-Eighth Session

Alexandria, United States of America, September 21 to 23, 2020

VARIETY DENOMINATIONS*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance***EXECUTIVE SUMMARY**

1. The purpose of this document is to report on work concerning the possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention", revision of the ninth edition of the International Code of Nomenclature for Cultivated Plants (ICNCP), the possible development of a UPOV similarity search tool for variety denomination purposes, expansion of the content of the PLUTO database and developments concerning the Working Group on Variety Denominations (WG-DEN).

2. The TWPs are invited to note:

(a) that the TC, at its fifty-fifth session, agreed to propose to revise the list of classes in document UPOV/INF/12/5, (i) to split the current class 205 into two new classes: one for Endive and Salad Chicory, and another for Industrial Chicory, and (ii) to add genus *Epichloe* to Class 203 (*Agrostis*, *Dactylis*, *Festuca*, *Festulolium*, *Lolium*, *Phalaris*, *Phleum* and *Poa*);

(b) developments in the WG-DEN, at its sixth meeting, and the CAJ, at its seventy-sixth session, concerning a possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention", as set out in paragraphs 13 to 20 of this document;

(c) that the Office of the Union will contribute to the revision of the ninth edition of the ICNCP on the basis of document UPOV/INF/12/5 and the work of the WG-DEN;

(d) developments concerning a UPOV similarity search tool for variety denomination purposes, as set out in paragraph 26 of this document;

(e) that the CAJ, at its seventy-sixth session, noted plans for the introduction of a unique identifier for variety record in the PLUTO database;

(f) that the CAJ, at its seventy-sixth session, agreed with the proposal to add common names in other languages to the PLUTO database; and

(g) that the CAJ, at its seventy-sixth session, noted that there was no need for further meetings of the WG-DEN.

3. The following abbreviations are used in this document:

CAJ:	Administrative and Legal Committee
TC:	Technical Committee
TWA:	Technical Working Party for Agricultural Crops
TWV:	Technical Working Party for Vegetables
TWP(s):	Technical Working Party(ies)
WG-DEN:	Working Group on Variety Denominations
ICNCP:	International Code of Nomenclature for Cultivated Plants
IUBS:	International Union of Biological Sciences

4. The structure of this document is as follows:

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

Comments by the Technical Working Parties at their sessions in 2019

Technical Working Party for Vegetables

5. The background to this matter is provided in document TWP/3/6 “Variety Denominations”, paragraphs 9 to 11.

6. The Technical Working Party for Vegetables (TWV), at its fifty-third session, held in Seoul, Republic of Korea, from May 20 to 24, 2019, considered the proposals to revise the list of classes 203 and 205 in document UPOV/INF/12/5, as set out in document TWP/3/6 “Variety denominations”, paragraph 9, in anticipation of consideration of this matter by the TC (see document TWV/53/14 “Report”, paragraphs 124 and 125).

7. The TWV agreed with the proposal to revise Class 205 as proposed in document TWP/3/6, paragraph 9, which is reproduced below:

- To split the current class 205 (*Cichorium* and *Lactuca*) into two new classes:
 - Classe : *Lactuca* – *Cichorium endivia* (frisée et scarole), *Cichorium intybus* var. *foliosum* (endive/witloof et les chicorées italiennes)
 - Classe : *C. intybus* var. *sativum* (chicorée industrielle)

Technical Working Party for Agricultural Crops

8. The Technical Working Party for Agricultural Crops (TWA), at its forty-eighth session, held in Montevideo, Uruguay, from September 16 to 20, 2019, considered the proposal to revise Class 203 in

document UPOV/INF/12/5, as set out in document TWP/3/6, paragraph 9, in anticipation of consideration of this matter by the Technical Committee. The TWA agreed that the genus *Epichloe* (formerly *Neotyphodium*) be added to Class 203 (*Agrostis*, *Dactylis*, *Festuca*, *Festulolium*, *Lolium*, *Phalaris*, *Phleum* and *Poa*) (see document TWA/48/9 “Report”, paragraph 114).

Technical Committee

9. The Technical Committee (TC), at its fifty-fifth session, held in Geneva, on October 28 and 29, 2019, considered documents TC/55/8 “Variety denominations” and TC/55/8 Add., noted the comments by the Technical Working Parties (TWPs) and agreed with the proposals to revise the list of classes in document UPOV/INF/12/5, as follows (see document TC/55/25 “Report”, paragraphs 238 and 239):

- (a) To split the current class 205 (*Cichorium* and *Lactuca*) into two new classes:
 - Class: *Lactuca* – *Cichorium endivia* (Endive), *Cichorium intybus* var. *foliosum* (Salad Chicory)
 - Class: *Cichorium intybus* var. *sativum* (Industrial Chicory)
- (b) For genus *Epichloe* (formerly *Neotyphodium*) to be added to Class 203 (*Agrostis*, *Dactylis*, *Festuca*, *Festulolium*, *Lolium*, *Phalaris*, *Phleum* and *Poa*)

