



WG-VD/5/3

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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**  
GENEVA

**AD HOC WORKING GROUP ON VARIETY DENOMINATIONS**

**Fifth Meeting**  
**Geneva, October 20, 2003**

**PROPOSAL TO REVISE UPOV RECOMMENDATION 9 AND  
THE LIST OF CLASSES FOR VARIETY DENOMINATION PURPOSES**

*Document prepared by the Office of the Union*

Introduction

1. During its fourth meeting, on April 10, 2003, the Working Group on Variety Denominations (hereinafter referred to as the "Working Group") discussed document WG-VD/4/3 "Report on the questionnaire on UPOV Recommendation 9 and the List of Classes for variety denomination purposes." Document WG-VD/4/3 provides a summary of the responses to the Questionnaire to identify the degree to which Recommendation 9 and the corresponding List of Classes\* were followed by members of the Union, and any particular problems and, as a consequence, possible changes or improvements. Based on the replies to the Questionnaire, the Working Group agreed that a more detailed proposal for the revision of Recommendation 9 and the List of Classes be prepared for the following meeting (see paragraph 11 of document WG-VD/4/4).

2. This document provides a proposal for the revision of Recommendation 9 and the corresponding List of Classes, reflecting the conclusions of the Working Group during the discussions of document WG-VD/4/3, at its fourth meeting, on April 10, 2003.

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\* Contained in Annex I of document UPOV/INF/12 Rev. "UPOV Recommendations on Variety Denominations," and also reproduced in Annex I to this document.

### Proposed Redrafting of the General Principle in Recommendation 9

3. At the fourth meeting, all the delegations, which expressed a view, and three observer organizations were in favor of retaining the general principle in Recommendation 9 (see paragraphs 9 and 10 of document WG-VD/4/4). The general principle in Recommendation 9 is reproduced for ease of reference: “For the purposes of the fourth sentence of Article 13(2) of the Convention, all taxonomic units are considered closely related that belong to the same botanical genus or are contained in the same class in the list in Annex I to these Recommendations.”

4. The text of Recommendation 9 refers to Article 13(2) of the 1978 Act. It was agreed by the Working Group (see paragraph 18 of document WG-VD/4/3) that any future version of this Recommendation should refer to Article 20(2) of the 1991 Act.

5. The Working Group also agreed to some drafting clarifications to the general principle in Recommendation 9 in order to provide a clear reference to the third and fourth sentences of Article 20(2) of the 1991 Act, namely that “It [the denomination] must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species.” The UPOV Convention does not provide for a definition of what should be considered “closely related species.” Recommendation 9 and the corresponding List of Classes provide the available guidance in the interpretation of “closely related species” for variety denomination purposes.

6. The Working Group is requested to consider the following draft:

“1. For the purposes of Article 20(2) of the 1991 Act of the UPOV Convention, and subject to points (2) and (3), the general recommendation is that all plant species that belong to a different genus are considered not to be closely related and are not liable to mislead or to cause confusion concerning the identity of the variety.

“2. In addition to 1, plant species, which are in different classes in Part I of the List of Classes, notwithstanding the fact that they may belong to the same genus, are considered not to be closely related and are not liable to mislead or to cause confusion concerning the identity of the variety.

“3. As an exception to 1, above, plant species that belong to any of the genera in the same class in Part II of the List of Classes, are considered to be closely related and/or are liable to mislead or cause confusion concerning the identity of the variety.”

### Proposal for the Revision of the List of Classes

7. The Working Group agreed on the need to revise the existing List of Classes based on the proposals received in the replies to the Questionnaire (see replies to Question 4 in Annex III of document WG-VD/4/3) and the new drafting proposal for the general principle in Recommendation 9 (see paragraph 6 of this document).

8. The Office of the Union has introduced, based on the new drafting proposal for the general principle, the proposed new structure of the List of Classes in Annex II to this document. For illustration purposes, the present contents of the new structure in Annex II refer only to a few examples of the existing classes established in UPOV/INF/12 Rev. (see Annex I to this document).

9. The proposed changes to the existing classes are presented in Annex III to this document (see paragraph 7 of this document). These classes, as amended, will be incorporated into the agreed structure.

