

# **GUIDELINES**

## **On Variety Denominations**

on

**Article 63 of Council Regulation (EC) 2100/94 of 27 July 1994 on Community plant variety rights<sup>1</sup>**

THE ADMINISTRATIVE COUNCIL OF THE COMMUNITY PLANT VARIETY OFFICE,

Having regard to the need to promote the harmonisation of rules governing variety denominations throughout the European Union for both listing and plant variety rights.

Having regard to Article 20 of the 1991 act of the UPOV Convention on variety denominations.

Having regard to Commission Implementing Regulation (EU) No 2021/384 of 3 March 2021 on the suitability of the denominations of varieties of agricultural plant species and vegetable species and repealing Regulation (EC) No 637/2009.

Acting pursuant to Article 30 of Commission Regulation (EC) No 874/2009, which requires the said Administrative Council to adopt guidelines establishing uniform and definitive criteria for determining impediments to the generic designation of a variety denomination referred to in Article 63(3) and (4) of Council Regulation (EC) No 2100/94,

HAS ADOPTED THE FOLLOWING GUIDELINES

## **Article 1**

### **Introduction**

In considering whether there is an impediment to the approval of a variety denomination under Article 63 of Council Regulation (EC) No 2100/94, the Community Plant Variety Right Office ("the Office") shall have regard to the guidelines set out below. Below each Article, the relevant sub-paragraph of Article 63(3) and 63(4) of Council Regulation (EC) No 2100/94 is indicated.

Any person who offers or disposes of to others for commercial purposes variety constituents must use the variety denomination. In the following articles, reference to variety should be understood as propagating material of such varieties and reference to users should be understood as users of that propagating material.

In analysing denominations, the following general principles should apply:

#### **1. Languages**

Only words in official EU languages are taken into consideration when assessing the meaning of the denominations. In case a variety denomination consists of words from different EU languages, the meaning of each word is taken into account. As far as technically possible, accents on letters will be reproduced in all EU languages.

#### **2. Misspelled words**

It is not necessary for a word to be written with its exact spelling for its semantic content to be understood,

#### **3. Attached words or elements**

In case a denomination contains one or more recognizable parts where at least one of them has a specific meaning in an EU language, the denomination does not constitute a meaningful expression as such, each part is separately analysed.

#### **4. Which denominations are considered for the analysis?**

In general, the Office takes into consideration denominations of varieties under official procedure, officially registered or marketed or denominations that have been deleted from an official register or ceased to be marketed for less than 10 years, unless such varieties have acquired a particular significance or are proven to be still available.



## Article 2

### **There is an impediment for the designation of a variety denomination where its use in the territory of the European Union is precluded by the prior right of a third party**

(Article 63 (3)(a) of Regulation 2100/94)

1. In the case of a trade mark as a prior right of a third party, the use of a variety denomination in the territory of the European Union shall be precluded by the objection of the trademark holder – in case it is upheld - which has been registered in one or more Member States or at EU level prior to the approval of the variety denomination, and which is identical or similar to the variety denomination and registered in relation to goods which are identical or similar to the species of the variety concerned.

2. An impediment to the suitability of a denomination due to a prior right may be removed where the written consent of the holder of the prior right to the use of the denomination in relation to the variety has been obtained, provided that such a consent is not liable to mislead the users as to the true origin of the variety.

3. In the case of a Protected geographical indication, a Protected designation of origin or a Traditional specialities guaranteed for agricultural products and foodstuffs as a prior right of a third party, a variety denomination in the territory of the European Union shall be considered to be precluded where the variety denomination would breach Article 13 or 24 of Council Regulation (EC) No 1151/2012<sup>1</sup>, Article 103 of Regulation (EU) No 1308/2013<sup>2</sup>, Article 20 of Regulation (EU) No 251/2014<sup>3</sup>, Article 21 of Regulation (EC) No 2019/787<sup>4</sup>, with respect to the Protected geographical indication, the Protected designation of origin or the Traditional specialities guaranteed protected in a Member State or in the European Union for goods which are identical or comparable to the plant variety concerned.

4. In the case of a prior right of the applicant in respect of whole or part of the proposed denomination, Article 18(1) of Regulation (EC) No 2100/94 shall apply *mutatis mutandis*.

