

**COMMISSION IMPLEMENTING DIRECTIVE (EU) 2023/1438****of 10 July 2023****amending Directives 2003/90/EC and 2003/91/EC as regards the protocols for the examination of certain varieties of agricultural plant species and vegetable species****(Text with EEA relevance)**

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 <sup>(1)</sup>, and in particular Article 7(2), points (a) and (b), thereof,

Having regard to Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed <sup>(2)</sup>, and in particular Article 7(2), points (a) and (b), thereof,

Whereas:

- (1) Commission Directives 2003/90/EC <sup>(3)</sup> and 2003/91/EC <sup>(4)</sup> aim to ensure that the varieties of agricultural plant species and vegetable species that Member States include in their national catalogues comply with the protocols established by the Community Plant Variety Office ('CPVO'). In particular, those Directives 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 and vegetable species. For the species not covered by the CPVO protocols those Directives aim to ensure compliance with guidelines of the International Union for Protection of New Varieties of Plants ('UPOV').
- (2) The CPVO and UPOV have updated existing protocols, in particular as regards hemp, garlic, kohlrabi, leaf chicory, watermelon and turnip. Those developments should be reflected in Union law.
- (3) Directives 2003/90/EC and 2003/91/EC should therefore be amended accordingly.
- (4) Member States should apply the new rules from 1 January 2024. However, in order not to disrupt official examinations, the following should apply. For varieties that were not yet accepted for inclusion in the Common Catalogue of varieties of agricultural plant or vegetable species, official examinations, which have started prior to 1 January 2024 and are not yet finalised, should continue to be made in accordance with Directive 2003/90/EC or Directive 2003/91/EC as they stood before being amended by this Directive.

<sup>(1)</sup> OJ L 193, 20.7.2002, p. 1.

<sup>(2)</sup> OJ L 193, 20.7.2002, p. 33.

<sup>(3)</sup> 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).

<sup>(4)</sup> 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 (OJ L 254, 8.10.2003, p. 11).

- (5) 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**

Annexes I and II to Directive 2003/90/EC are replaced by the text set out in Part A of the Annex to this Directive.

*Article 2*

**Amendments to Directive 2003/91/EC**

The Annexes to Directive 2003/91/EC are replaced by the text set out in Part B of the Annex to this Directive.

*Article 3*

**Transposition**

1. Member States shall adopt and publish, by 31 December 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 January 2024.

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 4*

**Transitional measures**

For official examinations of varieties started before 1 January 2024 but which are not yet finalised, Directives 2003/90/EC and 2003/91/EC shall apply as they stood before being amended by this Directive.

*Article 5*

**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 6*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 10 July 2023.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

## Part A

## 'ANNEX I

**List of species referred to in Article 1(2), point (a), which are to comply with CPVO technical protocols (\*)**

Scientific name	Common name	CPVO protocol
<i>Dactylis glomerata</i> L.	Cocksfoot	TP 31/1 of 25.3.2021
<i>Festuca arundinacea</i> Schreb.	Tall fescue	TP 39/1 of 1.10.2015
<i>Festuca filiformis</i> Pourr.	Fine-leaved sheep's fescue	TP 67/1 of 23.6.2011
<i>Festuca ovina</i> L.	Sheep's fescue	TP 67/1 of 23.6.2011
<i>Festuca pratensis</i> Huds.	Meadow fescue	TP 39/1 of 1.10.2015
<i>Festuca rubra</i> L.	Red fescue	TP 67/1 of 23.6.2011
<i>Festuca trachyphylla</i> (Hack.) Hack.	Hard fescue	TP 67/1 of 23.6.2011
<i>Lolium multiflorum</i> Lam.	Italian ryegrass	TP 4/2 of 19.3.2019
<i>Lolium perenne</i> L.	Perennial ryegrass	TP 4/2 of 19.3.2019
<i>Lolium x hybridum</i> Hausskn.	Hybrid ryegrass	TP 4/2 of 19.3.2019
<i>Medicago sativa</i> L.	Lucerne	TP /6/1 Corr. of 22.12.2021
<i>Medicago x varia</i> T. Martyn	Sand lucerne	TP 6/1 Corr. of 22.12.2021
<i>Phleum nodosum</i> L.	Small timothy	TP 34/1 of 22.12.2021
<i>Phleum pratense</i> L.	Timothy	TP 34/1 of 22.12.2021
<i>Pisum sativum</i> L. (partim)	Field pea	TP 7/2 Rev. 3 Corr. of 6.3.2020
<i>Poa pratensis</i> L.	Smooth-stalked meadow grass	TP 33/1 of 15.3.2017
<i>Trifolium pratense</i> L.	Red clover	TP 5/1 of 22.12.2021
<i>Vicia faba</i> L.	Field bean	TP 8/1 of 19.3.2019
<i>Vicia sativa</i> L.	Common vetch	TP 32/1 of 19.4.2016
<i>Brassica napus</i> L. var. <i>napobrassica</i> (L.) Rchb.	Swede	TP 89/1 of 11.3.2015
<i>Raphanus sativus</i> L. var. <i>oleiformis</i> Pers.	Fodder radish	TP 178/1 of 15.3.2017
<i>Brassica napus</i> L. (partim)	Swede rape	TP 36/3 of 21.4.2020
<i>Cannabis sativa</i> L.	Hemp	TP 276/2 Rev of 30.12.2022
<i>Glycine max</i> (L.) Merr.	Soya bean	TP 80/1 of 15.3.2017
<i>Gossypium</i> spp.	Cotton	TP 88/2 of 11.12.2020
<i>Helianthus annuus</i> L.	Sunflower	TP 81/1 of 31.10.2002
<i>Linum usitatissimum</i> L.	Flax/Linseed	TP 57/2 of 19.3.2014
<i>Sinapis alba</i> L.	White mustard	TP 179/1 of 15.3.2017

