



GUIDELINES

On Variety Denominations

with

EXPLANATORY NOTES

on

Article 63 of Council Regulation (EC) 2100/94 of 27 July 1994 on Community plant variety rights¹

(Consolidated with the explanatory text adopted by the Office)

The explanatory notes are proposed as a tool to help interpreting the guidelines adopted by the Administrative Council of the Office pursuant to Article 30 of Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 (hereafter the Basic Regulation) as regards proceedings before the Community Plant Variety Office (hereinafter referred to as “the Proceedings Regulation”). They have been drafted by the CPVO to bring together, systematically, the principles of practice developed by the competent Committee of the Office after having consulted the European Commission, EU Member States and breeders’ associations.

Their purpose is to help applicants to formulate a denomination proposal according to Article 63 of Council Regulation 2100/94 and to make it easier for national authorities to analyse the suitability of proposals for denominations.

The Administrative Council of the Office had the opportunity to comment on these explanatory notes but did not adopt them formally.

Below, you will find under each article **in bold the text of the relevant Article of the Basic Regulation** followed by the text of the guidelines highlighted in blue, the text of the explanatory notes highlighted in yellow and the examples highlighted in orange.

THE ADMINISTRATIVE COUNCIL OF THE COMMUNITY PLANT VARIETY OFFICE,

Having regard to the need to promote the harmonisation of rules governing variety denominations throughout the European Union for both listing and plant variety rights.

Having regard to Article 20 of the 1991 act of the UPOV Convention on variety denominations.

Having regard to Commission Implementing Regulation (EU) No 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.

Acting pursuant to Article 30 of Commission Regulation (EC) No 874/2009, which requires the said Administrative Council to adopt guidelines establishing uniform and definitive criteria for determining impediments to the generic designation of a variety denomination referred to in Article 63(3) and (4) of Council Regulation (EC) No 2100/94,

HAS ADOPTED THE FOLLOWING GUIDELINES



Article 1

Introduction

In considering whether there is an impediment to the approval of a variety denomination under Article 63 of Council Regulation (EC) No 2100/94, the Community Plant Variety Right Office ("the Office") shall have regard to the guidelines set out below. Below each Article, the relevant sub-paragraph of Article 63(3) and 63(4) of Council Regulation (EC) No 2100/94 is indicated.

Any person who offers or disposes of to others for commercial purposes variety constituents must use the variety denomination. In the following articles, reference to variety should be understood as propagating material of such varieties and reference to users should be understood as users of that propagating material.

Comments:

Under Article 17(1) of the Basic Regulation, any person who offers or disposes of to others for commercial purposes variety constituents must use the variety denomination. It is then stipulated in Article 17(2) of the Basic Regulation that a person effecting the above cited acts in relation to "any other materials of a protected variety" must inform about the concerned denomination "in accordance with other provisions in law or if a request is made by an authority, by the purchaser or by any other person having a legitimate interest". In the therein cited scenarios, the denomination must be actively requested.

Therefore, the public of plant varieties designated by plant variety denominations is primarily a professional public, while the general public may not be disregarded for some species in the light of the market realities.

Regarding the professional public, it can be defined as that public made up of professionals or experts in sectors concerned with the production or marketing of variety constituents. The professional public encompasses, inter alia, the following actors: breeders, seed distributors, seed propagators, plant propagators, growers, farmers, brand licensors, merchants, cooperatives, manufacturers, wholesalers and retailers. Members of the professional public have a relatively high technical and biological knowledge of plant varieties.

In some plant-related market segments or crop sectors, a more general public targeted by plant varieties designated by denominations can be identified. This part of the public generally has a lower degree of technical and biological knowledge of plant varieties and, therefore, the level of discernment when confronted with denominations is expected to be lower than that of the professional public.

In analysing denominations, the following general principles should apply:

1. Languages

Only words in official EU languages are taken into consideration when assessing the meaning of the denominations. In case a variety denomination consists of words from different EU languages, the meaning of each word is taken










into account. As far as technically possible, accents on letters will be reproduced in all EU languages.

Comments:

When a denomination reproduces a word with a semantic content in one of the EU official languages, the concept will be duly regarded in the analysis of the suitability of a denomination. Therefore, the semantic meaning of words in EU official languages will be taken into consideration in the assessment of whether or not a term is potentially descriptive, offensive, easily recognizable and/or liable to be confused with prior denominations.

Although Latin is not an official EU language, it is the language used to describe most of botanical taxa. The binomial nomenclature includes information such as, for instance, the characteristics or origin of the variety. The meaning of Latin terms will therefore be duly considered when these are used in variety denominations.

Examples:

| Legend: | | | |
|--------------------|--|---|--|
| |  not suitable |  suitable |  suitable with conditions |
| Denomination | Suitability | Comments | |
| Yevro |  | 'Yevro' is the Uzbek term for the official currency of the eurozone but that meaning is not considered as Uzbek is not an official language of the EU. | |
| Primo Red |  | For instance, 'Primo red' consists of the Italian word 'Primo' (in, English: first) and English word 'red'. The denomination will be analyzed as meaning 'First red'. The proposal is purely descriptive. | |
| Novum |  | The adjective "novum" means "new" in Latin and refers to a character of novelty only. A denomination 'Novum' does not allow to identify a variety in particular and refers to a characteristic that will not be matching the true characteristic of the variety after a certain period. | |
| Alba Dulcis |  | With the meaning of 'white' and 'sweet', the denomination could be considered as purely descriptive for species where these characteristics are relevant. | |

Consideration of generic terms

In general, a term is considered as generic when it refers to a characteristic or to the value that could be attributed to the variety. Such terms are not considered as distinctive elements allowing to identify a particular variety amongst other varieties of a same or closely related species. A denomination can therefore not consist only of one or several of these elements. This is explained in greater detail below



under Article 3, regarding Article 63(3)(b) of the Basic Regulation.

A non-descriptive term may also be considered as generic, when it has been used at least by two breeders for unrelated varieties of the same or of a closely related species. In this case, its use by a breeder for a variety of the same or of a closely related species unrelated with that of another breeder, is not subject to the principle of the biologic relation between the varieties. This is explained in greater detail below under Article 7, regarding Article 63(3)(f) of the Basic Regulation.

2. Misspelled words

It is not necessary for a word to be written with its exact spelling for its semantic content to be understood,

Comments:

A misspelling in a denomination does not necessarily alter its semantic content. Where the semantic content of a misspelled word is directly recognizable, the suggested meaning must be taken into account, just as it would in the case of the same word without the misspelling. In that respect, the origin of the breeder and the language chosen in the application may be taken into consideration.

Examples:

| Denomination | Suitability | Comment |
|--------------|-------------|---|
| XTRA | ✘ | 'XTRA' is visually not the same as the 'correct' spelled word 'EXTRA'. However, it is phonetically identical to it and the concept of the 'correct' word (extra) will normally be transferred to the misspelled word (xtra). The denomination proposal will be analyzed as meaning 'Extra'. |
| Yelow | ✘ | 'Yelow' is the misspelled form of 'Yellow', the denomination will be analyzed as meaning 'Yellow'. |

3. Attached words or elements

In case a denomination contains one or more recognizable parts where at least one of them has a specific meaning in an EU language, the denomination does not constitute a meaningful expression as such, each part is separately analysed.

Attaching two or more words can result in a fancy name. However, when these words are clearly recognisable in the denomination, they are taken into account individually to assess the suitability of the denomination regarding all criteria set out in the Art.63.



Examples:

| Legend: ✘ not suitable ✔ suitable | | |
|---|-------------|---|
| Denomination | Suitability | Comment |
| Earlyred | ✘ | The denomination is analysed as 'Early Red'. |
| Bluearly | ✘ | The denomination is analysed as 'Blue Early'. |

Particular case of company abbreviations, series identifiers, descriptive characteristics or numbers in variety denominations.

