UPOV

International Union for the Protection of New Varieties of Plants

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Technical Committee **TC/55/11**

Fifty-Fifth Session **Original:** English
Geneva, October 28 and 29, 2019 **Date:** September 20, 2019

MATTERS CONCERNING VARIETY DESCRIPTIONS

Document prepared by the Office of the Union

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EXECUTIVE SUMMARY

1. The purpose of this document is to consider draft guidance on the role and status of the variety description developed at the time of the grant of the breeder's right and the role of plant material used as the basis for the DUS examination.

2. The TC is invited to consider the proposed revision to document TGP/5, Section 6 "UPOV Report on Technical Examination and UPOV Variety Description", as set out in the Annex to this document.

3. The following abbreviations are used in this document:

CAJ:	Administrative and Legal Committee
CAJ-AG	Administrative and Legal Committee Advisory Group
TC:	Technical Committee

4. The structure of this document is as follows:

BACKGROUND

5. The background to this matter is provided in document TC/53/22 "Matters concerning variety descriptions".

6. The TC, at its fifty-third session, held in Geneva from April 3 to 5, 2017, considered document TC/53/22 (see document TC/53/31 "Report", paragraphs 188 and 189).

7. The TC considered whether new guidance on the role of the variety description and plant material should be drafted, taking into consideration (a) the purpose of the variety description developed at the time of the grant of the breeder's right; (b) the status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for enforcement of the breeder's right; and (c) the conclusions provided by the expert from the European Union in document TWV/50/14 Add., Annex II, slide 19, as follows:

- Notes of similar varieties shall come from the same growing trial as for the candidate variety
- To inform parties concerned on amendments for the Official VD (variety description)
- Agreement on data supplied to share databases

8. The TC noted the existence of different elements that could support the identification of plant material, such as the original and other official variety descriptions, including molecular markers. The TC agreed to invite the European Union to elaborate further guidance on the role of the variety description and role of plant material used as the basis for the DUS examination, but incorporating unchanged the text of document TC/53/22, Annex, and also taking into account the following aspects:

(a) the purpose of the variety description developed at the time of the grant of the breeder's right;
(b) the status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for enforcement of the breeder's right; and
(c) the conclusions provided by the expert from the European Union in document TWV/50/14 Add., Annex II, slide 19, as follows:
- Notes of similar varieties shall come from the same growing trial as for the candidate variety
- To inform parties concerned on amendments for the Official VD (variety description)
- Agreement on data supplied to shared databases

9. The TC, at its fifty-fourth session, held in Geneva on October 29 and 30, 2018, considered document TC/54/28 "Matters concerning variety descriptions" (see document TC/54/31 Corr. "Report", paragraphs 329 to 331).

10. The TC considered the draft guidance in the Annex to document TC/54/28 as the basis for a future revision of document TGP/5 Section 6 "UPOV Report on Technical Examination and UPOV Variety Description".

11. The TC agreed to invite the drafter from the European Union to work with the Office of the Union to revise the draft guidance in line with UPOV guidance wording

PROPOSAL

12. In accordance with the request of the TC, at its fifty-fourth session, draft guidance on the purpose of the variety description developed at the time of the grant of the breeder's right and the status of the original variety description in relation to the verification of the conformity of plant material to a protected variety for enforcement of the breeder's right is presented in the Annex to this document, in the form of a revision of document TGP/5 Section 6 "UPOV Report on Technical Examination and UPOV Variety Description."

13. The TC is invited to consider the proposed revision to document TGP/5, Section 6 "UPOV Report on Technical Examination and UPOV Variety Description", as set out in the Annex to this document.

[Annex follows]

DOCUMENT TGP/5, SECTION 6 “UPOV REPORT ON TECHNICAL EXAMINATION AND UPOV VARIETY DESCRIPTION”

Note for revisions: changes indicated by ~~strikethrough~~ (highlighted) for deletions and underlining (highlighted) for additions

Note for Draft version: **Endnotes** provide background information when considering the draft version, not to be retained in the approved version of the document. **Footnotes** to be retained in the published version of the document.