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<sup>1</sup> Regulation (EU) No 1151/2012 of the European Parliament and the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, OJEU L 343/13 of 14/12/2012

<sup>2</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJEU L 347/671 of 20/12/2013

<sup>3</sup> Regulation (EU) No 251/2014 of the European Parliament and the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91, OJEU L84/14 of 20/3/2014

<sup>4</sup> Regulation (EU) No 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ L 130, 17.5.2019, p. 1).



### Article 3

#### **There is an impediment for the designation of a variety denomination where it may commonly cause its users difficulties as regards recognition or reproduction**

(Article 63 (3)(b) of Regulation 2100/94)

1. The purpose of a denomination is to enable the identification of the variety.

A proposed denomination is not suitable if the designation does not enable the user to recognise it as a variety denomination. This is especially the case if the denomination exclusively refers to a specific characteristic or value which can be attributed to the variety since it conveys the false impression that only that variety possesses it, whereas in fact other varieties of the same species may possess the same characteristic or value.

2. A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:

2.1 It consists of comparatives or superlatives

Comparatives or superlatives may render the denomination purely descriptive and not recognizable as such. In principle denominations consisting of comparative or superlative designations only are not suitable. Denominations are considered in their potential figurative sense when assessing whether they are comparatives or superlatives.

2.2 It consists of, or contains botanical names.

Latin botanical names may not be recognizable as denominations. Latin botanical names that may create confusion with other taxonomic ranks are not suitable.

Such terms may be suitable in case they have another meaning, which would probably not confuse if used for any other variety of another genus. Similarly, some species names rarely used in botany and in relation to other genera to which the variety does not belong may be suitable.

Any part of the botanical taxon to which the variety belongs or common name is also not suitable, unless that part is common to other botanical taxa.

2.3 It consists of, or contains breeding and technical terms.

Some breeding and technical terms, used alone, are deemed to render a denomination not recognisable as such.

Some of these breeding and technical terms, used in combination with other terms would not prevent the recognition of the denomination as such.



#### 2.4 Particular case of geographical names that have acquired a reputation for the species in question

3. A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:

3.1 It consists of a single letter or numeral or numerals only, except where this is an established practice for designating varieties such as in the case of inbred lines or of similarly specific types of varieties;

3.2 It consists of more than 3 words or elements unless the flow of the wording makes it easily recognizable;

3.3 It contains a punctuation mark or other symbol, an upper- and lower-case mixture (save where the first letter is in upper case and the rest of the denomination is written in lower case), subscript, superscript or a design or a figurative element. However, the following punctuation marks are allowed: the apostrophe ('), the comma (,), up to two non-adjacent exclamation marks (!), the period or full-stop (.), or the hyphen (-), the forward slash (/) or backward slash (\) symbols.



## Article 4

**There is an impediment for the designation of a variety denomination where it is identical or may be confused with a variety denomination under which another variety of the same or of a closely related species is entered in an official register of plant varieties or under which material of another variety has been marketed in a Member State or in a Member of the International Convention for the Protection of New Varieties of Plants, unless the other variety no longer remains in existence and its denomination has acquired no special significance.**

(Article 63 (3)(c) of Regulation 2100/94)

In evaluating the identity of, or confusion with, a variety denomination of another variety, the following shall apply:

A denomination is prima facie unsuitable if it is exactly the same as a variety denomination already registered or used in a Member State of the European Union or a contracting party to the International Convention for the Protection of New Varieties of Plants (hereinafter "UPOV") in a relation to a variety of the same or a closely related species.

"May be confused with" shall be considered to cover visual, phonetical and conceptual confusion. After an analysis of these 3 criteria independently, an overall assessment is carried out concluding on the suitability of the denomination proposal for aspects linked to similarity. Denominations of varieties of the same or a closely related species are considered. The varieties in question have been officially accepted for marketing or marketed in the European Union, the European Economic Area or in a contracting party to UPOV, or to OECD or have been the subject of a plant variety right or an application thereof in such territories.

### 1. 'Closely related species'

'Closely related species' shall have the meaning as defined in the Annex to the guidelines. This situation should be taken into account in the overall assessment.

