

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 III

Varieties developed for growing under particular conditions

Section I

Acceptance of varieties developed for growing under particular conditions

Article 21

Varieties developed for growing under particular conditions

1 Member States may accept varieties developed for growing under particular conditions subject to the requirements provided for in Articles 22 and 23.

2 Member States may accept a variety developed for growing under particular conditions as a variety whose seed may only be verified as ‘standard seed of a variety developed for growing under particular conditions’. Such a variety shall be entered into the common catalogue of varieties of vegetable species as a ‘variety developed for growing under particular conditions whose seed shall be verified in accordance with Article 26 of Commission Directive 2009/145/EC’.

Article 22

Substantive requirements

1 In order to be accepted as a variety developed for growing under particular conditions, as referred to in Article 1(1)(b), a variety shall be with no intrinsic value for commercial crop production but developed for growing under particular conditions.

A variety shall be considered as having been developed for growing under particular conditions if it has been developed for growing under particular agro-technical, climatic or pedological conditions.

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 varieties developed for growing under particular conditions.

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 23

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 varieties developed for growing under particular conditions:

- (a) the description of the variety developed for growing under particular conditions 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 24

Exclusion of acceptance

A variety developed for growing under particular conditions 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 variety developed for growing under particular conditions, or it was deleted from that common catalogue of varieties of vegetable species 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 Regulation (EC) No 2100/94, by a national plant variety right, or if an application for such rights is pending.

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Article 25

Denomination

1 With respect to denominations of varieties developed for growing under particular conditions 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.