

COMMISSION IMPLEMENTING REGULATION (EU) 2021/384**of 3 March 2021****on the suitability of the denominations of varieties of agricultural plant species and vegetable species and repealing Regulation (EC) No 637/2009****(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 ⁽¹⁾, and in particular the second subparagraph of Article 9(6) thereof,

Having regard to Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed ⁽²⁾, and in particular the second subparagraph of Article 9(6) thereof,

Whereas:

- (1) Directives 2002/53/EC and 2002/55/EC lay down general rules in relation to the suitability of variety denominations by means of a reference to Article 63 of Council Regulation (EC) No 2100/94 ⁽³⁾.
- (2) In accordance with Article 63 of Regulation (EC) No 2100/94 in order for a plant variety to be approved, its variety denomination needs to be considered suitable by the Community Plant Variety Office (CPVO). A variety denomination is suitable if there is no impediment in accordance with paragraphs 3 or 4 of that Article.
- (3) Commission Regulation (EC) No 637/2009 ⁽⁴⁾ establishes detailed rules for the application of certain criteria set out in Article 63 of Regulation (EC) No 2100/94 as to the suitability of denominations of varieties of agricultural species and vegetable plant species for purposes of the application of the first subparagraph of Article 9(6) of Directive 2002/53/EC and of the first subparagraph of Article 9(6) of Directive 2002/55/EC.
- (4) The CPVO and the Member States established an expert group, which developed and amended guidelines on the suitability of denominations under Article 63 of Regulation (EC) No 2100/94 ('Guidelines on variety denominations' ⁽⁵⁾). In order to ensure consistency as regards the application of the criteria provided for by Article 63 of Regulation (EC) No 2100/94, it is appropriate to provide for further clarifications resulting from the Guidelines on variety denominations.
- (5) Regulation (EC) No 637/2009 has been amended several times. In view of the need to amend the existing rules and in the interest of legal certainty, that Regulation should be repealed and replaced by this Regulation.
- (6) A variety denomination is to be approved, unless it is unsuitable due to impediments. Under Article 63 of Regulation (EC) No 2100/94 the use of a variety denomination is to be precluded in case of a prior right of a third party, difficulties as regards recognition or reproduction, identical denominations to a variety of the same or closely related species, designations commonly used for the marketing of goods, where the denomination is liable to give offence in one of the Member States or is contrary to public policy, in case of confusion due to visual, phonetical or conceptual similarity or of misleading content.

⁽¹⁾ OJ L 193, 20.7.2002, p. 1.

⁽²⁾ OJ L 193, 20.7.2002, p. 33.

⁽³⁾ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, 1.9.1994, p. 1).

⁽⁴⁾ Commission Regulation (EC) No 637/2009 of 22 July 2009 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species (OJ L 191, 23.7.2009, p. 10).

⁽⁵⁾ CPVO Guidelines on variety denominations, Meeting 1-of the Administrative Council of (2018), DOC-AC-2018-1-7.

- (7) In order to give sufficient time to competent authorities for the application of the new rules, this Regulation should apply from 1 January 2022.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes detailed rules for the application of the criteria set out in Article 63 of Regulation (EC) No 2100/94 as to the suitability of the denominations of varieties of agricultural plant species and vegetable species, for the purposes of the first subparagraph of Article 9(6) of Directive 2002/53/EC and of the first subparagraph of Article 9(6) of Directive 2002/55/EC.

Article 2

Suitability of variety denominations

1. A variety denomination shall be suitable, if there is no impediment related to its designation.
2. There is an impediment related to the designation of a variety denomination in cases where:
 - (a) the use of the variety denomination in the territory of the Union is precluded where an objection of a third party holding a prior right is upheld, as set out in Article 3(1);
 - (b) the variety denomination conflicts with geographical indications, designations of origin or traditional specialties guaranteed, as set out in Article 3(2);
 - (c) the variety denomination may cause its users difficulties as regards its recognition or reproduction, as set out in Article 4;
 - (d) the variety denomination is identical or may be confused with a variety denomination under which another variety of the same or of a closely related species is entered in an official register of plant varieties or under which material of another variety has been marketed, as set out in Article 5;
 - (e) the variety denomination could cause confusion due to its visual, phonetical or conceptual similarity with the denomination of a variety of the same or closely related species, as set out in Article 5;
 - (f) the variety denomination is identical or may be confused with designations commonly used for the marketing of goods, or which have to be kept free under other legislation, as set out in Article 6;
 - (g) the variety denomination is liable to mislead or to cause confusion, as set out in Article 7.

Article 3

Prior right of a third party

1. There is an impediment due to the prior right of a third party, where an objection of a third party, holding a trademark, against the designation of the variety denomination in the territory of the Union, is upheld by any competent authority. That impediment concerns trademarks which:
 - (a) have been registered in one or more Member States or in the Union before the registration of the variety denomination;
 - (b) are identical or similar to the variety denomination; and

(c) are registered in relation to goods consisting of the same or closely related species of the variety concerned.

