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COMMISSION DIRECTIVE 2003/90/EC

of 6 October 2003

setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species

(Text with EEA relevance)

(OJ L 254, 8.10.2003, p. 7)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Commission Directive 2005/91/EC of 16 December 2005	L 331	24	17.12.2005



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setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species ⁽¹⁾, and in particular Article 7(2)(a) and (b) thereof,

Whereas:

- (1) Commission Directive 72/180/EEC of 14 April 1972 determining the characteristics and minimum conditions for examining varieties of agricultural plant species ⁽²⁾, as amended by Directive 2002/8/EC ⁽³⁾, has established, with a view to official acceptance of the varieties in the Member States' catalogues, the characteristics to be covered as a minimum by the examinations of the various species, as well as the minimum requirements for carrying out the examinations.
- (2) Test guidelines relating to the conditions for the examination of the varieties have been issued by the Administrative Council of the Community Plant Variety Office (CPVO) established by Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights ⁽⁴⁾, as last amended by Regulation (EC) No 1650/2003 ⁽⁵⁾, in respect of certain species.
- (3) Test guidelines establishing the conditions for the examinations of the varieties exist at international level. The International Union for the Protection of New Varieties of Plants (UPOV) has developed test guidelines.
- (4) Directive 72/180/EEC was amended by Directive 2002/8/EC to ensure consistency between the CPVO test guidelines and the conditions for examining the varieties with a view to their acceptance in the national catalogues of varieties of the Member States as far as CPVO test guidelines had been established. The CPVO has since issued guidelines for a number of other species.
- (5) It is appropriate to ensure consistency between the CPVO test guidelines and the conditions for the varieties with a view to their acceptance into national catalogues of the Member States.
- (6) It is appropriate to base the Community system on the UPOV test guidelines, in so far as the CPVO has not yet developed specific guidelines. National law applies for the species not covered by this Directive.
- (7) Directive 72/180/EEC should therefore be repealed.
- (8) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

⁽¹⁾ OJ L 193, 20.7.2002, p. 1.

⁽²⁾ OJ L 108, 8.5.1972, p. 8.

⁽³⁾ OJ L 37, 7.2.2002, p. 7.

⁽⁴⁾ OJ L 227, 1.9.1994, p. 1.

⁽⁵⁾ OJ L 245, 29.9.2003, p. 28.

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HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall provide for the inclusion in a national catalogue, within the meaning of Article 3(1) of Directive 2002/53/EC, of varieties of agricultural plant species which fulfil the requirements set out in paragraphs 2 and 3.
2. As regards distinctness, stability and uniformity:
 - (a) the species listed in Annex I shall comply with the conditions laid down in the 'Protocols for distinctness, uniformity and stability tests' of the Administrative Council of the Community Plant Variety Office (CPVO) listed in that Annex;
 - (b) the species listed in Annex II shall comply with the test guidelines for the conduct of tests for distinctness, uniformity and stability of the International Union for the Protection of new Varieties of Plants (UPOV) listed in that Annex.
3. As regards the value for cultivation or use, the varieties shall comply with the conditions laid down in Annex III, without prejudice to Article 4(2) of the Directive.

Article 2

All the varietal characteristics within the meaning of Article 1(2)(a), and any characteristics which are marked by an asterisk (*) in the test guidelines referred to in Article 1(2)(b) shall be used, providing that observation of a characteristic is not rendered impossible by the expression of any other characteristics, and providing that the expression of a characteristic is not prevented by the environmental conditions under which the test is conducted.

Article 3

Member States shall ensure that in respect of the species listed in Annexes I and II, the minimum requirements for carrying out the examinations in respect of trial design and growing conditions, as laid down in the test guidelines referred to in those Annexes, are fulfilled at the time of the examinations.

Article 4

Directive 72/180/EEC is repealed.

Article 5

1. Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive by 31 March 2004 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law they adopt in the field covered by this Directive.

Article 6

1. Where, on the entry into force of this Directive, varieties have not been accepted for inclusion in the Common Catalogue of varieties of

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agricultural plant species, and official examinations started prior to that date in accordance with the provisions of either

- (a) Directive 72/180/EEC or
- (b) the CPVO guidelines listed in Annex I or the UPOV guidelines listed in Annex II, according to the species,

the varieties concerned shall be deemed to fulfil the requirements of this Directive.

2. Paragraph 1 shall only apply where the trials lead to the conclusion that the varieties comply with the rules set out in either

- (a) Directive 72/180/EEC or
- (b) the CPVO guidelines listed in Annex I or the UPOV guidelines listed in Annex II, according to the species.