The use of company abbreviations, series identifiers, descriptive characteristics or numbers, may not prevent a denomination from being purely descriptive or so similar to another, that it would create confusion as to the identity or the origin of the variety. This is for instance the case where one of the cited elements is a stand-alone element in the denomination.

When evaluating if a denomination is purely descriptive or if it is identical or similar to another denomination, these elements are initially set aside. They are then reintroduced to continue the assessment according to any other applicable criteria set forth by the regulation. This is explained in greater detail below under Article 3, regarding Article 63(3)(b) and Article 4, regarding Article 63(3)(c) of the Basic Regulation.









The addition of company abbreviations, series identifiers, descriptive characteristics or numbers to an identical or very similar denomination could be considered as an attempt to make an unfair use of the existing denomination. That use is not deemed unfair if it is an addition to the same denomination by the same breeder or if there is a biological relationship between the varieties.

This notwithstanding, the Office must duly note whether the concerned element stands on its own or is attached to another element forming part of the denomination (e.g.: as a sort of "prefix" in the denomination).







If the association of a company abbreviation or a series identifier with a descriptive element, results in a fancy term, the identifier should not be removed at the time of the assessment of the descriptiveness (63.3.b). If such a denomination does not fall foul of any of these impediments, it may be suitable.









Examples:

| Legend:  not suitable  suitable  suitable with conditions | | |
|--|---|---|
| Denomination | Suitability | Comments |
| LY Red |  | <p>LY is a stand-alone company identifier. Red is a colour characteristic.</p> <p>The denomination does not allow to identify a red variety bred by the company LY. The denomination is purely descriptive.</p> |
| Lyred |  | <p>'Ly' is a company identifier associated with a colour characteristic.</p> <p>The association of this identifier with another element, even descriptive, results in a fancy term. The identifier should not be removed at the time of the assessment of the descriptiveness or the similarity.</p> <p>The denomination is suitable provided that the variety is red if this is a relevant criteria for the species concerned.</p> |
| LY Novus CLP |  | <p>LY is a stand-alone company identifier, 'Novus' refers to a novelty characteristic and 'CLP' is a resistance characteristic. The denomination describes a new CLP resistant variety bred by the company LY.</p> <p>The denomination contains the Latin adjective <i>novus</i>, which expresses a characteristic of novelty. This denomination does not allow to identify a specific variety amongst those bred by this company and presenting the same characteristics. The denomination is purely descriptive.</p> |
| Lynovus CLP |  | <p>'Ly' is a company identifier associated with a characteristic that refers to the novelty.</p> <p>Similarly to 'Lyred', 'Lynovus' can be seen as a fancy term. The denomination contains the Latin adjective <i>novus</i>, which expresses a characteristic of novelty. This characteristic will no longer be met after a certain period and will therefore become misleading.</p> |
| LY Ades <> Ades |  | <p>LY is a stand-alone company identifier; a variety 'Ades' already exists.</p> |







| Legend:  not suitable  suitable  suitable with conditions | | |
|--|---|--|
| Denomination | Suitability | Comments |
| | | <p>The addition of a company identifier to an existing denomination creates confusion as to the origin of the variety and may give the impression that the company LY is trying to make an unfair use of the existing denomination 'Ades'.</p> <p>Should the company LY be the breeder of 'Ades', the addition of the acronym of the company to the denomination 'Ades' for another of his variety would, by dint of similarity, create confusion as to the identity of the varieties.</p> |
| Lyades <> Ades |  | <p>Ly is a company identifier; a variety 'Ades' already exists.</p> <p>Ades is not a descriptive term.</p> <p>As a consequence, the association of the company identifier with an existing denomination 'Ades' is considered as an attempt to take unfair advantage of the reputation acquired by the existing variety 'Ades'.</p> |
| LY Jewel <> 'Jewel |  | <p>LY is a stand-alone company identifier; a variety 'Jewel' already exists.</p> <p>The addition of a company identifier to an existing denomination creates confusion as to the origin of the variety and may give the impression that the company LY is trying to make an unfair use of the existing denomination 'Jewel'.</p> <p>Should the company LY be the breeder of 'Jewel', the addition of the acronym of the company to the denomination 'Jewel' for another of his variety would not be suitable as it would, by dint of similarity, create confusion as to the identity of the varieties.</p> |
| Lyjewel <> Jewel |  | <p>Ly is a company identifier; a variety 'Jewel' already exists.</p> <p>Jewel is not a descriptive term.</p> <p>As a consequence, the association of the company identifier with an existing denomination 'Jewel' is considered as an attempt to take unfair advantage of the reputation acquired by the existing variety 'Jewel'.</p> |



| Legend:  not suitable  suitable  suitable with conditions | | |
|--|---|---|
| Denomination | Suitability | Comments |
| Red Impact <> Impact |  | <p>A variety 'Impact' already exists. Red is a colour characteristic.</p> <p>The addition of a descriptive term to an existing denomination gives the impression that 'Red Impact' is a red mutation of 'Impact'.</p> <p>The proposal is suitable if the varieties are from the same breeder or if there is a biologic relationship between the varieties or if the word Impact is generic (common to other denominations of varieties of the same species and from different breeders).</p> |
| LY Impact <> Red Impact |  | <p>LY is a stand-alone company identifier. A variety 'Red Impact' already exists</p> <p>These elements provide information as to the breeder / the colour of the variety but are not distinctive as such. They are closely linked to the distinctive part of the denomination (Impact), which is identical in both cases.</p> <p>When comparing the denominations for similarity, the company identifier and the characteristic are removed as a first step.</p> <p>The addition of a company identifier or of a characteristic indication is sufficient to avoid confusion between the two varieties, but it creates confusion as to their origin and the potential biologic relation between the two varieties.</p> <p>The proposal is not suitable if the two varieties are from different breeders, but would be suitable if the breeder of these varieties is the company LY.</p> |
| Impact CL<> Red Impact |  | <p>A variety 'Red Impact' already exists; CL is an established abbreviation describing an herbicide tolerant variety; Red is a colour characteristic.</p> <p>These elements provide information as to the characteristics of the variety but they are not distinctive as such. They are closely linked to the distinctive part of the denomination (Impact), which is identical in both cases.</p> <p>When comparing the denominations, the characteristics are removed as a first step.</p> <p>The proposal is suitable if the varieties are from the same breeder, if there is a biologic relationship between the varieties or if the word Impact is generic (common to other denominations of varieties</p> |



| Legend:  not suitable  suitable  suitable with conditions | | |
|--|---|---|
| Denomination | Suitability | Comments |
| | | of the same species and from different breeders). |
| Yellow Impact <> Red Impact |  | <p>A variety 'Red Impact' already exists – Yellow and Red are characteristics.</p> <p>These elements provide information as to the characteristics of the variety but they are not distinctive as such. They are closely linked to the distinctive part of the denomination (Impact), which is identical in both cases.</p> <p>When comparing the denominations, the characteristics are removed as a first step.</p> <p>The proposal is suitable if the varieties are from the same breeder, if there is a biologic relationship between the varieties or if the word Impact is generic (common to other denominations of varieties of the same species and from different breeders).</p> |
| Impact 2 <> Impact |  | <p>The variety Impact already exists. The additional number leads to think that 'Impact 2' derives from 'Impact'.</p> <p>The proposal is suitable if the varieties are from the same breeder, if there is a biologic relationship between the varieties or if the word Impact is generic (common to other denominations of varieties of the same species and from different breeders).</p> |
| Impakt <> Red Impact |  | <p>A variety 'Red Impact' from a different breeder already exists.</p> <p>'Red Impact' consist of a distinctive element (Impact) and a descriptive element (Red).</p> <p>When assessing the similarity between the denominations, the descriptive element 'red' is removed as a first step.</p> <p>The word 'Impakt' is visually and phonetically too close to 'Impact'.</p> <p>Despite the additional colour characteristic 'Red' in the initial variety denomination, the use of 'Impakt' could be considered as an unfair use of an existing variety denomination.</p> |

4. Which denominations are considered for the analysis?

In general, the Office takes into consideration denominations of varieties under official procedure, officially registered or marketed or denominations that have been deleted from an official register or ceased to be marketed for less than 10 years, unless such varieties have acquired a particular significance or are proven to be still available.