2. In the case of geographical indications, designations of origin or traditional specialties guaranteed for agricultural products and foodstuffs, spirit drinks, aromatised wines and wine products as a prior right of a third party, a variety denomination in the territory of the Union shall be precluded where the variety denomination would breach:

- (a) Article 13 or 24 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council ⁽⁶⁾;
- (b) Article 103 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽⁷⁾;
- (c) Article 20 of Regulation (EU) No 251/2014 of the European Parliament and of the Council ⁽⁸⁾;
- (d) Article 21(2) of Regulation (EU) 2019/787 of the European Parliament and of the Council ⁽⁹⁾.

3. An impediment to the suitability of a denomination due to the prior right referred to in paragraph 1 shall cease to exist where a written consent of the holder of the prior right to the use of the denomination in relation to the concerned variety has been obtained, provided that such a consent is not liable to mislead the public as to the true origin of the product.

4. In the case of a prior right of the applicant in respect of the whole or part of the proposed variety denomination, Article 18(1) of Regulation (EC) No 2100/94 shall apply *mutatis mutandis*.

Article 4

Difficulties as regards recognition or reproduction of a variety denomination

1. There is an impediment due to difficulties as regards recognition or reproduction of a variety denomination where a variety denomination causes its users difficulties as regards its recognition or reproduction.

2. It shall be considered that a variety denomination causes its users difficulties as regards its recognition or reproduction in the following cases:

- (a) it consists of, or contains, comparatives or superlatives;
- (b) it consists of, or contains, botanical names of species within the group either of agricultural plant species or of vegetable plant species, to which the variety belongs;
- (c) it consists of, or contains, breeding and technical terms, unless their use in combination with other terms would not prevent the recognition of the variety denomination as such;
- (d) it consists exclusively of a geographical name that has acquired a reputation for the species concerned;
- (e) it consists of a single letter or numeral or numerals only, unless this represents an established practice for designating certain varieties;

⁽⁶⁾ Regulation (EU) No 1151/2012 of the European Parliament and the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

⁽⁷⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁽⁸⁾ Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

⁽⁹⁾ Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ L 130, 17.5.2019, p. 1).

- (f) it consists of, or contains, too many words or elements, unless the flow of the wording makes it easily recognizable;
- (g) it contains a punctuation mark or other symbol, an upper and lower case mixture (except where the first letter is in upper case and the rest of the denomination in lower case), subscript, superscript or a design or a figurative element (except the apostrophe ('), the comma (,), up to two non-adjacent exclamation marks (!), the period or full-stop (.), or the hyphen (-), the forward slash (/) or backward slash (\) symbols);
- (h) it contains, or consists of, a subscript, a superscript or a design, a logo or a figurative element.

Article 5

Denomination that is identical or may be confused with the denomination of another variety

1. There is an impediment for the designation of a variety denomination where it is identical or may be confused with:
 - (a) a variety denomination under which another variety of the same or a closely related species is entered in an official register of varieties; or
 - (b) a variety denomination under which material of another variety has been marketed in a Member State or in the territory of a contracting party of the International Union for the Protection of New Varieties of Plants (UPOV);

unless the other variety no longer remains in existence and its denomination has acquired no special significance.

2. In order to establish whether there is a confusion for the purposes of paragraph 1, the competent authority shall first analyse each of the visual, phonetical and conceptual aspects separately and then make an overall assessment, taking also into account denominations of varieties of the same or a closely related species, provided that the varieties concerned referred to in this paragraph and in paragraph 1 have been either the subject of a plant variety right or of an application thereof, or officially accepted for marketing, in the territory of one of the following:

- (a) the Union;
- (b) the European Economic Area;
- (c) a contracting party of the UPOV;
- (d) a Member of the Organisation for Economic Cooperation and Development (OECD).

3. For the purposes of this Article, the following definitions apply:

- (a) 'closely related species' means the species listed in the Annex;
- (b) 'official register of varieties' means the Common catalogue of Varieties of Agricultural Plant Species, referred to in Article 17 of Directive 2002/53/EC or in Article 17 of Directive 2002/55/EC, or the OECD Variety List, or a plant variety register of a Member of UPOV;
- (c) 'a variety no longer remains in existence' means a variety of which material no longer exists;
- (d) 'the denomination has acquired no special significance' means a situation where the denomination of a variety which has been entered in an official register of varieties is considered to have lost special significance on the expiry of a 10-year period after deletion from that register, unless there are exceptional circumstances.

Article 6

Designations commonly used for the marketing of goods

1. There is an impediment to the designation of a variety denomination where a variety denomination is identical or may be confused with designations which are commonly used for the marketing of goods or which have to be kept free under other legislation.

2. Designations which are commonly used for the marketing of goods or which have to be kept free under other legislation shall be:

- (a) currency denominations;
- (b) terms associated with weights and measures;
- (c) expressions and terms that are not to be used for other purposes than those envisaged by the legislation of the Union or of a Member State.

Article 7

Misleading content

1. There is an impediment for the designation of a variety denomination where it is liable to mislead or to cause confusion concerning the characteristics, the value or the identity of the variety, or the identity of the breeder or of any other party to the proceedings.