UPOV REPORT ON TECHNICAL EXAMINATION

1. Reference number of Reporting Authority .....
2. Requesting Authority .....
3. Reference number of Requesting Authority .....
4. Breeder’s reference .....
5. Date of application in requesting member of the Union .....
6. Applicant (name and address) .....
7. Agent (name and address) (if applicable) .....

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8. (a) Botanical name of taxon .....
   (b) UPOV code .....
9. Common name of taxon .....
10. Variety denomination .....
11. Person who bred, or discovered .....
    and developed, the variety (name and address) .....
    (if different from applicant) .....
12. Reporting Authority .....
13. Testing station(s) and place(s) .....
14. Period of testing .....
15. Date and place of issue of document .....

16. RESULTS OF THE TECHNICAL EXAMINATION

(a) Report on Distinctness

The variety
- is distinct [ ]
- is not distinct [ ]
according to the UPOV Convention

Variety(ies) from which it is not distinct (if applicable)

……

(b) Report on Uniformity

The variety
- is uniform [ ]
- is not uniform [ ]
according to the UPOV Convention

Characteristic(s) for which the variety is not uniform and explanation of the lack of uniformity (if applicable) are provided in an annex to this report.

(c) Report on Stability

The variety
- is stable [ ]
- is not stable [ ]
according to the UPOV Convention

Characteristic(s) for which the variety is not stable and explanation of the lack of stability (if applicable) are provided in an annex to this report.

(d) A description of the variety is provided in an annex to this report [ ]

(if the variety is distinct, uniform and stable).

(If the variety is not distinct, a description can be provided on request.)

17. Remarks .....
.....

18. Signature .....

UPOV VARIETY DESCRIPTION

1. Reference number of Reporting Authority .....
2. Reference number of Requesting Authority .....
3. Breeder's reference .....
4. Applicant (name and address) .....

5. (a) Botanical name of taxon .....
   (b) UPOV code .....
6. Common name of taxon .....
7. Variety denomination .....
8. Date and document number of UPOV Test Guidelines .....
9. Date and/or document number of Reporting Authority's test guidelines .....
10. Reporting Authority .....
11. Testing station(s) and place(s) .....
12. Period of testing .....
13. Date and place of issue of document .....
14. Group: (if characteristics of number 15 are used for grouping, they are marked with a G in that number)

UPOV No.	Reporting Authority No.	Characteristics	States of Expression	Note	Remarks

Reference number of Reporting Authority .....

15. Characteristics Included in the UPOV Test Guidelines or Reporting Authority's Test Guidelines

UPOV No.	Reporting Authority No.	Characteristics	States of Expression	Note	Remarks

16. Similar Varieties and Differences from These Varieties

Denomination(s) of variety(ies) similar to the candidate variety	Characteristic(s) in which the candidate variety differs from the similar variety(ies)[1)]	State of expression of the characteristic(s) for the similar variety(ies)[2)]	State of expression of the characteristic(s) for the candidate variety[2)]

1) In the case of identical states of expression of both varieties, please indicate the size of the difference.

2) The state of expression of the candidate variety and similar variety(ies) relate to the DUS examination conducted at the testing station, place and period of testing indicated in 11 and 12.

17. Additional Information

(a) Additional Data

(b) Photograph (if appropriate)

(c) RHS Colour Chart version used (if appropriate)

(d) Remarks

18. Explanatory Notes to the Annex: UPOV VARIETY DESCRIPTION

(a) General (Annex: UPOV Variety Description)

(i) Purpose of the original variety description

The purpose of the variety description developed at the time of the grant of the breeder's right (original variety description) can be summarized as follows[i]:

(a) to describe the characteristics of the variety; and
(b) to identify and list similar varieties and differences from these varieties;
combined with the information on the basis for (a) and (b), namely:
- Date and document number of UPOV Test Guidelines;
- Date and/or document number of Reporting Authority's test guidelines;
- Reporting Authority;
- Testing station(s) and place(s);
- Period of testing;
- Date and place of issue of document;
- Group: (Table: Characteristics; States of Expression; Note; Remarks);
- Additional Information:
  (a) Additional Data
  (b) Photograph (if appropriate)
  (c) RHS Colour Chart version used (if appropriate)
  (d) Remarks."