**2. 'A variety no longer remains in existence'** shall be considered to mean a variety of which material no longer exists;

**3. 'An official register of plant varieties'** shall be considered as a reference to the common catalogue of varieties of agricultural plant species or of vegetable species, the EU variety register of fruit genera and species (Fruit Reproductive Material Information System, FRUMATIS), the common catalogue of vine varieties or to any register compiled and maintained by the Community Plant Variety Office, the OECD, or by an official body of the Member States of the EU or the European Economic Area, or of a contracting party to UPOV.

**4. 'A variety the denomination of which has acquired no special significance':** the denomination of a variety which has at one time been entered in an official register of plant varieties and thereby acquired special significance shall in each case be considered to have lost that special significance on the expiry of a 10-year period after deletion from that register, if this variety has not acquired significance by other means since then, e.g. through commerce.



## Article 5

**There is an impediment for the designation of a variety denomination where it is identical or may be confused with other designations which are commonly used for the marketing of goods or which have to be kept free under other legislation**

(Article 63 (3)(d) of Regulation 2100/94)

Designations which are commonly used for the marketing of goods or which have to be kept free under other legislation shall be considered to mean in particular:

1. Currency denominations, or terms associated with weights and measures;
2. Expressions that, by virtue of legislation, shall not be used for purposes other than those envisaged by that legislation.

## Article 6

**There is an impediment for the designation of a variety denomination where it is liable to give offence in one of the Member States or is contrary to public policy**

(Article 63 (3)(e) of Regulation 2100/94)

This heading would cover names of unsavoury characters from recent history, words with an offensive or abusive meaning in a language of the EU.



## Article 7

**There is an impediment for the designation of a variety denomination where it is liable to mislead or to cause confusion concerning the characteristics, the value or the identity of the variety, or the identity of the breeder or any other party to the proceedings**

(Article 63 (3)(f) of Regulation 2100/94)

A variety denomination shall be considered to mislead or to cause confusion if:

1. It conveys the false impression that the variety has particular characteristics or value;
2. it conveys the false impression that the variety is related to, or derived from, another specific variety;
3. By dint of its similarity to a well-known trading name other than a registered trade mark or variety denomination, it suggests that the variety is another variety, or conveys a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder;
4. it contains comparatives and superlatives which may be misleading as to the characteristics of the variety. In particular, a denomination is not suitable if it exaggerates the merits of the variety and might become confusing through the later introduction of new varieties having comparable characteristics.
5. it contains the name of a natural or legal person, or a reference thereto, so as to convey a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder;
6. it contains the name of a geographical name that would be likely to deceive the user as to the characteristics or value of the variety.





## Article 8

**There is an impediment for the designation of a variety denomination where, in the case of a variety which has already been entered:**

**(a) in one of the Member States**

**(b) in a Member of the International Union for the Protection of New Varieties of Plants; or**

**(c) in another State for which it has been established in a Community act that varieties are evaluated there under rules which are equivalent to those laid down in the Directives on common catalogues;**

**in an official register of plant variety rights or material thereof and has been marketed there for commercial purposes, and the proposed variety denomination differs from that which has been registered or used there, unless the latter one is the object of an impediment pursuant to paragraph 3**

(63 (4) of Regulation 2100/94)

Where there is an impediment under Article 2 to 7 above, the Office must administer a synonym.

“Official register of plant varieties”

An “official register of plant varieties” shall be considered as a reference to the common catalogue of varieties of agricultural plant species or of vegetable species, the EU variety register of fruit genera and species (Fruit Reproductive Material Information System, FRUMATIS), the common catalogue of vine varieties or to any register compiled and maintained by the Community Plant Variety Office, or by an official body of the Member States of the EU or the European Economic Area, or of a contracting party to UPOV.

## Article 9

These Guidelines shall enter into force on the same day of the Commission Implementing Regulation (EU) 2021/384 of 3 March 2021 on the suitability of the denominations of varieties of agricultural plant species and vegetable species and repealing Regulation (EC) No 637/2009.

Angers,  
Marien VALSTAR  
Chairperson of the Administrative Council



## ANNEX

### CLOSELY RELATED SPECIES

"Closely related species" as specified in Article 63(3)(c) of Council Regulation 2100/94 and referred to in Article 4(d) of these Guidelines should have the following meaning:

- a) As a general rule, for genera and species not covered by the list of classes in this Annex, a genus is considered to be a class
- b) If there are more than one class within a genus, the list of classes in Part I below shall apply
- c) If classes encompass more than one genus, the list of classes in Part II below shall apply.

