

**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.
- (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.

⁽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.

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.

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.

Done at Brussels, 6 October 2003.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

LIST OF SPECIES WHICH SHALL COMPLY WITH CPVO TEST GUIDELINES

Leek, protocol TP/85/1 of 15.11.2001	Melon, protocol TP/104/1 of 27.3.2002
Asparagus, protocol TP/130/1 of 27.3.2002	Cucumber/Gherkin, protocol TP/61/1 of 27.3.2002
Cauliflower, protocol TP/45/1 of 15.11.2001	Carrot, protocol TP/49/6 of 27.3.2002
Sprouting broccoli, protocol TP/151/1 of 27.3.2002	Lettuce, protocol TP/13/1 of 15.11.2001
Brussels sprouts, protocol TP/54/1 of 27.3.2002	Tomato, protocol TP/44/2 of 15.11.2001
Savoy cabbage, protocol TP/48/1 of 15.11.2001	French bean, protocol TP/12/1 of 15.11.2001
Cabbage, protocol TP/48/1 of 15.11.2001	Radish, protocol TP/64/6 of 27.3.2002
Red cabbage, protocol TP/48/1 of 15.11.2001	Spinach, protocol TP/55/6 of 27.3.2002
Chili/Capsicum/Pepper, protocol TP/76/1 of 27.3.2002	Corn salad/Lamb's lettuce, protocol TP/75/6 of 27.3.2002
Endive, protocol TP/118/1 of 27.3.2002	

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

ANNEX II

LIST OF SPECIES WHICH SHALL COMPLY WITH UPOV TEST GUIDELINES

Chive/Welsh onion/Japanese bunching onion, guideline TG/161/3 of 1.4.1998	Watermelon, guideline TG/142/3 of 26.10.1993
Garlic, guideline TG/162/4 of 4.4.2001	Gourd/Pumpkin, guideline TG/155/3 of 18.10.1996
Celery, guideline TG/82/4 of 17.4.2002	Marrow/Squash, guideline TG/119/4 of 17.4.2002
Spinach beet/Chard/Leaf beet, guideline TG/106/3 of 7.10.1987	Artichoke, guideline TG/184/3 of 4.4.2001
Beetroot, guideline TG/60/6 of 18.10.1996	Fennel, guideline TG/183/3 of 4.4.2001
Curly kale, guideline TG/90/6 of 17.4.2002	Parsley, guideline TG/136/4 of 18.10.1991
Kohlrabi, guideline TG/65/4 of 17.4.2002	Runner bean, guideline TG/9/5 of 9.4.2003
Chinese cabbage, guideline TG/105/4 of 9.4.2003	Pea, guideline TG/7/9 of 4.11.1994 (and correction 18.10.1996)
Turnip, guideline TG/37/10 of 4.4.2001	Rhubarb, guideline TG/62/6 of 24.3.1999
Witloof chicory, guideline TG/173/3 of 5.4.2000	Scorzonera/Black salsify, guideline TG/116/3 of 21.10.1988
Leaf chicory, guideline TG/154/3 of 18.10.1996	Aubergine/Egg plant, guideline TG/117/4 of 17.4.2002
Industrial chicory, guideline TG/172/3 of 4.4.2001	Broad bean, guideline TG/206/1 of 9.4.2003

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