

Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties (Text with EEA relevance)

CHAPTER II

Conservation varieties

Section I

Acceptance of conservation varieties

Article 3

Conservation varieties

- 1 Member States may accept conservation varieties subject to the requirements provided for in Articles 4 and 5.
- 2 Conservation varieties shall be accepted as follows:
 - a Member States may accept a variety as a variety whose seed may either be certified as ‘certified seed of a conservation variety’ or verified as ‘standard seed of a conservation variety’. Such a variety shall be entered into the common catalogue of varieties of vegetable species as a ‘conservation variety whose seed shall be certified in accordance with Article 10 of Commission Directive 2009/145/EC or verified in accordance with Article 11 of that Directive’;
 - b Member States may accept a variety as a variety whose seed may only be verified as ‘standard seed of a conservation variety’. Such a variety shall be entered into the common catalogue of varieties of vegetable species as a ‘conservation variety whose seed shall be verified in accordance with Article 11 of Commission Directive 2009/145/EC’.

Article 4

Substantive requirements

- 1 In order to be accepted as a conservation variety, a landrace or variety referred to in Article 1(1)(a) shall present an interest for the conservation of plant genetic resources.
- 2 By way of derogation from Article 1(2) of Directive 2003/91/EC, Member States may adopt their own provisions as regards distinctness, stability and uniformity of conservation varieties.

In such cases Member States shall ensure that for distinctness and stability at least the characteristics shall apply which are referred to in:

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- a the technical questionnaires associated with the test protocols of the Community Plant Variety Office (CPVO), for the species listed in Annex I to Directive 2003/91/EC, which apply to those species; or
- b the technical questionnaires of the Guidelines of the International Union for the Protection of New Varieties of Plants (UPOV), for the species listed in Annex II to Directive 2003/91/EC, which apply to those species.

For the assessment of uniformity, Directive 2003/91/EC shall apply.

However, if the uniformity level is established on the basis of off-types, a population standard of 10 % and an acceptance probability of at least 90 % shall be applied.

Article 5

Procedural requirements

By way of derogation from the first sentence of Article 7(1) of Directive 2002/55/EC, no official examination shall be required if the following information is sufficient for the decision on the acceptance of the conservation varieties:

- (a) the description of the conservation variety and its denomination;
- (b) the results of unofficial tests;
- (c) knowledge gained from practical experience during cultivation, reproduction and use as notified by the applicant to the Member State concerned;
- (d) other information, in particular from the plant genetic resource authorities or from organisations recognised for this purpose by the Member States.

Article 6

Exclusion of acceptance

A conservation variety shall not be accepted for inclusion in the national catalogue of varieties if:

- (a) it is already listed in the common catalogue of varieties of vegetable species as a variety other than a conservation variety, or it was deleted from that common catalogue within the last 2 years, or the period granted under Article 15(2) of Directive 2002/55/EC expired less than 2 years ago; or
- (b) it is protected by a Community plant variety right, as provided for in Council Regulation (EC) No 2100/94⁽¹⁾, or by a national plant variety right, or an application for such a right is pending.

Article 7

Denomination

¹ With respect to denominations of conservation varieties which were known before 25 May 2000, Member States may permit derogations from Regulation (EC) No 637/2009, except where such derogations would violate prior rights of a third party which are protected under Article 2 of that Regulation.

2 Notwithstanding Article 9(2) of Directive 2002/55/EC, Member States may accept more than one name for a variety if the names concerned are historically known.

Article 8

Region of origin

1 When a Member State accepts a conservation variety, it shall identify the locality or localities, region or regions, in which the variety has historically been grown and to which it is naturally adapted, hereinafter 'region of origin'. It shall take into account information from plant genetic resource authorities or from organisations recognised for that purpose by the Member States.

Where the region of origin is located in more than one Member States, it shall be identified by all Member States concerned by common accord.

2 The Member State or Member States performing the identification of the region of origin shall notify the identified region to the Commission.

Article 9

Maintenance

Member States shall ensure that a conservation variety must be maintained in its region of origin.

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- (1) [OJ L 227, 1.9.1994, p. 1.](#)