Article 2

There is an impediment for the designation of a variety denomination where its use in the territory of the European Union is precluded by the prior right of a third party

(Article 63 (3)(a) of Regulation 2100/94)

1. In the case of a trade mark as a prior right of a third party, the use of a variety denomination in the territory of the European Union shall be precluded by the objection of the trademark holder – in case it is upheld - which has been registered in one or more Member States or at EU level prior to the approval of the variety denomination, and which is identical or similar to the variety denomination and registered in relation to goods which are identical or similar to the species of the variety concerned.

2. An impediment to the suitability of a denomination due to a prior right may be removed where the written consent of the holder of the prior right to the use of the denomination in relation to the variety has been obtained, provided that such a consent is not liable to mislead the users as to the true origin of the variety.

3. In the case of a Protected geographical indication, a Protected designation of origin or a Traditional specialities guaranteed for agricultural products and foodstuffs as a prior right of a third party, a variety denomination in the territory of the European Union shall be considered to be precluded where the variety denomination would breach Article 13 or 24 of Council Regulation (EC) No 1151/2012¹, Article 103 of Regulation (EU) No 1308/2013², Article 20 of Regulation (EU) No 251/2014³, Article 21 of Regulation (EC) No 2019/787⁴, with respect to the Protected geographical indication, the Protected designation of origin or the Traditional specialities guaranteed protected in a Member State or in the European Union for goods which are identical or comparable to the plant variety concerned.

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

¹ Regulation (EU) No 1151/2012 of the European Parliament and the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, OJEU L 343/13 of 14/12/2012

² Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization 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, OJEU L 347/671 of 20/12/2013

³ Regulation (EU) No 251/2014 of the European Parliament and 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, OJEU L84/14 of 20/3/2014

⁴ Regulation (EU) No 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).



Comments:

1. 'in the territory of the European Union'

Should be interpreted as referring to use either throughout the territory of the European Union or in any member State(s) thereof.

2. 'prior right'

Although it is conceivable that a variety denomination might fall foul of copyright or other rights, the most commonly encountered example of such a prior right will be the registered trade mark. There may also be cases where a variety denomination may be in conflict with a Protected geographical indication (PGI), a Protected designation of origin (PDO) or a Traditional speciality guaranteed (TSG) for agriculture products and foodstuffs protected in the European Union.

3. 'use precluded by'

3.1 Trade marks

Pursuant to Article 18(2) of the Basic Regulation, the holder of a prior trademark may hamper the free use of a subsequent denomination. In such a case (objection, appeal or article 66 of the Basic Regulation) the formal procedure should apply.

Unless a trade mark holder chooses to assert his right in relation to a variety denomination, the use of the denomination will not be precluded.

Should the Office be informed about a prior right through other sources, the Office will inform the applicant/holder of the existence of such a right and that the holder of the prior right may at any time object, appeal or invoke article 66 of the Basic Regulation against the proposed or the approved variety denomination. The prior right may then become an impediment to the denomination.

By publishing proposed denominations, the Office provides the means for trade mark holders who wish to assert their rights to do so by objecting to the denomination. The Office may receive indications from other sources (for example the applicant himself) that a trade mark holder is asserting his right. The Office will uphold the objection where both the earlier trademark and the denomination, and the goods for which the trade mark has been registered and the species of the variety, are identical. In the case of similarity (both between the trade mark and the denomination and the goods for which the trade mark is registered and the species of the variety), a likelihood of confusion on the part of the user needs additionally to be shown by the holder of the trade mark. In case of trade marks with reputation, its use as a denomination may be precluded even where the species of the variety is dissimilar to the goods for which the trade mark was registered where the denomination takes unfair advantage of, or has a detrimental effect on, the character or reputation of the trade mark.



3.1.1 Dealing with objections from trade mark holders

Only a body with appropriate jurisdiction can rule whether a trade mark will be infringed by a particular denomination. To establish whether an objector has a prima facie case, the following will be of assistance:

- Case 1 – The Trade mark and the Variety Denomination are identical

The first step is to check the list of goods in the certificate of registration submitted by the objector/trade mark holder to consider whether the species of the variety is identical, or similar to those goods.

If the goods specified are “all living plants” then it is clear that the species of the variety is identical to those goods, as the variety will fall under that general category. The proposed denomination (identical to the trade mark) is therefore considered unsuitable (nonetheless the applicant could choose to bring an action against the trade mark for non-use in respect of all living plants, see the paragraph ‘Non utilisation of a trade mark’ below).

If the goods specified in the certificate of registration are only limited to certain plants such as roses and rose plants, the species of the variety will only be deemed identical to the goods for which the trade mark has been registered if such species is from the same UPOV class⁵.

The specification of the list of goods using terms such as “including, in particular, for example, featuring, specifically, such as” or other equivalent do not restrict the list itself as all these terms mean in principle “for example”. Therefore, the use of these terms indicates that the specific goods are only examples of items included in the category and that protection is not restricted to them. Consequently, if the protection of the previous trade mark is claimed for “all living plants, in particular roses”, the protection is not restricted only but includes also roses. On the other hand, the term namely (or exclusively or other equivalent) is exclusive and restricts the scope of the registration only to the specifically listed goods. The use of the term excluding will limit the list of goods to those which fall outside of the exclusion. The use of commas in the list of goods serves to separate items within the same or a similar category. The use of a semi-colon means a separation between terms. The separation of terms by different punctuation can lead to changes in their meaning and may lead to a different assessment when comparing the goods. The applicant and the objector are informed about the opinion of the Office and that a formal decision will be taken at the time of decision on the application, with the possibility to appeal.

- Case 2 – The Trade mark and Variety Denomination are merely similar

Where the proposed denomination is not identical but similar, an assessment must be made of the

⁵ The UPOV classes appear in the annex to these Guidelines.



likelihood of confusion by users. In making this assessment the examiner should err on the side of caution. The applicant should be informed.

3.1.2. Limited waiver by the trade mark holder

An impediment to the suitability of a denomination under this heading may be removed where the written consent of the prior right holder to the use of the denomination in relation to the variety has been obtained. Any declaration of waiver of his rights by the holder of a trade mark in relation to the use of an identical or similar designation as a variety denomination must be accompanied by a written consent that the trade mark holder will not hamper the free use of that denomination in connection with the variety, even after the termination of the Community plant variety right.

3.1.3. Use by the CPVR holder of his/her own trade mark

Although this section relates to the prior right of a third party, it is worth noting that Article 18(1) of the Basic Regulation prohibits the use by a CPVR holder of any right granted in respect of a designation identical to the denomination (e.g.: a trade mark) to hamper the free use of the denomination. This remains so even after the termination of the CPVR. Because of this provision, there is no impediment to the use by the holder of his own trade mark as a variety denomination or part thereof. However, the use of a trade mark as a variety denomination may lead to the revocation of the trade mark as the variety denomination is deemed to be generic.

4. Non-use of a trade mark

As long as the trade mark has been registered for goods belonging to the whole Class 31 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks⁶ (which includes mainly land products not having been subjected to any form of preparation for consumption, live animals and plants as well as foodstuffs for animals as follows: "Grains and agricultural, horticultural and forestry products not included in other classes; live animals; fresh fruits and vegetables; seeds; natural plants and flowers; foodstuffs for animals; malt"), Class 29 for dried and cooked fruits and vegetables, edible oils and fats, Class 30 for coffee, tea, cocoa, rice, tapioca and sago, Class 32 for beers, fruit beverages and fruit juices, Class 33 for alcoholic beverages, Class 34 for tobacco, but the proposed denomination relates to a species for which the trade mark holder is not using his mark, the registered trade mark shall nevertheless be considered as a prior right and the trademark holder may invoke his rights. The registered trademark will therefore be taken into consideration when assessing if the proposed denomination is suitable or not. However, if the trade mark holder is not using his mark for all or some of the goods in Class 31, a revocation proceedings for lack of effective use can be started by a third party before the competent authorities (such as for European Union Trade Marks 'EUTM' before the European Union Intellectual Property Office 'EUIPO' – previously 'OHIM').