*10. The Working Group is requested to comment on the proposal for the revision of Recommendation 9 and the corresponding List of Classes contained in this document and its Annexes II and III.*

[Annex I follows]

ANNEX I

**LIST OF CLASSES FOR VARIETY DENOMINATION PURPOSES**

As amended by the Council at its twenty-fifth ordinary session, on October 25, 1991.

[Recommendation 9

For the purposes of the fourth sentence of Article 13(2) of the Convention, all taxonomic units are considered closely related that belong to the same botanical genus or are contained in the same class in the list in Annex I to these Recommendations.]

Note: Classes which contain subdivisions of a genus may lead to the existence of a complementary class containing the other subdivisions of the genus concerned (example: Class 9 (*Vicia faba*) leads to the existence of another class containing the other species of the genus *Vicia*).\*

Class 1: *Avena*, *Hordeum*, *Secale*, *Triticale*, *Triticum*

Class 2: *Panicum*, *Setaria*

Class 3: *Sorghum*, *Zea*

Class 4: *Agrostis*, *Alopecurus*, *Arrhenatherum*, *Bromus*, *Cynosurus*, *Dactylis*, *Festuca*, *Lolium*, *Phalaris*, *Phleum*, *Poa*, *Trisetum*

Class 5: *Brassica oleracea*, *Brassica chinensis*, *Brassica pekinensis*

Class 6: *Brassica napus*, *B. campestris*, *B. rapa*, *B. juncea*, *B. nigra*, *Sinapis*

Class 7: *Lotus*, *Medicago*, *Ornithopus*, *Onobrychis*, *Trifolium*

Class 8: *Lupinus albus* L., *L. angustifolius* L., *L. luteus* L.

Class 9: *Vicia faba* L.

Class 10: *Beta vulgaris* L. var. *alba* DC., *Beta vulgaris* L. var. *altissima*

Class 11: *Beta vulgaris* ssp. *vulgaris* var. *conditiva* Alef. (syn.: *Beta vulgaris* L. var. *rubra* L.), *Beta vulgaris* L. var. *cicla* L., *Beta vulgaris* L. ssp. *vulgaris* var. *vulgaris*

Class 12: *Lactuca*, *Valerianella*, *Cichorium*

Class 13: *Cucumis sativus*

Class 14: *Citrullus*, *Cucumis melo*, *Cucurbita*

Class 15: *Anthriscus*, *Petroselinum*

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\* The complementary classes have been added by the Office of the Union for the convenience of the reader and are given in the numbers 28 to 35.

Class 16: Daucus, Pastinaca

Class 17: Anethum, Carum, Foeniculum

Class 18: Bromeliaceae

Class 19: Picea, Abies, Pseudotsuga, Pinus, Larix

Class 20: Calluna, Erica

Class 21: Solanum tuberosum L.

Class 22: Nicotiana rustica L., N. tabacum L.

Class 23: Helianthus tuberosus

Class 24: Helianthus annuus

Class 25: Orchidaceae

Class 26: Epiphyllum, Rhipsalidopsis, Schlumbergera, Zygocactus

Class 27: Proteaceae

## **COMPLEMENTARY CLASSES**

Class 28: Species of Brassica other than  
(in Class 5 + 6) Brassica oleracea, Brassica chinensis, Brassica pekinensis + Brassica napus,  
B. campestris, B. rapa, B. juncea, B. nigra, Sinapis

Class 29: Species of Lupinus other than  
(in Class 8) Lupinus albus L., L. angustifolius L., L. luteus L.

Class 30: Species of Vicia other than  
(in Class 9) Vicia faba L.

Class 31: Species of Beta + subdivisions of the species Beta vulgaris other than  
( in Class 10 +11) Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima + Beta  
vulgaris ssp. vulgaris var. conditiva Alef. (syn.: Beta vulgaris L. var. rubra L.), Beta vulgaris  
L. var. cicla L., Beta vulgaris L. ssp. vulgaris var. vulgaris

Class 32: Species of Cucumis other than  
(in Class 13 + 14) Cucumis sativus + Citrullus, Cucumis melo, Cucurbita

Class 33: Species of Solanum other than  
( in Class 21) Solanum tuberosum L.

Class 34: Species of Nicotiana other than  
( in Class 22) Nicotiana rustica L., N. tabacum L.