<i>Avena nuda</i> L.	Small naked oat, Hulless oat	TP 20/3 of 6.3.2020
<i>Avena sativa</i> L. (includes <i>A. byzantina</i> K. Koch)	Oats and Red oat	TP 20/3 of 6.3.2020
<i>Hordeum vulgare</i> L.	Barley	TP 19/5 of 19.3.2019
<i>Oryza sativa</i> L.	Rice	TP 16/3 of 1.10.2015
<i>Secale cereale</i> L.	Rye	TP 58/1 Rev Corr. of 27.4.2022
<i>Sorghum bicolor</i> (L.) Moench subsp. <i>bicolor</i>	Sorghum	TP 122/1 of 19.3.2019
<i>Sorghum bicolor</i> (L.) Moench subsp. <i>drummondii</i> (Steud.) de Wet ex Davidse	Sudan grass	TP 122/1 of 19.3.2019
<i>Sorghum bicolor</i> (L.) Moench subsp. <i>bicolor</i> x <i>Sorghum bicolor</i> (L.) Moench subsp. <i>drummondii</i> (Steud.) de Wet ex Davidse	Hybrids resulting from the crossing of <i>Sorghum bicolor</i> subsp. <i>bicolor</i> and <i>Sorghum bicolor</i> subsp. <i>drummondii</i>	TP 122/1 of 19.3.2019
<i>xTriticosecale</i> Wittm. ex A. Camus	Hybrids resulting from the crossing of a species of the genus <i>Triticum</i> and a species of the genus <i>Secale</i>	TP 121/3 Corr. of 27.4.2022
<i>Triticum aestivum</i> L. subsp. <i>aestivum</i>	Wheat	TP 3/5 of 19.3.2019
<i>Triticum turgidum</i> L. subsp. <i>durum</i> (Desf.) van Slageren	Durum wheat	TP 120/3 of 19.3.2014
<i>Zea mays</i> L. (partim)	Maize	TP 2/3 of 11.3.2010
<i>Solanum tuberosum</i> L.	Potato	TP 23/3 of 15.3.2017

(\*) The text of these protocols can be found on the CPVO web site ([www.cpvo.europa.eu](http://www.cpvo.europa.eu)).