#### Part I

##### *Classes within a genus*

<u>Classes</u>	<u>Botanical names</u>
Class 1.1:	Brassica oleracea
Class 1.2:	Brassica other than Brassica oleracea
Class 2.1:	Beta vulgaris L.. var. alba DC., Beta vulgaris L. var. altissima
Class 2.2:	Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: B. vulgaris L. var. rubra L.), B. vulgaris L. var. cicla L., B. vulgaris L. ssp. vulgaris var. vulgaris.
Class 2.3:	Beta other than classes 2.1 and 2.2.
Class 3.1:	Cucumis sativus
Class 3.2:	Cucumis melo
Class 3.3:	Cucumis other than classes 3.1 and 3.2
Class 4.1:	Solanum tuberosum L.
Class 4.2:	Tomato & Tomato rootstocks: <ul style="list-style-type: none"><li>○ Solanum lycopersicum L. (Lycopersicon esculentum Mill.)</li><li>○ Solanum cheesmaniae (L. Ridley) Fosberg (Lycopersicon cheesmaniae L. Riley)</li><li>○ Solanum chilense (Dunal) Reiche (Lycopersicon chilense Dunal)</li><li>○ Solanum chmielewskii (C.M. Rick et al.) D.M. Spooner et al. (Lycopersicon chmielewskii C. M. Rick et al.)</li><li>○ Solanum galapagense S.C. Darwin &amp; Peralta (Lycopersicon cheesmaniae f. minor (Hook. f.) C. H. Müll.) (Lycopersicon cheesmaniae var. minor (Hook. f.) D. M. Porter)</li></ul>



- Solanum habrochaites S. Knapp & D.M. Spooner  
(Lycopersicon agrimoniifolium Dunal)  
(Lycopersicon hirsutum Dunal)  
(Lycopersicon hirsutum f. glabratum C. H. Müll.)
- Solanum pennellii Correll  
(Lycopersicon pennellii (Correll) D'Arcy)
- Solanum peruvianum L.  
(Lycopersicon dentatum Dunal)  
(Lycopersicon peruvianum (L.) Mill.)
- Solanum pimpinellifolium L.  
(Lycopersicon pimpinellifolium (L.) Mill.)  
(Lycopersicon racemigerum Lange)

And hybrids between those species

Class 4.3: Solanum melongena L.

Class 4.4: Solanum other than classes 4.1, 4.2 and 4.3

## Part II

*Classes encompassing more than one genus*

<u>Classes</u>	<u>Botanical names</u>
Class 201:	Secale, Triticale, Triticum
Class 202:	Megathyrus, Panicum, Setaria, Steinchisma
Class 203*:	Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum and Poa
Class 204*	Lotus, Medicago, Ornithopus, Onobrychis, Trifolium
Class 205:	Cichorium, Lactuca
Class 206:	Petunia and Calibrachoa
Class 207:	Chrysanthemum and Ajania
Class 208:	(Statice) Goniolimon, Limonium, Psylliostachys
Class 209:	(Waxflower) Chamelaucium, Verticordia
Class 210:	Jamesbrittania and Sutera
Class 211:	Mushrooms
	<ul style="list-style-type: none"> <li>○ Agaricus</li> <li>○ Agrocybe</li> <li>○ Auricularia</li> <li>○ Dictyophora</li> <li>○ Flammulina</li> <li>○ Ganoderma</li> <li>○ Grifola</li> </ul>



- Hericium
- Hypsizigus
- Lentinula
- Lepista
- Lyophyllum
- Meripilus
- Mycoleptodonoides
- Naematoloma
- Panellus
- Pholiota
- Pleurotus
- Polyporus
- Sparassis
- Tricholoma

Class 212:       Verbena L. and Glandularia J.F.Gmel.

Class 213:       Eupatorium L.

- Acanthostyles R. M. King & H. Rob.
- Ageratina Spach
- Asplundianthus R. M. King & H. Rob.
- Bartlettina R. M. King & H. Rob.
- Campuloclinium DC.
- Chromolaena DC.
- Conoclinium DC.
- Cronquistianthus R. M. King & H. Rob.
- Eutrochium Raf.
- Fleischmannia Sch. Bip.
- Praxelis Cass.
- Viereckia R. M. King & H. Rob.

\*Classes 203 and 204 are not solely established on the basis of closely related species