Class 35: Species of Helianthus other than  
(in Class 23 + 24) Helianthus tuberosus + Helianthus annuus

[Annex II follows]

ANNEX II

**PROPOSED NEW STRUCTURE OF THE LIST OF CLASSES  
FOR VARIETY DENOMINATION PURPOSES**

“1. For the purposes of Article 20(2) of the 1991 Act of the UPOV Convention, and subject to points (2) and (3), the general recommendation is that all plant species that belong to a different genus are considered not to be closely related and are not liable to mislead or to cause confusion concerning the identity of the variety.

“2. In addition to 1, plant species, which are in different classes in Part I of the List of Classes, notwithstanding the fact that they may belong to the same genus, are considered not to be closely related and are not liable to mislead or to cause confusion concerning the identity of the variety.

“3. As an exception to 1, above, plant species that belong to any of the genera in the same class in Part II of the List of Classes, are considered to be closely related and/or are liable to mislead or cause confusion concerning the identity of the variety.”

**PART I**

*Examples from the existing classes:*

Class 5: Brassica oleracea, Brassica chinensis, Brassica pekinensis

Class 6: Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis

Class 28: Species of Brassica other than in Class 5 + 6 (Brassica oleracea, Brassica chinensis, Brassica pekinensis + Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis)

Class 8: Lupinus albus L., L. angustifolius L., L. luteus L.

Class 29: Species of Lupinus other than in Class 8 (Lupinus albus L., L. angustifolius L., L. luteus L.)

**PART II**

*Examples from the existing classes:*

Class 1: Avena, Hordeum, Secale, Triticale, Triticum

Class 2: Panicum, Setaria

Class 3: Sorghum, Zea

[Annex III follows]

## ANNEX III

PROPOSALS RECEIVED IN THE REPLIES TO THE QUESTIONNAIRE  
CONCERNING THE REVISION OF THE LIST OF CLASSES  
(Replies to Question 4 in Annex III to document WG-VD/4/3)

To facilitate the deliberations of the Working Group, the proposals are presented in boxes. Each box contains, at the top, a shadowed part with the existing class, followed by the proposals received concerning that class. Relevant comments concerning possible consequences of those proposals are also contained in the box. New proposals, which do not correspond to the existing classes, are included at the end of the document.

Class 1: Avena, Hordeum, Secale, Triticale, Triticum

Proposal: Division of class into: (a) Avena, (b) Hordeum and (c) Secale, Triticale, Triticum

*Comments:* Effect would be to delete Avena and Hordeum from Class 1. Classes for a single genus (e.g. Avena) are not necessary, as the general recommendation applies.

Class 2: Panicum, Setaria

Proposal: Addition of genera: Brachiaria, Paspalum, Pennisetum.

Class 3: Sorghum, Zea

Proposals: Division of Sorghum and Zea.

*Comments:* Acceptance of this proposal would result in the deletion of Class 3 as the general recommendation would then apply to Sorghum and Zea. The same proposal has been made by two authorities and one non-governmental organization.

Class 4: Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum

Proposal 1: Division of Class 4 into two classes with the following composition:

Class (a): Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Trisetum.

Class (b): Dactylis, Festuca, Lolium, Phalaris, Phleum.

Proposal 2: Addition of genera: Deschampsia, Koeleria and: Festulolium

Class 5: Brassica oleracea, Brassica chinensis, Brassica pekinensis

Proposal: Revision of Classes 5 and 6 concerning Brassica in order to create 3 Classes:

Class (a): Brassica oleracea

Class (b): Brassica rapa (B. campestris): Chinensis group and the Pekinensis group only

Class (c): Brassica napus, Brassica rapa (excluding Chinensis group and Pekinensis group)  
B. juncea, B. nigra and B. sinapis

Class 6: Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis

*Comments*: See proposals for Brassica in Class 5.

Class 7: Lotus, Medicago, Ornithopus, Onobrychis, Trifolium

Proposal 1: Deletion of Lotus and Trifolium resulting in a class containing Medicago, Ornithopus, Onobrychis.

Proposal 2: Addition of genus Melilotus

*Comments*: If proposal 1 is accepted, the general recommendation would apply for Lotus and Trifolium.

Class 8: Lupinus albus L., L. angustifolius L., L. luteus L.

Proposal 1: Merge Class 8 with Class 29 (species of Lupinus other than in Class 8)

Proposal 2: Addition of species: Lupinus mutabilis L., Lupinus nanus Douglas.

*Comments*: Acceptance of proposal 1 would result in the deletion of both classes since Lupinus would be covered by the general recommendation.