Administrative and Legal Committee

10. The CAJ, at its seventy-sixth session, held in Geneva, on October 30, 2019, considered document CAJ/76/2 “Report on developments in the Technical Committee” and the presentation made by the Chair of the TC. The CAJ noted the report on developments in the TC at its fifty-fifth session. The CAJ noted that the conclusions of the TC in relation to matters to be considered by the CAJ were contained in document CAJ/76/2 and would be considered under the relevant items of the CAJ agenda. It further noted that the report of the TC was available in document TC/55/25 “Report”. (see document CAJ/76/9 “Report”, paragraphs 7 to 8).

11. *The TWPs are invited to note that the TC, at its fifty-fifth session, agreed to propose to revise the list of classes in document UPOV/INF/12/5:*

(a) *to split the current class 205 into two new classes: one for Endive and Salad Chicory, and another for Industrial Chicory;*

(b) *to add genus Epichloe to Class 203 (Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum and Poa).*

Working Group on Variety Denominations

12. The background to this matter is provided in document TWP/3/6 “Variety Denominations”, paragraphs 6 to 8.

13. The Working Group on Variety Denominations (WG-DEN), at its sixth meeting, held in Geneva, on October 29, 2019, considered documents UPOV/WG-DEN/6/2 “Revision of Document UPOV/INF/12/5 ‘Explanatory Notes On Variety Denominations under the UPOV Convention’” and UPOV/EXN/DEN/1 Draft 2 “Explanatory Notes on Variety Denominations under the UPOV Convention” and agreed with the text proposed in document UPOV/EXN/DEN/1 Draft 2, subject to the following:

Section 2.3.1 (d): to delete the following example of a suitable denomination:

“*Prunus* ‘Sato-zakura’ (‘Zakura’ is the Japanese word for flowering cherries, rather than a name for the whole genus);”

Section 2.3.3 (a): to read as follows:

“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. However, the following cases are examples of only one

letter or one number difference that may be considered not to be liable to mislead or cause confusion: [...]”;

Section 2.3.4 (b): to read as follows:

“A word format, pattern or combination may become associated with a breeder by custom and practice. However, to become associated with a breeder, it would be necessary to include a common word, prefix or suffix. In such cases, the authority may consider that the use of that word format, pattern or combination for denominations of varieties by another breeder may mislead or cause confusion concerning the identity of the breeder;

“*Examples of unsuitable denominations:* ‘ABC red’ proposed by a breeder (Breeder 2) when ‘ABC velvet’, ‘ABC star’ and ‘ABC green’ are registered by another breeder (Breeder 1).”

Section 5.3 (a): to clarify the following wording:

“it does not conform to the provisions in paragraphs (2) (for example, the proposed denomination is not different from the denomination of an existing variety of the same plant species or of a closely related species in its territory) and (4) (for example, the proposed denomination is identical to a trademark registered for identical goods);” .

14. The WG-DEN agreed that a draft of document UPOV/EXN/DEN/1 should be submitted to the Administrative and Legal Committee (CAJ) on the above basis.

Administrative and Legal Committee

15. The CAJ, at its seventy-sixth session considered documents CAJ/76/6 “Variety Denominations” and CAJ/76/6 Add. The CAJ noted that document CAJ/76/6 Add. contained the conclusions at the sixth meeting of the WG-DEN (see document CAJ/76/9 “Report”, paragraphs 35 to 39).

16. The CAJ noted the revisions of document UPOV/INF/12/5, as presented in document UPOV/EXN/DEN/1 Draft 2 with the amendments proposed by the WG-DEN.

17. The CAJ noted that the WG-DEN had requested the Office of the Union to clarify the following wording:

“Section 5.3 (a):

“it does not conform to the provisions in paragraphs (2) (for example, the proposed denomination is not different from the denomination of an existing variety of the same plant species or of a closely related species in its territory) and (4) (for example, the proposed denomination is identical to a trademark registered for identical goods);”

18. The CAJ noted the request of the Delegation of the European Union to consider a change in Section 2.3.3.(a) (i) of the “visual and phonetic” to “visual or phonetic” and to introduce an additional component for “concept”. The Office of the Union reported that those proposals had been considered by the WG-DEN and had not been retained and that the proposals would result in inconsistencies without other amendments.

19. The CAJ agreed that the Office of the Union should invite members and observers to make written comments by correspondence on document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” concerning the matters in paragraphs 17 and 18. The Office of the Union, based on the written comments received by correspondence, would prepare a draft of document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” for consideration at the seventy-seventh session of the CAJ, to be held on October 28, 2020.