⁶ Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967, and at Geneva on May 13, 1977, and amended on September 28, 1979



The UPOV classes have been developed such that the botanical taxa within the same class are considered to be closely related and/or liable to mislead or to cause confusion concerning the identity of the variety.

5. Protected geographical indication, Protected designation of origin and Traditional specialities guaranteed

In conformity with Article 3(2) of Regulation 2021/384, an impediment arises where a denomination affects a Protected geographical indication, a Protected designation of origin or a Traditional specialities guaranteed for agricultural products and foodstuffs as a prior right of a third party, by breaching any of the cited legal provisions of the regulations concerning the mentioned rights. This applies both in cases of identity and in cases of similarity.



Article 3

There is an impediment for the designation of a variety denomination where it may commonly cause its users difficulties as regards recognition or reproduction

(Article 63 (3)(b) of Regulation 2100/94)

1. The purpose of a denomination is to enable the identification of the variety.

A proposed denomination is not suitable if the designation does not enable the user to recognise it as a variety denomination. This is especially the case if the denomination exclusively refers to a specific characteristic or value which can be attributed to the variety since it conveys the false impression that only that variety possesses it, whereas in fact other varieties of the same species may possess the same characteristic or value.

Comment:

A word is descriptive when it is so in its ordinary and plain meaning as expressed, for example, by dictionary entries. The said meaning should be immediately understood as providing information about a characteristic of the variety, especially if the characteristics are mentioned in the technical DUS protocol for the species in question or if they are of particular relevance for the professional public in the given species. The relationship between the term and the characteristic concerned should be direct, specific and understood without further reflection. When assessing the proposed denominations, the Office does not carry out far-fetched interpretations of the terms under scrutiny.

1. Reference to stage of expression of characteristics of the variety are not suitable

Examples:

| Legend: ✘ not suitable ✔ suitable | | | |
|---|-------------------------------|-------------|--|
| Denomination | Species | Suitability | Comments |
| Gustoso | <i>Malus domestica</i> Borkh. | ✘ | With the meaning of 'tasty', the Italian adjective 'gustoso' is purely descriptive as to the taste for this fruit variety, and does not allow to identify a variety in particular. |
| | <i>Tulipa</i> L. | ✔ | The taste is not a characteristic for an ornamental variety. |
| Sweetone | <i>Prunus persica</i> L. | ✘ | The characteristic 'sweet' is a characteristic of the protocol and is clearly recognisable in this denomination, which could be understood as 'sweet one' which is |



| Legend: ✘ not suitable ✔ suitable | | | |
|---|-----------------------------------|--------------------------------------|--|
| Denomination | Species | Suitability | Comments |
| | | | purely descriptive. |
| | <i>Tulipa</i> L. | ✔ | Sweetness is not a characteristic for a Tulip variety. |
| Sweetred | <i>Prunus persica</i> L. | ✘ | The denomination purely describes a new sweet and red peach variety. |
| | <i>Brassica napus</i> L. | ✔ | The colour and the sweetness are not characteristics for oilseed rape. |
| Stips and Stripes | <i>Hippeastrum</i> Herb. | ✘ | The denomination consists of the Dutch word 'Stip' ('dot' in English) that has been anglicized with a final 's' but is clearly recognisable and the English word 'stripes'. Both words are purely descriptive. |
| Casanova | <i>All species</i> | ✔ | The word nova is clearly recognisable but is part of the overall concept of the denomination which refers to the well-known name of the Italian adventurer. |
| Newcastle | <i>All species</i> | ✔ | The word 'new' is clearly recognisable but is part of the overall concept of the denomination which commonly refers to the English city 'Newcastle upon Tyne'. |
| Swiss Red | <i>Prunus armeniaca</i> L. | ✘ | The denomination describes the colour and the origin of the variety. |
| Round Grey | <i>Cucurbita pepo</i> L. | ✘ | The denomination describes the shape and the colour of the variety. |
| Flattie | <i>Prunus persica</i> (L.) Batsch | ✘ | The denomination describes the shape of the variety (evokes a flat peach). |
| Cubus | <i>Raphanus sativus</i> L. | ✘ | 'Cubus' is a misspelled form of 'Kubus', which describes the shape of the variety. |
| Shortie | <i>Brassica napus</i> L. | ✘ | 'Shortie' is a misspelled form of 'Shorty', which describes the size of the variety. |



| Legend: ✘ not suitable ✔ suitable | | | |
|---|---------------------------|-------------|---|
| Denomination | Species | Suitability | Comments |
| Yellow Petite | <i>Capsicum annuum</i> L. | ✘ | The denomination is a combination of the English adjective 'yellow' and the French adjective 'petite' (small); the denomination describes the size and the colour of the variety. |

2. Particular case of colour characteristics

Reference to colour is often used in variety denominations. A colour can be described with abstract colour names or can be evoked with figurative colour names.

2.1 Abstract colour names

Abstract colours refer to a colour only. They are considered as adjectives and cannot be monopolized.

2.1.1 Basic abstract colour names

'Basic colours' like red, white, yellow, green, are easy to identify and therefore, to assess.

The notion of 'basic colours' and their associated terms depends on the language and the field of activity.

In this document, the English common understanding of 'basic colours' is taken into account. The 11 basic colours should be Blue, Yellow, Red, Pink, Green, Orange, Brown, Violet, White, Black, and Purple. They should not be suitable as denominations as such. It should not be possible to monopolize them: nobody can build up a series on the basis of that word, preventing others to use it in another denomination.

Example:

'Red' is not suitable as a variety denomination and cannot be monopolized. As a consequence, two denominations containing the word 'Red' can co-exist without leaving the impression that they have a biologic relation.

2.1.2 Other abstract colour names

A general principle is that as soon as a word that only refers to a colour is defined in a dictionary, it should be considered as such. This is for example the case for 'beige' referring to a hue of yellow or grey. It should be considered as a colour.

It is proposed that such colours should be taken into account. The same principle as above should



apply: they should not be suitable as denominations as such. It should not be possible to monopolize them.

Examples:

'Beige' is not suitable as a variety denomination and cannot be monopolized. As a consequence, there is no need for a biologic relation between two denominations containing the word 'Beige'.

2.2 Figurative use of colour names

It is more difficult to assess the suitability of terms which evoke colours ("Figuratively used colours") but which also refer to a thing or a phenomenon in relation to this colour.

Examples:

'Ruby', 'Emerald', 'Topaze', 'Caramel', 'Coffee', 'Chocolate', 'Onyx', 'Gold', 'Silver', 'Cognac', 'Salmon', 'Magenta'.

There are two situations:

2.2.1 The colour is relevant for the species concerned

The colour at hand could suggest a characteristic for the species in question: the term used alone is not suitable as a variety denomination but it can be part of the denomination. In that case the suggested colour should match the true colour of the variety.

Just like with any descriptive term, no biologic relation is required between varieties the denomination of which have the same colour evocation in common. This is explained in greater detail below under Article 7, regarding Article 63(3)(f) of the Basic Regulation.

Examples:

'Caramel', 'Ruby', 'Salmon' are not suitable variety denominations for a *Lilium* L. as they may describe its colour characteristic.

'Caramel Candy', 'Ruby Treasure', 'Salmon Delight' are suitable for a *Lilium* L. provided that the colour is not misleading as the true colour of the variety.