(ii) Status of the original variety description in relation to the enforcement of the breeder's rights

Document UPOV/EXN/ENF/1 "Explanatory notes on the enforcement of breeders' rights under the UPOV Convention" explains as follows:

"SECTION II: Some possible measures for the enforcement of breeders' rights

"While the UPOV Convention requires members of the Union to provide for appropriate legal remedies for the effective enforcement of breeders' rights, it is a matter for breeders to enforce their rights."

In relation to the verification of plant material of a protected variety for the purposes of enforcement of the breeder's right, it should be recalled that the description of the variety characteristics in the original variety description and the basis for distinctness from the most similar variety are linked to the circumstances of the DUS examination, namely:

- Date and document number of UPOV Test Guidelines;
- Date and/or document number of Reporting Authority's test guidelines;
- Reporting Authority;
- Testing station(s) and place(s);
- Period of testing;
- Date and place of issue of document;
- Group: (Table: Characteristics; States of Expression; Note; Remarks).
- Additional Information:
  (a) Additional Data
  (b) Photograph (if appropriate)
  (c) RHS Colour Chart version used (if appropriate)
  (d) Remarks

(iii) Amendment to the original variety description

Document TGP/4 "Constitution and Maintenance of Variety Collections" explains in section 3.1.1:

> "With regard to descriptions based on the relevant UPOV Test Guidelines, it is important to note that UPOV Test Guidelines may be revised (see document TGP/7), possibly leading to the introduction of some new characteristics and the deletion of some others from the table of characteristics. Furthermore, the states of expression of a characteristic may be amended. Therefore, descriptions which have been prepared using different versions of the UPOV Test Guidelines for the same species or group of species may not be fully compatible. In these cases, the descriptions should be aligned as far as possible."

In some members of the Union the original variety description may be amended to adapt the description to render it comparable with descriptions of other varieties, produced under different circumstances. In such cases, all stakeholders should be informed.

Examination offices may update their variety data to reflect the evolution of Test Guidelines. Such updates are made for working purposes and do not affect the original variety description.

(iv) Reference Number of the Reporting Authority

The reference number of the Reporting Authority should be repeated on each page of the report.

(b) Ad Number 14 (Annex: UPOV Variety Description)

Only information on the group to which the variety belonged should be given or information on groupings other than by characteristics listed in Number 15. Grouping by characteristics mentioned in Number 15 should be indicated simply by marking the respective characteristic in Number 15 with the letter "G" before the number of the characteristic.

(c) Ad Number 15 (Annex: UPOV Variety Description)

(i) All characteristics of the UPOV Test Guidelines should be reproduced, including those which are not applicable and those which have not been recorded. Those not applicable should be marked "not applicable," those not recorded, "not recorded."

(ii) The asterisks from the UPOV Test Guidelines should be repeated on the form.

(iii) Additional characteristics from the Reporting Authority's test guidelines should not be placed after the UPOV Test Guidelines characteristics, but in their sequence according to the UPOV principles, as the main purpose of the form is still for the authority's use. They do not need to be specially marked as they are sufficiently identified by the Reporting Authority's number.

(iv) The list contains only a small column for brief remarks or for a reference to lengthier remarks which should be reproduced in a footnote.

(d) Ad Number 16 (Annex: UPOV Variety Description)

Only those characteristics that show sufficient differences to establish distinctness should be given. Information on differences between two varieties should always contain the states of expression with their notes for both varieties; if possible, in columns if more varieties are mentioned.

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[i] see document CAJ/71/11 "Report", paragraphs 30 and 31

[End of Annex and of document]