## ANNEX II

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

<b>Scientific name</b>	<b>Common name</b>	<b>UPOV guideline</b>
<i>Beta vulgaris</i> L.	Fodder beet	TG/150/3 of 4.11.1994
<i>Agrostis canina</i> L.	Velvet bent	TG/30/6 of 12.10.1990
<i>Agrostis gigantea</i> Roth	Red top	TG/30/6 of 12.10.1990
<i>Agrostis stolonifera</i> L.	Creeping bent grass	TG/30/6 of 12.10.1990
<i>Agrostis capillaris</i> L.	Brown top	TG/30/6 of 12.10.1990
<i>Bromus catharticus</i> Vahl	Rescue grass	TG/180/3 of 4.4.2001
<i>Bromus sitchensis</i> Trin.	Alaska brome grass	TG/180/3 of 4.4.2001
<i>xFestulolium</i> Asch. et Graebn.	Hybrids resulting from the crossing of a species of the genus <i>Festuca</i> with a species of the genus <i>Lolium</i>	TG/243/1 of 9.4.2008
<i>Lotus corniculatus</i> L.	Birdsfoot trefoil	TG/193/1 of 9.4.2008
<i>Lupinus albus</i> L.	White lupin	TG/66/4 of 31.3.2004
<i>Lupinus angustifolius</i> L.	Narrow-leaved lupin	TG/66/4 of 31.3.2004
<i>Lupinus luteus</i> L.	Yellow lupin	TG/66/4 of 31.3.2004
<i>Medicago doliata</i> Carmign.	Straight-spined medic	TG/228/1 of 5.4.2006
<i>Medicago italica</i> (Mill.) Fiori	Disc medic	TG/228/1 of 5.4.2006
<i>Medicago littoralis</i> Rohde ex Loisel.	Shore medic/Strand medic	TG/228/1 of 5.4.2006
<i>Medicago lupulina</i> L.	Trefoil	TG/228/1 of 5.4.2006
<i>Medicago murex</i> Willd.	Sphere medic	TG/228/1 of 5.4.2006
<i>Medicago polymorpha</i> L.	Bur medic	TG/228/1 of 5.4.2006
<i>Medicago rugosa</i> Desr.	Wrinkled medic/Gama medic	TG/228/1 of 5.4.2006
<i>Medicago scutellata</i> (L.) Mill.	Snail medic/Shield medic	TG/228/1 of 5.4.2006
<i>Medicago truncatula</i> Gaertn.	Barrel medic	TG/228/1 of 5.4.2006
<i>Trifolium repens</i> L.	White clover	TG/38/7 of 9.4.2003
<i>Trifolium subterraneum</i> L.	Subterranean clover	TG/170/3 of 4.4.2001
<i>Phacelia tanacetifolia</i> Benth.	California Bluebell	TG/319/1 of 5.4.2017
<i>Arachis hypogaea</i> L.	Groundnut/Peanut	TG/93/4 of 9.4.2014
<i>Brassica juncea</i> (L.) Czern	Brown mustard	TG/335/1 of 17.12.2020
<i>Brassica rapa</i> L. var. <i>silvestris</i> (Lam.) Briggs	Turnip rape	TG/185/3 of 17.4.2002
<i>Carthamus tinctorius</i> L.	Safflower	TG/134/3 of 12.10.1990
<i>Papaver somniferum</i> L.	Poppy	TG/166/4 of 9.4.2014

(\*) The text of these guidelines can be found on the UPOV web site ([www.upov.int](http://www.upov.int))

## Part B

## 'ANNEX I

## List of species referred to in Article 1(2), point (a), which are to comply with CPVO technical protocols (\*)

Scientific name	Common name	CPVO protocol
<i>Allium cepa</i> L. (Cepa group)	Onion and Echalion	TP 46/2 of 1.4.2009
<i>Allium cepa</i> L. (Aggregatum group)	Shallot	TP 46/2 of 1.4.2009
<i>Allium fistulosum</i> L.	Japanese bunching onion or Welsh onion	TP 161/1 of 11.3.2010
<i>Allium porrum</i> L.	Leek	TP 85/2 of 1.4.2009
<i>Allium sativum</i> L.	Garlic	TP 162/2 of 30.5.2023
<i>Allium schoenoprasum</i> L.	Chives	TP 198/2 of 11.3.2015
<i>Apium graveolens</i> L.	Celery	TP 82/1 of 13.3.2008
<i>Apium graveolens</i> L.	Celeriac	TP 74/1 of 13.3.2008
<i>Asparagus officinalis</i> L.	Asparagus	TP 130/2 of 16.2.2011
<i>Beta vulgaris</i> L.	Beetroot including Cheltenham beet	TP 60/1 of 1.4.2009
<i>Beta vulgaris</i> L.	Spinach beet or Chard	TP 106/2 of 14.4.2021
<i>Brassica oleracea</i> L.	Curly kale	TP 90/1 of 16.2.2011
<i>Brassica oleracea</i> L.	Cauliflower	TP 45/2 Rev. 2 of 21.3.2018
<i>Brassica oleracea</i> L.	Sprouting broccoli or Calabrese	TP 151/2 Rev. 2 of 21.4.2020
<i>Brassica oleracea</i> L.	Brussels sprouts	TP 54/2 Rev. of 15.3.2017
<i>Brassica oleracea</i> L.	Kohlrabi	TP 65/2 of 30.5.2023
<i>Brassica oleracea</i> L.	Savoy cabbage, White cabbage and Red cabbage	TP 48/3 Rev. 2 of 25.3.2021
<i>Brassica rapa</i> L.	Chinese cabbage	TP 105/1 of 13.3.2008
<i>Capsicum annuum</i> L.	Chilli or Pepper	TP 76/2 Rev. 2 Corr. of 21.4.2020
<i>Cichorium endivia</i> L.	Curled-leaved endive and Plain-leaved endive	TP 118/3 of 19.3.2014
<i>Cichorium intybus</i> L.	Industrial chicory	TP 172/2 of 1.12.2005
<i>Cichorium intybus</i> L.	Leaf chicory	TP 154/2 Rev. of 31.3.2023
<i>Cichorium intybus</i> L.	Witloof chicory	TP 173/2 of 21.3.2018
<i>Citrullus lanatus</i> (Thunb.) Matsum. et Nakai	Watermelon	TP 142/2 Rev. 2 of 31.3.2023
<i>Cucumis melo</i> L.	Melon	TP 104/2 Rev. 2 Corr. of 25.3.2021
<i>Cucumis sativus</i> L.	Cucumber and Gherkin	TP 61/2 Rev. 2 of 19.3.2019
<i>Cucurbita maxima</i> Duchesne	Gourd	TP 155/1 of 11.3.2015