20. The CAJ at its seventy-seventh session, and the Council, at its fifty-fourth ordinary session, to be held on October 30, 2020, would be invited to consider a draft of document UPOV/EXN/DEN/1.

21. *The TWPs are invited to note developments in the WG-DEN, at its sixth meeting, and the CAJ, at its seventy-sixth session, concerning a possible revision of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention”, as set out in paragraphs 13 to 20 of this document.*

REVISION OF THE NINTH EDITION OF THE ICNCP

22. The background to this matter is provided in document TWP/3/6, paragraphs 13 to 15.

23. On November 27, 2019, the Office of the Union was notified by Mr. John C. David, Chairman of the International Union of Biological Sciences (IUBS) Commission of the Nomenclature for Cultivated Plants, that the next meeting of the IUBS Commission would be delayed until the summer of 2020 and that proposals to amend the International Code of Nomenclature for Cultivated Plants (ICNCP) were requested to be sent to the Chairman of the IUBS Commission. On March 31, 2020, the Chairman of the IUBS Commission informed the Office of the Union that the next meeting of the IUBS Commission is scheduled to take place in Angers, France, with tentative dates of October 21 and 22, 2020. It is expected that the confirmation of the arrangements for the meeting will be made in June. The Office of the Union will contribute to the revision of the ninth edition of the ICNCP on the basis of document UPOV/INF/12/5 and the work of the WG-DEN, as agreed by the CAJ, at its seventy-fifth session, held in Geneva, on October 31, 2018.

24. The TWPs are invited to note that the Office of the Union will contribute to the revision of the ninth edition of the ICNCP on the basis of document UPOV/INF/12/5 and the work of the WG-DEN.

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

25. The background to this matter is provided in document TWP/3/6, paragraph 18.

26. The WG-DEN, at its sixth meeting, received a presentation on developments concerning a UPOV denomination similarity search tool by the Office of the Union and noted the plans for the development of a UPOV denomination similarity search tool. It agreed that the developments on this matter should be reported to the CAJ for consideration in conjunction with the discussion on draft document UPOV/EXN/DEN for the possible inclusion of reference to a UPOV denomination similarity search tool.

27. The CAJ, at its seventy-sixth session, noted the developments reported in document CAJ/76/6 Add. concerning "UPOV denomination similarity search tool" (see document CAJ/76/9 "Report", paragraph 40).

EXPANSION OF THE CONTENT OF THE PLUTO DATABASE

Working Group on Variety Denominations in 2019

28. The background to this matter is provided in document TWP/3/6, paragraph 20.

29. The WG-DEN, at its sixth meeting, received a presentation on the possible introduction of a unique identifier for variety records in the PLUTO database.

30. The WG-DEN noted the plans for the introduction of a unique identifier for variety records in the PLUTO database.

31. The WG-DEN considered the proposals on additional data to be included in the PLUTO database and agreed with the proposal to add common names in other languages to the PLUTO database, as far as resources allowed.

32. The WG-DEN noted that the TC was considering how to address matters concerning variety types for DUS testing purposes and agreed that developments in the TC should be reported to the CAJ.

Administrative and Legal Committee in 2019

33. The CAJ, at its seventy-sixth session, noted the developments reported in document CAJ/76/6 Add. concerning "Expansion of the content of the PLUTO database", and plans for the introduction of a unique identifier for variety records in the PLUTO database (see document CAJ/76/9 "Report", paragraphs 40 to 42).

34. With regard to the inclusion of other varieties (new data) in the PLUTO database, the CAJ noted the proposals for additional data to be included in the PLUTO database and agreed with the proposal to add common names in other languages to the PLUTO database.

35. The CAJ noted that the TC was considering how to address matters concerning variety types for DUS testing purposes and agreed that developments in the TC should be reported to the CAJ.

WORKING GROUP ON VARIETY DENOMINATIONS

36. The WG-DEN, at its sixth meeting, agreed that it had completed the work mandated by the CAJ and agreed that it would not be necessary to hold a further meeting.

37. The CAJ, at its seventy-sixth session, noted that there was no need for further meetings of the WG-DEN (see document CAJ/76/9 "Report", paragraph 43).

38. *The TWPs are invited to note:*

(a) developments concerning a UPOV similarity search tool for variety denomination purposes, as set out in paragraph 26 of this document;

(b) that the CAJ, at its seventy-sixth session, noted plans for the introduction of a unique identifier for variety record in the PLUTO database;

(c) that the CAJ, at its seventy-sixth session, agreed with the proposal to add common names in other languages to the PLUTO database; and

(d) that the CAJ, at its seventy-sixth session, noted that there was no need for further meetings of the WG-DEN.

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