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COMMISSION DIRECTIVE 2003/91/EC

of 6 October 2003

setting out implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species

(Text with EEA relevance)

(OJ L 254, 8.10.2003, p. 11)

Amended by:

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Commission Directive 2006/127/EC of 7 December 2006

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**COMMISSION DIRECTIVE 2003/91/EC****of 6 October 2003****setting out implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable 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 2002/55/EC of 13 June 2002 on the marketing of vegetable seed ⁽¹⁾, as amended by Directive 2003/61/EC ⁽²⁾, and in particular Article 7(2)(a) and (b) thereof,

Whereas:

- (1) Commission Directive 72/168/EEC of 14 April 1972 determining the characteristics and minimum conditions for examining vegetable varieties ⁽³⁾, as amended by Directive 2002/8/EC ⁽⁴⁾ 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 ⁽⁵⁾, as last amended by Regulation (EC) No 1650/2003 ⁽⁶⁾, 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 72/168/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 CPVO has not yet developed specific guidelines. National law applies for the species not covered by this Directive.
- (7) Directive 72/168/EEC should therefore be repealed.

⁽¹⁾ OJ L 193, 20.7.2002, p. 23.

⁽²⁾ OJ L 165, 3.7.2003, p. 23.

⁽³⁾ OJ L 103, 2.5.1972, p. 6.

⁽⁴⁾ OJ L 37, 7.2.2002, p. 7.

⁽⁵⁾ OJ L 227, 1.9.1994, p. 1.

⁽⁶⁾ OJ L 245, 29.9.2003, p. 28.

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- (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,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall provide for the inclusion in a national catalogue within the meaning of Article 3(2) of Directive 2002/55/EC of varieties of vegetable species which fulfil the requirements set out in paragraph 2.
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.

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 72/168/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.

▼B*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 vegetable species, and official examinations started prior to that date in accordance with the provisions of either

- (a) Directive 72/168/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 72/168/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.

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ANNEX I

List of species referred to in Article 1(2)(a) which are to comply with CPVO test protocols

Scientific name	Common name	CPVO protocol
<i>Allium cepa</i> L. (Cepa group)	Onion and Echalion	TP 46/1 of 14.6.2005
<i>Allium cepa</i> L. (Aggregatum group)	Shallot	TP 46/1 of 14.6.2005
<i>Allium porrum</i> L.	Leek	TP 85/1 of 15.11.2001
<i>Allium sativum</i> L.	Garlic	TP 162/1 of 25.3.2004
<i>Asparagus officinalis</i> L.	Asparagus	TP 130/1 of 27.3.2002
<i>Brassica oleracea</i> L.	Cauliflower	TP 45/1 of 15.11.2001
<i>Brassica oleracea</i> L.	Sprouting Broccoli or Calabrese	TP 151/1 of 27.3.2002
<i>Brassica oleracea</i> L.	Brussels sprouts	TP 54/2 of 1.12.2005
<i>Brassica oleracea</i> L.	Kohlrabi	TP 65/1 of 25.3.2004
<i>Brassica oleracea</i> L.	Savoy cabbage, White cabbage and Red cabbage	TP 48/2 of 1.12.2005
<i>Capsicum annuum</i> L.	Chilli or Pepper	TP 76/1 of 27.3.2002
<i>Cichorium endivia</i> L.	Curled-leaved endive and Plain-leaved endive	TP 118/2 of 1.12.2005
<i>Cichorium intybus</i> L.	Industrial chicory	TP 172/2 of 1.12.2005
<i>Cichorium intybus</i> L.	Witloof chicory	TP 173/1 of 25.3.2004
<i>Cucumis melo</i> L.	Melon	TP 104/1 of 27.3.2002
<i>Cucumis sativus</i> L.	Cucumber and Gherkin	TP 61/1 of 27.3.2002
<i>Cucurbita pepo</i> L.	Marrow or Courgette	TP 119/1 of 25.3.2004
<i>Cynara cardunculus</i> L.	Globe artichoke and Cardoon	TP 184/1 of 25.3.2004
<i>Daucus carota</i> L.	Carrot and Fodder carrot	TP 49/2 of 1.12.2005
<i>Foeniculum vulgare</i> Mill.	Fennel	TP 183/1 of 25.3.2004
<i>Lactuca sativa</i> L.	Lettuce	TP 13/2 of 1.12.2005
<i>Lycopersicon esculentum</i> Mill.	Tomato	TP 44/2 of 15.11.2001
<i>Phaseolus vulgaris</i> L.	Dwarf French bean and Climbing French bean	TP 12/2 of 1.12.2005
<i>Pisum sativum</i> L. (partim)	Wrinkled pea, Round pea and Sugar pea	TP 07/1 of 6.11.2003
<i>Raphanus sativus</i> L.	Radish	TP 64/1 of 27.3.2002
<i>Spinacia oleracea</i> L.	Spinach	TP 55/1 of 27.3.2002
<i>Valerianella locusta</i> (L.) Laterr.	Corn salad or Lamb's lettuce	TP 75/1 of 27.3.2002
<i>Vicia faba</i> L. (partim)	Broad bean	TP Broadbean/1 of 25.3.2004
<i>Zea mays</i> L. (partim)	Sweetcorn and Popcorn	TP 2/2 of 15.11.2001

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

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ANNEX II

List of species referred to in Article 1(2)(b) which are to comply with UPOV test guidelines

Scientific name	Common name	UPOV guideline
<i>Allium fistulosum</i> L.	Japanese bunching onion or Welsh onion	TG/161/3 of 1.4.1998
<i>Allium schoenoprasum</i> L.	Chives	TG/198/1 of 9.4.2003
<i>Apium graveolens</i> L.	Celery	TG/82/4 of 17.4.2002
<i>Apium graveolens</i> L.	Celeriac	TG/74/4 corr. of 17.4.2002 + 5.4.2006
<i>Beta vulgaris</i> L.	Spinach beet or Chard	TG/106/4 of 31.3.2004
<i>Beta vulgaris</i> L.	Beetroot including Cheltenham beet	TG/60/6 of 18.10.1996
<i>Brassica oleracea</i> L.	Curly kale	TG/90/6 of 31.3.2004
<i>Brassica rapa</i> L.	Chinese cabbage	TG/105/4 of 9.4.2003
<i>Brassica rapa</i> L.	Turnip	TG/37/10 of 4.4.2001
<i>Cichorium intybus</i> L.	Large-leaved chicory or Italian chicory	TG/154/3 of 18.10.1996
<i>Citrullus lanatus</i> (Thunb.) Matsum. et Nakai	Watermelon	TG/142/4 of 31.3.2004
<i>Cucurbita maxima</i> Duchesne	Gourd	TG/155/3 of 18.10.1996
<i>Petroselinum crispum</i> (Mill.) Nyman ex A. W. Hill	Parsley	TG/136/5 of 6.4.2005
<i>Phaseolus coccineus</i> L.	Runner bean	TG/9/5 of 9.4.2003
<i>Raphanus sativus</i> L.	Black radish	TG/63/6 of 24.3.1999
<i>Rheum rhabarbarum</i> L.	Rhubarb	TG/62/6 of 24.3.1999
<i>Scorzonera hispanica</i> L.	Scorzonera or Black salsify	TG/116/3 of 21.10.1988
<i>Solanum melongena</i> L.	Aubergine or Eggplant	TG/117/4 of 17.4.2002

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