<i>Cucurbita pepo</i> L.	Marrow or Courgette	TP 119/1 Rev. of 19.3.2014
<i>Cynara cardunculus</i> L.	Globe artichoke and Cardoon	TP 184/2 Rev. of 6.3.2020
<i>Daucus carota</i> L.	Carrot and Fodder carrot	TP 49/3 Corr. of 13.3.2008
<i>Foeniculum vulgare</i> Mill.	Fennel	TP 183/2 of 14.4.2021
<i>Lactuca sativa</i> L.	Lettuce	TP 13/6 Rev. 3 of 27.4.2022
<i>Solanum lycopersicum</i> L.	Tomato	TP 44/4 Rev. 5 of 14.4.2021
<i>Petroselinum crispum</i> (Mill.) Nyman ex A. W. Hill	Parsley	TP 136/1 Corr. of 21.3.2007
<i>Phaseolus coccineus</i> L.	Runner bean	TP 9/1 of 21.3.2007
<i>Phaseolus vulgaris</i> L.	Dwarf French bean and Climbing French bean	TP 12/4 of 27.2.2013
<i>Pisum sativum</i> L. (partim)	Wrinkled pea, Round pea and Sugar pea	TP 7/2 Rev. 3 Corr. of 6.3.2020
<i>Raphanus sativus</i> L.	Radish, Black radish	TP 64/2 Rev. Corr. of 11.3.2015
<i>Rheum rhabarbarum</i> L.	Rhubarb	TP 62/1 of 19.4.2016
<i>Scorzonera hispanica</i> L.	Scorzonera or Black salsify	TP 116/1 of 11.3.2015
<i>Solanum melongena</i> L.	Aubergine or Egg plant	TP 117/1 of 13.3.2008
<i>Spinacia oleracea</i> L.	Spinach	TP 55/5 Rev. 4 of 27.4.2022
<i>Valerianella locusta</i> (L.) Laterr.	Corn salad or Lamb's lettuce	TP 75/2 of 21.3.2007
<i>Vicia faba</i> L. (partim)	Broad bean	TP 206/1 of 25.3.2004
<i>Zea mays</i> L. (partim)	Sweet corn and Pop corn	TP 2/3 of 11.3.2010
<i>Solanum habrochaites</i> S. Knapp & D.M. Spooner; <i>Solanum lycopersicum</i> L. x <i>Solanum habrochaites</i> S. Knapp & D.M. Spooner; <i>Solanum lycopersicum</i> L. x <i>Solanum peruvianum</i> (L.) Mill.; <i>Solanum lycopersicum</i> L. x <i>Solanum cheesmaniae</i> (L. Ridley) Fosberg; <i>Solanum pimpinellifolium</i> L. x <i>Solanum habrochaites</i> S. Knapp & D.M. Spooner	Tomato rootstocks	TP 294/1 Rev. 5 of 14.4.2021
<i>Cucurbita maxima</i> Duchesne x <i>Cucurbita moschata</i> Duchesne	Interspecific hybrids of <i>Cucurbita maxima</i> Duchesne x <i>Cucurbita moschata</i> Duchesne for use as rootstocks	TP 311/1 of 15.3.2017

(\*) The text of these protocols can be found on the CPVO web site ([www.cpvo.europa.eu](http://www.cpvo.europa.eu)).



## ANNEX II

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

Scientific name	Common name	UPOV guideline
<i>Brassica rapa</i> L.	Turnip	TG/37/11 of 23.9.2022

(\*) The text of these guidelines can be found on the UPOV web site ([www.upov.int](http://www.upov.int)).