Article 7

This Directive shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

Article 8

This Directive is addressed to the Member States.

▼ **M1***ANNEX I***List of species which shall comply with CPVO test guidelines**

Species listed in the Common Catalogue	CPVO protocol
Field pea	Pea, TP 7/1 of 6.11.2003
Swede rape	Oilseed rape, TP 36/1 of 25.3.2004
Sunflower	Sunflower, TP 81/1 of 31.10.2002
Oats	Oats, TP 20/1 of 6.11.2003
Barley	Barley, TP 19/2 of 6.11.2003
Rice	Rice, TP 16/1 of 18.11.2004
Rye	Rye, TP 58/1 of 31.10.2002
Triticale	Triticale, TP 121/1 of 6.11.2003
Wheat	Wheat, TP 3/3 of 6.11.2003
Durum wheat	Durum wheat, TP120/2 of 6.11.2003
Maize	Maize, TP 2/2 of 15.11.2001
Potato	Potato, TP 23/1 of 27.3.2002

The text of these protocols can be found on the CPVO web site (www.cpvo.eu.int).

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ANNEX II

List of species which shall comply with UPOV test guidelines

Species listed in the Common Catalogue	UPOV guidelines
Fodder beet	Fodder beet, guideline TG/150/3 of 4.11.1994
Velvet bent	Bent, guideline TG/30/6 of 12.10.1990
Red top	Bent, guideline TG/30/6 of 12.10.1990
Creeping bent	Bent, guideline TG/30/6 of 12.10.1990
Brown top	Bent, guideline TG/30/6 of 12.10.1990
Rescue grass	Rescue grass, guideline TG/180/3 of 4.4.2001
Alaska brome-grass	Alaska brome-grass, guideline TG/180/3 of 4.4.2001
Cocksfoot	Cocksfoot, guideline TG/31/8 of 17.4.2002
Tall fescue	Tall fescue, guideline TG/39/8 of 17.4.2002
Sheep's fescue	Sheep's fescue, guideline TG/67/4 of 12.11.1980
Meadow fescue	Meadow fescue, guideline TG/39/8 of 17.4.2002
Red fescue	Red fescue, guideline TG/67/4 of 12.11.1980
Italian ryegrass	Ryegrass, guideline TG/4/7 of 12.10.1990
Perennial ryegrass	Ryegrass, guideline TG/4/7 of 12.10.1990
Hybrid ryegrass	Ryegrass, guideline TG/4/7 of 12.10.1990
Timothy	Timothy, guideline TG/34/6 of 7.11.1984
Smooth-stalked meadow grass	Kentucky bluegrass, guideline TG/33/6 of 12.10.1990
White lupin	White lupin, guideline TG/66/4 of 31.3.2004
Blue lupin	Blue lupin, guideline TG/66/4 of 31.3.2004
Yellow lupin	Yellow lupin, guideline TG/66/4 of 31.3.2004
Lucerne	Lucerne, guideline TG/6/5 of 6.4.2005
Red clover	Red clover, guideline TG/5/7 of 4.4.2001
White clover	White clover, guideline TG/38/7 of 9.4.2003
Field bean	Field bean, guideline TG/8/6 of 17.4.2002
Common vetch	Common vetch, guideline TG/32/6 of 21.10.1988
Swede	Swede, guideline 89/6 of 4.4.2001
Fodder radish	Fodder radish, guideline TG/178/3 of 4.4.2001
Groundnut/Peanut	Groundnut, guideline TG/93/3 of 13.11.1985
Turnip rape	Turnip rape, guideline TG/185/3 of 17.4.2002

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Species listed in the Common Catalogue	UPOV guidelines
Safflower	Safflower, guideline TG/134/3 of 12.10.1990
Cotton	Cotton, guideline TG/88/6 of 4.4.2001
Flax/Linseed	Flax/Linseed, guideline TG/57/6 of 20.10.1995
Opium poppy	Opium/Seed poppy, guideline TG/166/3 of 24.3.1999
White mustard	White mustard, guideline TG/179/3 of 4.4.2001
Soya bean	Soya bean, guideline TG/80/6 of 1.4.1998
Sorghum	Sorghum, guideline TG/122/3 of 6.10.1989

The text of these guidelines can be found on the UPOV web site (www.upov.int).

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ANNEX III

**CHARACTERISTICS AS REGARDS THE EXAMINATION OF THE
VALUE FOR CULTIVATION OR USE**

1. Yield.
2. Resistance to harmful organisms.
3. Behaviour with respect to factors in the physical environment.
4. Quality characteristics.

The methods used shall be specified when the results are submitted.