

DIRECTIVES

COMMISSION IMPLEMENTING DIRECTIVE (EU) 2022/1647

of 23 September 2022

amending Directive 2003/90/EC as regards a derogation for organic varieties of agricultural plant species suitable for organic production

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 2003/90/EC ⁽²⁾ aims to ensure that the varieties of agricultural plant species that Member States include in their national catalogues comply with the protocols established by the Community Plant Variety Office ('CPVO'). In particular, those protocols aim to ensure compliance with the rules concerning the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species to establish distinctness, uniformity and stability ('DUS'). For the species not covered by the CPVO protocols, that Directive aims to ensure compliance with test guidelines of the International Union for Protection of New Varieties of Plants ('UPOV').
- (2) Amongst others, varieties of agricultural plant species are to comply with the conditions, laid down in Annex III to Directive 2003/90/EC, concerning the examination of the value for cultivation and use ('VCU').
- (3) There is a need to ensure that producers can use organic varieties suitable for organic production resulting from organic breeding activities. Some of them meet the DUS criteria of all other varieties of the same species, but other varieties intended for organic production are characterised by a high level of genetic and phenotypical diversity between individual reproductive units.
- (4) Therefore, the standards for uniformity defined in the existing DUS protocols and guidelines of the CPVO and UPOV are not suitable for organic varieties for organic production, which are characterised by a high level of genetic and phenotypical diversity. Furthermore, there is a need to establish principles for the VCU examination that correspond to the demands of the organic sector.
- (5) It is therefore necessary to offer the possibility to deviate from the existing DUS examination protocols and to provide for requirements for VCU examination that are more adapted for organic varieties suitable for organic production.
- (6) Therefore, it should be possible to adjust the existing protocols for variety examination for certain species to meet the needs of the organic agriculture. It is therefore appropriate to derogate from certain provisions of Article 1 of Commission Directive 2003/90/EC and to lay down specific requirements for the VCU examination.
- (7) Member States should report, to the Commission and the other Member States, by 31 December of each year, until 31 December 2030, on the number of applications and results of the DUS and VCU examinations, in order to ensure a regular review of those requirements and further assess the need to amend, remove or also apply them to other species.

⁽¹⁾ OJ L 193, 20.7.2002, p. 1.

⁽²⁾ 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 (OJ L 254, 8.10.2003, p. 7).

- (8) Directive 2003/90/EC should therefore be amended accordingly.
- (9) Competent authorities and the professional operators concerned should have sufficient time to adequately prepare before national provisions transposing this Directive start applying.
- (10) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2003/90/EC

Directive 2003/90/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. As regards distinctness, uniformity and stability, and without prejudice to the second subparagraph:

- (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.

By way of derogation from the first subparagraph, as regards uniformity, the organic varieties suitable for organic production, which belong to the species listed in Annex IV, Part A, may comply instead with the conditions listed in Part B of that Annex.

Member States shall report, to the Commission and the other Member States, by 31 December of each year, until 31 December 2030, on the number of applications for variety registrations and results of the examinations for distinctness, uniformity and stability (DUS) concerning those organic varieties’;

(b) in paragraph 3, the following second and third subparagraphs are added:

‘By way of derogation from the first subparagraph, as regards the value for cultivation or use, organic varieties suitable for organic production, which belong to the species listed in Annex IV, Part A, may, comply instead with the conditions laid down in Part B of that Annex.’;

Member States shall report, to the Commission and the other Member States, by 31 December of each year, until 31 December 2030, on the number of applications and results of the examinations for the value of cultivation and use (VCU) concerning those organic varieties’;

(2) The text set out in the Annex to this Directive is added as Annexes IV and V.

Article 2

Transposition

1. Member States shall adopt and publish, by 30 June 2023 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 July 2023.

When Member States adopt those provisions, they shall contain a reference to this Directive or 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 national law, which they adopt in the field covered by this Directive.

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 23 September 2022.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

‘ANNEX IV

PART A

List of species referred to in the second subparagraph of Article 1(2)

Barley

Maize

Rye

Wheat

PART B

Specific provisions concerning tests for distinctness, uniformity and stability for organic varieties of agricultural plant species suitable for organic production**1. General rule**

The following shall apply to organic varieties of agricultural plant species suitable for organic production:

- 1.1. As regards distinctness and stability, all characteristics of the protocols and guidelines referred to in Annexes I and II shall be observed and described.
- 1.2. As regards uniformity, all characteristics of the protocols and guidelines referred to in Annexes I and II shall be observed and described and the following shall apply to the characteristics listed under point 2:
 - (a) those characteristics may be assessed in a less stringent way;
 - (b) where for those characteristics a derogation from the respective technical protocol is provided for in that point 2, the level of uniformity within the variety shall be similar to the level of uniformity of comparable varieties of common knowledge in the Union.