No biologic relation is needed between 'Caramel Candy' and 'Caramel Toffee', or 'Ruby Treasure' and 'Ruby Jewel' for the denominations to be accepted.



2.2.2 The colour is not relevant for the species concerned











The suggested colour characteristic is not relevant for the species in question. In this case, a denomination can consist of or contain such a colour indication, provided that the term is not used in a series, as defined under Art. 7 of these guidelines.

Examples:








'Caramel', 'Ruby', 'Salmon' are suitable denominations for a variety of *Festuca pratensis* Huds as these colour indications are not relevant for meadow fescue.

In order to be considered suitable, however, a biologic relation is needed when the proposed denomination is part of a series. For instance, the Office will ask for a biolink biological relation among 'Caramel Candy' and an existing series 'Caramel Toffee', 'Caramel Dream' from the same breeder.

Examples:








| Legend:  not suitable  suitable  suitable with conditions | | | |
|--|---|---|---|
| Denomination | Species | Suitability | Comments |
| Primevert | <i>Pisum sativum</i> L. |  | The denomination consists of the combination of the English adjective 'prime' (of a first importance, best, first in order, highest in quality, excellent) and the French colour indication 'vert'. The additional adjective 'prime' emphasizes the colour, gives a superlative connotation but does not make the proposal recognisable as a variety denomination. |
| Light Pink | <i>Phalaenopsis</i> Bl. |  | The denomination is purely descriptive as to the colour of the variety. The additional word 'light' is understood as an adjective that emphasizes the colour but it does not make the proposal recognisable as a variety denomination. |
| Pink Light | <i>Phalaenopsis</i> Bl. |  | The additional word 'light' is understood as a noun. The proposal is suitable provided that the variety is pink. |
| Bianca Blanche | <i>Rosa</i> L. - |  | Bianca, Blanche are abstract colour indications (English: white). For species where the colour is considered as a relevant characteristic, these terms are not suitable as variety denominations as such because they are deemed to be purely descriptive. |
| | <i>Spinacia oleracea</i> L. |  | |
| Terracotta | <i>Daucus carota</i> L. |  | Terracotta is a type of earthenware but is also used to refer to the natural brownish orange colour. Terracotta is not suitable as such as a variety denomination for a variety of <i>Daucus carota</i> L. because the colour is a relevant characteristic for this species. The denomination is suitable for a sugar beet |
| | <i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>saccharifera</i> Alef. |  | |










| Legend:  not suitable  suitable  suitable with conditions | | | |
|--|-----------------------------|---|---|
| Denomination | Species | Suitability | Comments |
| | | | variety because the colour is not a relevant characteristic for that species. |
| Rubino | <i>Allium cepa</i> L. |  | Rubino is a gemstone and a figurative colour indication. Rubino is not suitable as a variety denomination as such for a variety of <i>Allium cepa</i> L. because the colour is a relevant characteristic for this species. The denomination is acceptable for barley, as the colour indication is not relevant for that species |
| | <i>Hordeum vulgare</i> L. |  | |
| Amber | <i>Lactuca sativa</i> L. |  | Amber is a tree resin, a figurative colour indication and a first name. Amber is not suitable as a variety denomination as such for a variety of <i>Lactuca sativa</i> L. because the colour is a relevant characteristic for this species. |
| Smeralda | <i>Malus domestica</i> Bork |  | Smeralda is a figurative colour indication and a first name. Smeralda is not suitable as a variety denomination as such for a variety of <i>Malus domestica</i> Bork. because the colour is a relevant characteristic for this species. |

3. Any other indication that may be exclusively linked to the value of the variety is not suitable

Examples:

| Legend:  not suitable  suitable  suitable with conditions | | | |
|--|---------------------------|---|---|
| Denomination | Species | Suitability | Comments |
| Valor | - |  | By definition, the word 'valor' refers exclusively to the value of the variety and is not suitable. |
| Right Price, Bright Price Light Price | - |  | The denominations refer exclusively to the commercial value of the variety and are not recognizable as a variety denomination. |
| Snacking Red | <i>Capsicum annuum</i> L. |  | 'Snacking' is not a characteristic of the variety itself. The proposal is suitable provided that the variety is red. |
| Possente | <i>Cucumis melo</i> L. |  | With the meaning of 'powerful, strong' the denomination refers exclusively to a characteristic that other varieties may have. It is not suitable. |



| Legend:  not suitable  suitable   suitable with conditions | | | |
|--|------------------------------|---|--|
| Denomination | Species | Suitability | Comments |
| Express | <i>Avena strigose</i> Schreb |  | The denomination could be linked to a timing characteristic in the protocol of the <i>Avena strigose</i> Schreb. |
| Orient Express | - |  | The word 'Express' is clearly recognisable but is part of the overall concept of the denomination which refers to the long-distance passenger train service. |
| Sweet Crunch | <i>Daucus carota</i> L. |  | The denomination cannot be directly associated with a characteristic of the variety. |

2. A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:

2.1 It consists of comparatives or superlatives

Comparatives or superlatives may render the denomination purely descriptive and not recognizable as such. In principle denominations consisting of comparative or superlative designations only are not suitable. Denominations are considered in their potential figurative sense when assessing whether they are comparatives or superlatives.

Comment

Comparatives, mostly adjectives or adverbs express a higher degree of a quality. Superlatives, mostly adjectives or adverbs express the highest degree of a quality. Comparatives or superlatives are not suitable as variety denominations. However, their use can be acceptable when they are combined with another word, as long as the denomination as a whole does not suggest a direct comparison with other varieties of the same species, and the denomination, due to the inclusion of the concerned additional word, conveys a message different and sufficiently far removed from the descriptive message evoked by the comparative/superlative. In the case of polysemy, a superlative or a comparative may lose its descriptive value for the benefit of a non-descriptive concept, which has become of more common perception and use.



Examples:

| Legend:  not suitable  suitable  suitable with conditions | | |
|---|---|---|
| Denomination | Suitability | Comments |
| Excellent |  | With the meaning of 'extremely or exceptionally good', 'outstanding', 'of the highest quality', 'superior in kind or degree', the adjective 'excellent' implies a comparison with other varieties of the same species and purely describes a characteristic that can be common to other varieties of that species. The denomination does not allow to identify a variety in particular and is therefore not suitable. |
| Excellent Reason |  | The proposal results in a general and commonly used expression. In this case, the denomination will be assessed as a concept as such; the elements of the denomination are not analysed separately. The proposal is suitable. |
| First |  | The denomination implies a comparison with other varieties of the same species and refers to a variety that is preceding all others in time, order, or importance. This denomination purely describes a characteristic that can be common to other varieties of the same species. The denomination does not allow to identify a variety in particular and is therefore not suitable. |
| First Meeting |  | The proposal is suitable provided that there is no variety of the same species 'Meeting'. |
| Supreme |  | Supreme is a superlative that describes the highest rank, degree or quality. It is not suitable as a variety denomination. |
| Supreme Court |  | The proposal refers to a well-known concept. In this case, the denomination will be assessed as a whole; the elements of the denomination are not analysed separately. The proposal is suitable. |
| Perfection |  | The word 'Perfection' describes an unsurpassable level of excellence and conveys a superlative notion. This denomination purely describes a characteristic that can be common to other varieties of the same species. The denomination does not allow to identify a variety in particular and is therefore not suitable. |
| Night Perfection |  | The proposal is suitable provided that there is no variety of the same species 'Night'. In this case the word "Perfection" would imply a comparison between 'Night Perfection' and the existing variety 'Night' and would be considered as giving a superlative connotation to the denomination. |
| Superior |  | With the meaning of 'higher in rank, status or quality, size or power, the adjective 'superior' implies a comparison with other varieties of the same species. This denomination purely describes a characteristic that can be common to other varieties of the same species. The denomination does not allow to identify a variety in particular and is therefore not suitable. |
| Lake Superior |  | The proposal refers to a well-known geographic place. In this case, the denomination will be assessed as a |