2. It shall be considered that a variety denomination is liable to mislead or to cause confusion if:

- (a) it conveys a false impression that the variety is related to, or derived from, another specific variety;
- (b) it conveys a false impression that the variety has a particular characteristic or value;
- (c) it refers to a specific characteristic or value in a way which conveys a false impression that only that variety possesses that specific characteristic or value, whereas other varieties of the same species may possess the same characteristic or value;
- (d) it is similar to a well-known trading name other than a registered trademark or variety denomination;
- (e) it suggests that the variety is another variety;
- (f) it conveys a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety or the breeder;
- (g) it consists of, or contains:
 - (i) comparatives or superlatives which may be deceptive as to the characteristics of the variety;
 - (ii) the botanical or common names of species, within the group either of agricultural plant species or of vegetable plant species, to which the variety belongs;
 - (iii) the name of a natural or legal person, or a reference thereto, so as to convey a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety or the breeder;
- (h) it includes a geographical name that is likely to deceive the user as to the characteristics or the value for cultivation and use of the variety.

Article 8

Repeal of Regulation (EC) No 637/2009

Regulation (EC) No 637/2009 is repealed.

However, it shall continue to apply to variety denominations which have been proposed by the applicant to the competent authority for their approval before 1 January 2022.

Article 9

Entry into force and application

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

It shall apply from 1 January 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 March 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Definition of closely related species within the meaning of Article 5(3)

For the purpose of defining 'closely related species', as referred to in Article 5(3), the following shall apply:

- (a) if there is more than one class within a genus, the list of classes in part I shall apply;
- (b) if classes encompass more than one genus, the list of classes in part II shall apply;
- (c) as a general rule, for genera and species not covered by the lists of classes in parts I and II, a genus is considered to be a class.

PART I

CLASSES WITHIN A GENUS

Classes	Botanical names
Class 1.1:	<i>Brassica oleracea</i>
Class 1.2:	<i>Brassica</i> other than <i>Brassica oleracea</i>
Class 2.1:	<i>Beta vulgaris</i> L. var. <i>alba</i> DC., <i>Beta vulgaris</i> L. var. <i>altissima</i>
Class 2.2:	<i>Beta vulgaris</i> ssp. <i>vulgaris</i> var. <i>conditiva</i> Alef. (syn.: <i>B. vulgaris</i> L. var. <i>rubra</i> L.), <i>B. vulgaris</i> L. var. <i>cicla</i> L., <i>B. vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>vulgaris</i> .
Class 2.3:	<i>Beta</i> other than classes 2.1 and 2.2.
Class 3.1:	<i>Cucumis sativus</i>
Class 3.2:	<i>Cucumis melo</i>
Class 3.3:	<i>Cucumis</i> other than classes 3.1 and 3.2
Class 4.1:	<i>Solanum tuberosum</i> L.
Class 4.2:	Tomato & Tomato rootstocks: <ul style="list-style-type: none"> — <i>Solanum lycopersicum</i> L. (<i>Lycopersicon esculentum</i> Mill.) — <i>Solanum cheesmaniae</i> (L. Ridley) Fosberg (<i>Lycopersicon cheesmaniae</i> L. Riley) — <i>Solanum chilense</i> (Dunal) Reiche (<i>Lycopersicon chilense</i> Dunal) — <i>Solanum chmielewskii</i> (C.M. Rick et al.) D.M. Spooner et al. (<i>Lycopersicon chmielewskii</i> C. M. Rick et al.) — <i>Solanum galapagense</i> S.C. Darwin & Peralta (<i>Lycopersicon cheesmaniae</i> f. <i>minor</i> (Hook. f.) C. H. Müll.) (<i>Lycopersicon cheesmaniae</i> var. <i>minor</i> (Hook. f.) D. M. Porter) — <i>Solanum habrochaites</i> S. Knapp & D.M. Spooner (<i>Lycopersicon agrimoniifolium</i> Dunal) (<i>Lycopersicon hirsutum</i> Dunal) (<i>Lycopersicon hirsutum</i> f. <i>glabratum</i> C. H. Müll.) — <i>Solanum pennellii</i> Correll (<i>Lycopersicon pennellii</i> (Correll) D'Arcy) — <i>Solanum peruvianum</i> L. (<i>Lycopersicon dentatum</i> Dunal) (<i>Lycopersicon peruvianum</i> (L.) Mill.) — <i>Solanum pimpinellifolium</i> L. (<i>Lycopersicon pimpinellifolium</i> (L.) Mill.) (<i>Lycopersicon racemigerum</i> Lange) and hybrids between those species
Class 4.3:	<i>Solanum melongena</i> L.
Class 4.4:	<i>Solanum</i> other than classes 4.1, 4.2 and 4.3

PART II

CLASSES ENCOMPASSING MORE THAN ONE GENUS

Classes	Botanical names
Class 201:	<i>Secale, Triticosecale, Triticum</i>
Class 203 *:	<i>Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum</i> and <i>Poa</i>
Class 204 *:	<i>Lotus, Medicago, Ornithopus, Onobrychis, Trifolium</i>
Class 205:	<i>Cichorium, Lactuca</i>

* Classes 203 and 204 are not solely established on the basis of closely related species