Class 12: Lactuca, Valerianella, Cichorium

Proposal 1: Deletion of Cichorium resulting in a class with Lactuca, Valerianella.

Proposal 2: Division with a class containing Lactuca, Valerianella, Cichorium (other than Intybus). Creation of a separate class for Cichorium Intybus.

Proposal 3: Deletion of Valerianella.

*Comments*: Acceptance of proposal 1 would result in the general rule applying to Cichorium. Acceptance of proposal 3 would result in the general rule applying for Valerianella. Acceptance of both proposals 1 and 3 would result in deletion of the class completely.

Class 13: Cucumis sativus

Proposal: Division of Class 13 (contents not provided).

Class 14: Citrullus, Cucumis melo, Cucurbita

Proposal 1: Proposal for the deletion of Cucurbita.

Proposal 2: Division of Class 14 (contents not provided)

*Comments*: Acceptance of proposal 1 would result in the general rule applying to Cucurbita. Proposal 1 was made by one authority and by one non-governmental organization.

Class 20: Calluna, Erica

Proposal: Addition of genus: Daboecia

Class 21: Solanum tuberosum L.

Proposal: Deletion of this class.

Class 22: Nicotiana rustica L., N. tabacum L.

Proposal: Merge Class 22 with Class 34 (species of Nicotiana other than in Class 22)

*Comments*: Acceptance of the proposal would result in the deletion of both classes since Nicotiana would be covered by the general recommendation.

Class 23: Helianthus tuberosus

Proposal 1: Merge Class 23 with Class 24 (Helianthus annuus) and Class 35

Proposal 2: Merge Class 23 with Class 24 (Helianthus annuus)

*Comments*: Acceptance of proposal 1 would result in the deletion of the three classes since Helianthus would be covered by the general recommendation.

Class 24: Helianthus annuus

Proposal 1: Merge Class 24 (Helianthus annuus) with Class 23 (Helianthus tuberosus) and Class 35 (see comments for Class 23)

Proposal 2: Deletion of Class 24.

*Comments*: Proposal 2 would also require modification of Class 35.

## COMPLEMENTARY CLASSES

Class 29: Species of Lupinus other than  
(in Class 8) Lupinus albus L., L. angustifolius L., L. luteus L.

Proposal: Merge Class 29 with Class 8 (Lupinus albus L., L. angustifolius L., L. luteus L.)

*Comments*: (See comments for Class 8)

Class 33: Species of Solanum other than  
( in Class 21) Solanum tuberosum L.

Proposal: Division in three: Lycopersicum, Capsicum and Solanum melongena.

*Comments*:

(a) Explanation given in the proposal: Since 1991 the botanical status of tomato has changed and then it is clear that Lycopersicum is not comprised in the existing Class 33. It is the same for Capsicum.

(b) Further division of Solanum genus would require a complementary class for species other than Solanum melongena L. and Solanum tuberosum L.

Class 34: Species of Nicotiana other than  
( in Class 22) Nicotiana rustica L., N. tabacum L.

*Comments*: See Class 22

Class 35: Species of Helianthus other than  
(in Class 23 + 24) Helianthus tuberosus + Helianthus annuus

*Comments*: See Classes 23 and 24

**PROPOSALS FOR THE ADDITION OF NEW CLASSES NOT INCLUDED IN THE EXISTING LIST**

Proposal A: Creation of new classes for fruit trees

*Comments:*

Explanation provided in the proposal: uses could vary from country to country, consensus will be necessary.

It is recommended to consult the Chair of the Technical Working Party for Fruit Crops (TWF).

Proposal B: Class for Glycine max.

*Comments:* There is another related proposal for the creation of a Class for genus Glycine, including Glycine max. The latter proposal is not necessary, as it would follow the general recommendation.

Proposal C: Class for Gossypium

*Comments:* This proposal is not necessary, as it would follow the general recommendation.

Proposal D: Class for Pisum and Cicer arietinum

*Comments:*

Proposal E: Class for *Allium porrum*

*Comments:*

Proposal F: Class for species of *Allium* other than *Allium porrum*

*Comments:*

Proposal G: New classes for new ornamental species

*Comments:*

It is recommended to coordinate this matter with the Chair of the Technical Working Party for Ornamental Plants and Forest Trees (TWO).

[End of Annex III and of document]