| Legend:  not suitable  suitable  suitable with conditions | | |
|---|---|---|
| Denomination | Suitability | Comments |
| | | whole; the elements of the denomination are not analysed separately. The proposal is suitable. |
| Exceptional |  | The adjective 'exceptional' can be understood of being better than the average, being superior. It implies a comparison with other varieties of the same species. This denomination purely describes a characteristic that can be common to other varieties of the same species. The denomination does not allow to identify a variety in particular and is therefore not suitable. |
| Exceptional Circumstances |  | The proposal results in a general and commonly used expression. In this case, the denomination will be assessed as a concept as such; the elements of the denomination are not separately analysed. The proposal is suitable. |
| Hyper |  | This prefix means above, beyond; it expresses in general excess, the highest degree and is considered as a superlative. This denomination purely describes a characteristic that can be common to other varieties of the same species. The denomination does not allow to identify a variety in particular and is therefore not suitable. |
| Hyper Store |  | The proposal is suitable provided that there is no variety of the same species 'Store'. Otherwise, the word "Hyper" would imply a comparison between 'Hyper' and the existing variety 'Store' and would be considered as giving a superlative connotation to the denomination. |
| Crème de la Crème |  | 'Creme de la creme' has only a superlative connotation; it should be considered as such and is not suitable as a variety denomination. |
| Maxxiwaxx |  | The denomination is composed of 'maxxi' and 'waxx'. For a maize variety, the denomination is considered as consisting of the misspelled form of 'maxi' (superlative) and 'wax' (for a waxy corn variety). The proposal is not suitable for that species. For species where "wax" is not a characteristic, the proposal is suitable because 'maxxi' does not emphasize a characteristic of the variety. |
| Max |  | Max could be perceived as the abbreviation of the superlative "maximum" but is commonly used as a first name. |
| Junior |  | Junior is a comparative in Latin but is commonly used as a noun. |
| Summit |  | Although a name like 'Summit' may suggest a superlative notion, it is also a part of a mountain. |



- Dealing with terms suggesting a superlative only: example of 'TOP' in denominations





'Top' standing alone is a word mostly understood and used with a meaning of 'the highest or uppermost part or something, which cannot be surpassed in excellence or performance. It is therefore considered as a superlative designation, purely descriptive and not recognisable as a variety denomination.

If 'Top' is associated with a word, that could be a characteristic or used in such a way that it suggests a value for the variety in question, the proposal has to be considered first as a superlative designation, secondly as purely descriptive.

If 'Top' is associated with the denomination of an existing non-descriptive variety denomination, the proposal is not purely descriptive but could be rejected on the basis that it is a superlative and it implies a comparison. Duet <> Duettop (see Art. 63.3. f).

In other situations, denominations containing 'Top' may be suitable.

Examples:

| Legend:  not suitable  suitable  suitable with conditions | | |
|--|---|---|
| Denomination | Suitability | Comments |
| Hightop |  | The proposal is suitable provided that the height is not a relevant characteristic for the species concerned. |

2.2 It consists of, or contains botanical names.

Latin botanical names may not be recognizable as denominations. Latin botanical names that may create confusion with other taxonomic ranks are not suitable.

Comment

Species common names are considered as botanical names.







The use of the genus, the species Latin name or the common name of the species is **not acceptable** in the denominations of **varieties of that species or belonging to the same UPOV crop sector**, the UPOV crop sectors being agricultural crops, ornamentals and forestry species, vegetables and fruits.

The use of a part of the genus, the species Latin name or the common name of the species **may be allowed** in the denomination of varieties of that species or of other species of the same UPOV crop sector **if that part is common to other species names of the same crop sector**.

The use of the genus, the species Latin name or the common name of the species, or the use of a part of them **is acceptable** in the denominations of **varieties belonging to different UPOV crop sectors**.







Examples:

| Legend:  not suitable  suitable  suitable with conditions | | |
|---|---|--|
| Denomination | Suitability | Comments |
| Africana |  | This proposal is not suitable for a variety of <i>Polygala</i> L. as a species <i>Polygala africana</i> Chodat. exists. |
| Sativus |  | This proposal is not suitable for a maize variety although <i>Zea sativus</i> does not exist because <i>Sativus</i> is a widely used species name. |
| Daffodil |  | This proposal is not suitable for a variety of <i>Narcissus</i> L. because it is the common name of the species. The proposal is suitable for a variety of another crop sector. |
| Daffod |  | This proposal is not suitable for a variety of <i>Narcissus</i> L. because it contains a part the common name of the species, which is clearly recognisable. The proposal is suitable for a variety of another crop sector. |

Such terms may be suitable in case they have another meaning, which would probably not confuse if used for any other variety of another genus. Similarly, some species names rarely used in botany and in relation to other genera to which the variety does not belong may be suitable.

Examples:

| Legend:  not suitable  suitable | | |
|---|---|---|
| Denomination | Suitability | Comments |
| Veronica, Victoria, Daphne, Calypso, Erica, Cosmos |  | These denominations are genus names and would probably not confuse anybody if used for other ornamental genera (such as when 'Erica' and 'Cosmos' are used for a rose). |
| Erica, 'Snowflake' |  | 'Erica' when used for a <i>Calluna</i> and 'Snowflake' when used for a <i>Galanthus</i> would be considered as confusing. |



Any part of the botanical taxon to which the variety belongs or common name is also not suitable, unless that part is common to other botanical taxa.

Examples:

| Legend: ✘ not suitable ✔ suitable | | | |
|---|---------------------------|--------------------------------------|---|
| Denomination | Species | Suitability | Comments |
| Aga | <i>Agapanthus</i> L. | ✔ | This denomination is the beginning of the Genus <i>Agapanthus</i> but also of <i>Agaricus</i> , <i>Agathis</i> and <i>Agave</i> and is therefore suitable as part of an <i>Agapanthus</i> variety denomination. |
| Agapan | <i>Agapanthus</i> L. | ✘ | This denomination is the beginning of the Genus <i>Agapanthus</i> only and is not suitable as a variety denomination for an <i>Agapanthus</i> variety. |
| Agapan | <i>Lavandula</i> L. | ✘ | This denomination is the beginning of the Genus <i>Agapanthus</i> only and is not suitable as a variety denomination for varieties of lavender as this species belongs to the same crop sector. |
| Agapan | <i>Zea mays</i> L. | ✔ | This denomination is the beginning of the Genus <i>Agapanthus</i> only. It is suitable for a maize variety, as maize does not belong to the same crop sector. |
| Leuc | <i>Leucanthemum</i> | ✔ | This denomination is the beginning of the Genus <i>Leucanthemum</i> but also of <i>Leucaena</i> , <i>leucocorynce</i> Lindl, <i>Leucophyllum</i> Bonpl., <i>Leucojum</i> L. , <i>Leucophyta</i> R.Br, <i>Leucospermum</i> R. Br.; and is therefore suitable as part of an <i>Leucanthemum</i> variety denomination. |
| Triticu | <i>Triticum</i> L. | ✘ | This denomination is the beginning of the Genus <i>Triticum</i> only and is not suitable as a variety denomination for a wheat variety. |
| Triticu | <i>Hordeum vulgare</i> L. | ✘ | This denomination is the beginning of the Latin species name <i>Triticum aestivum</i> L. and is not suitable as a variety denomination for variety of Barley, as this species belongs to the same crop sector. |
| Triticu | <i>Citrus</i> L. | ✔ | This denomination is the beginning of the Latin species name <i>Triticum aestivum</i> L. and is suitable as a variety denomination for variety of citrus as this species does not belong to the same crop sector. |