2. Derogation from technical protocols**2.1. Barley**

For the varieties belonging to the species barley (*Hordeum vulgare* L.), the following DUS characteristics of the CPVO protocol CPVO/TP-019/5 of the tested variety may deviate from the following DUS requirements for uniformity:

CPVO No 5 —	Flag leaf: anthocyanin colouration of auricles
CPVO No 8 —	Flag leaf: glaucosity of sheath
CPVO No 9 —	Awns: anthocyanin coloration of tips
CPVO No 10 —	Ear: glaucosity
CPVO No 12 —	Grain: anthocyanin coloration of nerves of lemma
CPVO No 16 —	Sterile spikelet: attitude
CPVO No 17 —	Ear: shape
CPVO No 20 —	Awn: length
CPVO No 21 —	Rachis: length of first segment
CPVO No 22 —	Rachis: curvature of first segment
CPVO No 23 —	Median spikelet: length of glume and its awn relative to grain
CPVO No 25 —	Grain: spiculation of inner lateral nerves of dorsal side of lemma

2.2. Maize

For the varieties belonging to the species maize (*Zea mays* L.) the following DUS characteristics of the CPVO protocol CPVO-TP/002/3 of the tested variety may deviate from the following DUS requirements for uniformity:

CPVO No 1 —	First leaf: anthocyanin coloration of sheath
CPVO No 2 —	First leaf: shape of apex
CPVO No 8 —	Tassel: anthocyanin coloration of glumes excluding base
CPVO No 9 —	Tassel: anthocyanin coloration of anthers
CPVO No 10 —	Tassel: angle between main axis and lateral branches
CPVO No 11 —	Tassel: curvature of lateral branches
CPVO No 15 —	Stem: anthocyanin coloration of brace roots
CPVO No 16 —	Tassel: density of spikelets
CPVO No 17 —	Leaf: anthocyanin coloration of sheath
CPVO No 18 —	Stem: anthocyanin coloration of internodes
CPVO No 19 —	Tassel: length of main axis above lowest lateral branch
CPVO No 20 —	Tassel: length of main axis above highest lateral branch
CPVO No 21 —	Tassel: length of lateral branch

2.3. Rye

For the varieties belonging to the species rye (*Secale cereale* L.), the following DUS characteristics of the CPVO protocol CPVO-TP/058/1 of the tested variety may deviate from the following DUS requirements for uniformity:

CPVO No 3 —	Coleoptile: anthocyanin coloration
CPVO No 4 —	Coleoptile: length
CPVO No 5 —	First leaf: length of sheath
CPVO No 6 —	First leaf: length of blade
CPVO No 8 —	Flag leaf: glaucosity of sheath
CPVO No 10 —	Leaf next to flag leaf: length of blade
CPVO No 11 —	Leaf next to flag leaf: width of blade
CPVO No 12 —	Ear: glaucosity
CPVO No 13 —	Stem: hairiness below ear

2.4. Wheat

For the varieties belonging to the species wheat (*Triticum aestivum* L. *subsp. aestivum*.), the following DUS characteristics of the CPVO protocol CPVO-TP/003/5 of the tested variety may deviate from the following DUS requirements for uniformity:

CPVO No 3 —	Coleoptile: anthocyanin coloration
CPVO No 6 —	Flag leaf: anthocyanin coloration of auricles
CPVO No 8 —	Flag leaf: glaucosity of sheath
CPVO No 9 —	Flag leaf: glaucosity of blade
CPVO No 10 —	Ear: glaucosity
CPVO No 11 —	Culm: glaucosity of neck
CPVO No 20 —	Ear: shape in profile
CPVO No 21 —	Apical rachis segment: area of hairiness on convex surface

CPVO No 22 —	Lower glume: shoulder width
CPVO No 23 —	Lower glume: shoulder shape
CPVO No 24 —	Lower glume: length of beak
CPVO No 25 —	Lower glume: shape of beak
CPVO No 26 —	Lower glume: area of hairiness on internal surface

ANNEX V

PART A

List of species referred to in the second subparagraph of Article 1(3)

Barley
Maize
Rye
Wheat

PART B

Conditions to be fulfilled – Value of cultivation and use for organic varieties suitable for organic production

1. The examination for cultivation and use shall be conducted under organic conditions, in accordance with the provisions of Regulation (EU) 2018/848, and in particular with the general principles under Article 5(d), (e), (f) and (g) and plant production rules under Article 12.
2. The specific needs and objectives of organic agriculture shall be taken into account in variety examination and in the evaluation of examination results. Disease resistance or tolerance, and adaptation to diverse local soil and climate conditions, shall be examined.
3. Where competent authorities are not able to provide for an examination under organic conditions, or for the examination of certain characteristics, including disease susceptibility, testing may be carried out pursuant to one of the following points:
 - (a) under the supervision of the competent authority on organic breeders premises or organic farms;
 - (b) under low-input conditions and with minimum treatments;
 - (c) in another Member State, if bilateral agreements between Member States have been concluded to achieve testing under organic conditions.

The value of a variety for cultivation or use shall be considered as satisfactory if, when compared to other organic varieties suitable for organic production accepted in the catalogue of the Member State in question, its qualities, taken as a whole, offer, at least as far as production in any given region is concerned, a clear improvement either for cultivation or for uses which can be made of the crops or the products derived therefrom. Superior characteristics for the agricultural production, as regards farming practices and food or feed production that present advantages for organic agriculture, shall be considered as particularly valuable for the VCU examination.

4. The competent authority shall provide for different examination conditions that are adapted to specific needs of organic agriculture and shall examine to the extent of its capacity specific traits and characteristics, at the applicant's request, if reproducible methods are available.'
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