| Legend: ✘ not suitable ✔ suitable | | | |
|---|--------------------------------|--------------------------------------|--|
| Denomination | Species | Suitability | Comments |
| Starapple 1 | <i>Malus domestica</i> Borkh. | ✘ | The common name of the species 'apple' is clearly recognisable in the variety denomination, which is therefore not suitable |
| Starapple 1 | <i>Solanum tuberosum</i> L. | ✔ | Although the word apple is clearly recognisable in the denomination, this species name will not create confusion for a potato variety |
| Leekton | <i>Allium porrum</i> L. | ✘ | The common name of the species 'leek' is clearly recognisable in the variety denomination, which is therefore not suitable |
| Leekton | <i>Fragaria</i> L. | ✔ | Although the word leek is clearly recognisable in the denomination, this species name will not create confusion for a strawberry variety |
| Tomastrong | <i>Solanum lycopersicum</i> L. | ✘ | A part of the common name 'tomato' is clearly recognisable in the variety denomination and is therefore not suitable |
| Tomastrong | <i>Diospyros</i> L. | ✔ | Although a part of the common name "tomato" is clearly recognisable in the denomination, this will not create confusion with a variety of kaki. |
| MV Maissa | <i>Zea mays</i> L. | ✘ | The common name of the species 'maize' is clearly recognisable in the variety denomination, which is therefore not suitable |
| MV Maissa | <i>Tulipa</i> L. | ✔ | Although the common name of the species 'maize' is clearly recognisable in the variety denomination, this will not create confusion for a tulip variety. |

2.3 It consists of, or contains breeding and technical terms.

Some breeding and technical terms, used alone, are deemed to render a denomination not recognisable as such.

Examples:

| Legend: ✘ not suitable ✔ suitable | | |
|--|------------------------------------|--|
| Denomination | Suitability | Comments |
| clone, crossing, cultivar, F1, grex, group, hybrid, Improved, line, maintenance, mixture, mutation, parental, plant, selection, series, sport, strain, transformed, variety | ✘ | As breeding or technical terms, these words, their plural form or their equivalent in any EU language are not suitable as variety denominations. This list is not exhaustive. |



Some of these breeding and technical terms, used in combination with other terms would not prevent the recognition of the denomination as such.

Comment

The use of a **breeding or a technical term alone** may not prevent the denomination to be suitable **if the term is not relevant for the species concerned.**

The suitability of a denomination that is **composed of a breeding or a technical term associated with another term** may depend on the species, as certain breeding terms may not be relevant for the species concerned.

Examples:

| Legend: ✘ not suitable ✔ suitable | | | |
|---|-----------------------------|-------------|--|
| Denomination | Species | Suitability | Comments |
| Café des Sports | - | ✔ | In this proposal, the word 'Sports' clearly refers to the physical activity and 'Café des sports' is a very common name of French cafés. The denomination is suitable. |
| Fleur Jansen | - | ✔ | In this case, the word 'Fleur' refers to the first name and is suitable in this context. |
| Fruitcocktail | - | ✔ | The denomination refers to the mixture of pieces of different kinds of fruit and is suitable |
| Flowerdale | - | ✔ | The denomination makes reference to the Flowerdale falls in Scotland and is suitable as a variety denomination. |
| Bloemendaal | - | ✔ | Bloemendaal is a town in the Netherlands and is suitable as a variety denomination. |
| Flower | <i>Agaricus</i> L. | ✔ | The word 'flower' is not relevant for mushrooms |
| Cobgold | <i>Zea mays</i> L. | ✘ | The denomination consists of the word 'cob' which is another word for 'ears' for maize and cannot be part of a variety denomination of that species. |
| | <i>Rosa</i> L. | ✔ | The word "cob" is not relevant for a rose |
| Roottotal | Tomato rootstock | ✘ | The technical term 'Rootstock' is clearly recognisable in the denomination |
| | <i>Triticum aestivum</i> L. | ✔ | Rootstock is not relevant for <i>Triticum aestivum</i> L. |
| Silver Sport | <i>Narcissus</i> L. | ✘ | The word Sport is a relevant technical term for a daffodil |
| | <i>Lolium perenne</i> L. | ✔ | The word Sport is not a relevant term for <i>Lolium perenne</i> as it is not an usual method to look for mutants in raygrass fields |



2.4 Particular case of geographical names that have acquired a reputation for the species in question

Comment









In case the denomination proposal consists of or includes a geographical name that falls within the scope of a prior right (for instance, PDO/PGI/TSG), the proposed denomination should be refused. (See Article 2 – ‘Protected geographical indication, Protected designation of origin and Traditional specialities Guaranteed’).

In case the denomination proposal **consists exclusively** of a geographical name that has acquired a well-known reputation for the production of the species concerned, the proposed denomination should be refused: under such circumstances, many varieties are potentially produced in that area and the proposal does not enable to identify a particular variety.







In case the denomination proposal **contains** a geographical name that has acquired a well-known reputation for the production of the species concerned, the variety should be bred in this area.

In case the denomination proposal consists of or contains a geographical name that has not particular reputation for the species concern, the proposal should be accepted, if the denomination fulfils all other provisions laid down by art. 63.

Examples:

| Legend:  not suitable  suitable  suitable with conditions | | | |
|--|---------------------------|---|---|
| Denomination | Species | Suitability | Comments |
| Holland | <i>Tulipa</i> L. |  | Holland is renowned for the production of tulips and the word should not be used alone. |
| Mystery of Holland | <i>Tulipa</i> L. |  | The proposal is suitable provided that the variety is bred in Holland. |
| Gouda | <i>Tulipa</i> L. |  | Gouda has no particular reputation for the production of tulips. The denomination is suitable even if the variety is not bred in the Netherlands. |
| Spain | <i>Tulipa</i> L. |  | Spain has no reputation for the production of Tulips. The proposal is suitable. |
| Spirit of Spain | <i>Capsicum annuum</i> L. |  | The proposal is suitable provided that the variety is bred in Spain. |



| Legend:  not suitable  suitable  suitable with conditions | | | |
|--|---------------------------|---|---|
| Denomination | Species | Suitability | Comments |
| | <i>Tulipa</i> L. |  | Spain has no reputation for the production of tulips. The variety can be bred in another country. |
| Castilla | <i>Capsicum annuum</i> L. |  | <p>'Castilla' is neither a PGI/PDO and can refer to the regions of "Castilla y León" or to "Castilla La Mancha". Castilla y León has acquired reputation for the production of peppers</p> <p>In view of this fact, and of the tendency that some Spanish citizens may have to cut names short (e.g.: from "Castilla y León" to "Castilla"), professional experts are likely to immediately think of the region "Castilla y León" when confronted with the denomination 'Castilla'. On the opposite hand, where a link cannot be established between a variety and a particular region, the denomination can serve to identify a particular variety and can thus be accepted. A case-by-case analysis based on the cited "link element" must be carried out.</p> |
| Fresno-Benavente | <i>Capsicum annuum</i> L. |  | Fresno-Benavente is a PGI and cannot be part of a variety denomination for a pepper variety. |

3. A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:

3.1 It consists of a single letter or numeral or numerals only, except where this is an established practice for designating varieties such as in the case of inbred lines or of similarly specific types of varieties;

Comment

Denominations consisting of solely Arabic numerals are only suitable if it is an established practice for designating varieties such as in the case of inbred lines or particular species.

Denominations consisting of spelled out numbers or of a mix of Arabic numerals and spelled out numbers could create difficulty in their recognition and reproduction and are therefore not suitable unless they are linked to a well-known concept.



Examples:

| Legend: ✘ not suitable ✔ suitable | | |
|---|--------------------------------------|--|
| Denomination | Suitability | Comments |
| Quattro Sixteen Catorze | ✘ | These denominations are not suitable. |
| Nullachtfünfzehn | ✔ | Common in Germany, Austria, Switzerland, South Tyrol and Luxembourg, this expression is used in the sense of "quite ordinary", "not special", "average", or "not worth mentioning". |
| Utwo Sixteena Quattron | ✔ | The addition of a letter in front or at the end of the denomination makes the proposal suitable |
| Lyquattro | ✔ | Ly is a company identifier. The addition of a series or company identifier to a spelled out number resulting in a pronounceable fancy term is suitable as a variety denomination. |

3.2 It consists of more than 3 words or elements unless the flow of the wording makes it easily recognizable;

Comment:

More than three elements are in general not recommended in variety denominations.

However, in certain cases, this limit could be exceeded, in particular when the denomination contains a numbered series indication, a company identifier or an established abbreviation that has to be drafted in capital letters and that constitutes a distinct element of the denomination, separated by a blank space. Exceptions are allowed in the case the denomination is part of an existing series of denominations for a range of related varieties and based on the same pattern.

Examples:

| Legend: ✘ not suitable ✔ suitable | | |
|---|--------------------------------------|---|
| Denomination | Suitability | Comments |
| 'ABC 234 EFG' | ✔ | This denomination is suitable. |
| BTS Smart 9360 N | ✔ | The denomination is part of an existing series based on 'BTS Smart'. It consists of a Breeder's series identifier |



| Legend: ✘ not suitable ✔ suitable | | |
|---|--------------------------------------|---|
| Denomination | Suitability | Comments |
| | | (BTS), a numbered series indication (9360) and an established abbreviation (N). |
| Chian Xen Violin CX 316 | ✔ | The denomination is part of an existing series 'Chian Xen Violin' and contains an established abbreviation (CX) and a numbered series indication (316) |
| Yangs Golden Red No 41 | ✔ | The denomination is part of an existing series 'Yangs'. It contains a colour characteristic, an established abbreviation (No) and a numbered series indication (41) |

Comment:

In general, the length of denominations or its elements should not exceed 30 characters.

This limit could be exceeded, for instance in cases where the flow of the wording, considered alone or in conjunction with its semantic content in a certain language does not prevent its recognition as a variety denomination nor its reproduction.

3.3 It contains a punctuation mark or other symbol, an upper- and lower-case mixture (save where the first letter is in upper case and the rest of the denomination is written in lower case), subscript, superscript or a design or a figurative element. However, the following punctuation marks are allowed: 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.

Comment:

Punctuation marks are ignored in the comparison of similarity.

Each word of a variety denomination must start with an initial capital letter unless linguistic custom demands otherwise. Exception are words after hyphen, unless they are proper nouns, articles, conjunction and preposition, other than those which are the first word of the epithet.

Successions of letters and numbers that need to be pronounced individually should be drafted in capital letters and, if combined with another pronounceable element, should constitute a distinct element of the denomination, separated by a blank space.



Examples:

| Legend: ✘ not appropriate ✔ appropriate | | |
|---|--------------------------------------|---|
| Denomination | Recommended drafting | Comments |
| Sweet Heart San Antonio | ✔ | The denominations consists of two words that are pronounceable. The first letter of each word should be capitalized. |
| Moshan Xiong No.2 | ✔ | Each element should be capitalised |
| ABC Ambition Little Red Lady HV1 PT San Remo CL | ✔ | Successions of letters or letters and numbers that need to be pronounced individually should be drafted in capital letters and should constitute a distinct element of the denomination, separated by a blank space if combined with another pronounceable element. |
| 's-Hertogenbosch | ✔ | The denomination is commemorating the town of 's-Hertogenbosch in The Netherlands. Its spelling follows a linguistic custom: it contains a punctuation mark and is to be written "s-Hertogenbosch" and not "S-Hertogenbosch. |
| IJsselham | ✔ | The denomination is commemorating the town IJsselham. Its spelling follows a linguistic custom (the initial two letters in capitals) and is to be written 'IJsselham' and not 'Ijsselham'. |
| Je l'Aime | ✘ | 'Je l'aime' falls under linguistic custom and only the first word should be capitalized. |
| Je l'aime | ✔ | |
| Peter's Glory | ✔ | This denomination falls under linguistic custom and the letter 's' should not be capitalised |
| Peter's glory | ✘ | |
| LY Florence | ✔ | LY is a company identifier. In practice, company acronyms or identifiers are capitalized even if they are pronounceable. |
| Dotori Orange TY | ✔ | TY is an established abbreviation used to refer to the resistance of tomatoes to Yellow Leaf Curl Virus (TYLCV). Although 'TY' is pronounceable, the use of capital letters is considered as an established practice. |
| Case-by-case | ✔ | In this case, the denominations contain one or several hyphens. As a consequence, words following the hyphen should be in lower cases, except if the word is a noun or a preposition like these examples. |
| Case-By-Case | ✘ | |
| Mont-Louis | ✔ | |
| Mont-louis | ✘ | |



| Legend: ✘ not appropriate ✔ appropriate | | |
|---|--------------------------------------|--|
| Denomination | Recommended drafting | Comments |
| Zákányszék-KD1 | ✔ | The denomination contains a hyphen. As a consequence, the second element should be in lower cases. However, in this case, the second element consist in a series of letters and numbers that are not pronounceable and should be written in upper cases. |
| Zákányszék-Kd1 | ✘ | |
| Pompon de Paris | ✔ | 'de' is a conjunction and should therefore not be capitalised |
| Pompon De Paris | ✘ | |
| Beauty of Bath | ✔ | 'of' is a conjunction and should therefore not be capitalised |
| Beauty of bath | ✘ | |



Article 4

There is an impediment for the designation of a variety denomination where it 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 in a Member State or in a Member of the International Convention for the Protection of New Varieties of Plants, unless the other variety no longer remains in existence and its denomination has acquired no special significance.

(Article 63 (3)(c) of Regulation 2100/94)

In evaluating the identity of, or confusion with, a variety denomination of another variety, the following shall apply:

A denomination is prima facie unsuitable if it is exactly the same as a variety denomination already registered or used in a Member State of the European Union or a contracting party to the International Convention for the Protection of New Varieties of Plants (hereinafter "UPOV") in a relation to a variety of the same or a closely related species.

"May be confused with" shall be considered to cover visual, phonetical and conceptual confusion. After an analysis of these 3 criteria independently, an overall assessment is carried out concluding on the suitability of the denomination proposal for aspects linked to similarity. Denominations of varieties of the same or a closely related species are considered. The varieties in question have been officially accepted for marketing or marketed in the European Union, the European Economic Area or in a contracting party to UPOV, or to OECD or have been the subject of a plant variety right or an application thereof in such territories.

Comment:

It is recommended that the freely accessible web-based CPVO Variety Finder assists in the process of checking whether the proposed denomination is identical or similar to denominations of existing varieties of the same genus or, if appropriate, UPOV class. Generally, a genus corresponds to a UPOV class unless the UPOV Class encompasses more than one genus or unless there are several classes within a genus (see annex).

The Variety Finder selects a set of potentially similar denominations on the basis of visual similarity, consisting in a minimum number of letters in common between the denomination tested and the denominations selected.

The denominations selected are then compared with 3 criteria, the visual, phonetical and conceptual similarity – before an overall assessment is made. For these 3 criteria, a continuous variation in the level of similarity (low, medium, high) needs to be taken into account. In principle, the conceptual similarity of the proposed denomination with another word may not make the denomination unsuitable, as long as



the words compared are clearly different from a visual and/or a phonetical point of view. Conversely, the conceptual difference may, in general, not be sufficient to offset a clear visual and/or phonetical similarity.

Examples below are intended to illustrate the analysis made under the related criteria. Only the overall assessment enables to conclude on the suitability of the denomination proposal.

1. Visual similarity

As a general rule, differences of two or more letters are not regarded as confusing.

1.1 A two-letter difference should be understood as different letters in the same place of the words or additional letters.

Examples:

| Legend: + high level of similarity - low level of similarity | | |
|--|------------------------------|--|
| Denomination | Visual Similarity assessment | Comments |
| Myrtel <> Miriel | - | Two different letters at the same place. Low level of visual similarity |
| Zitrino <> Citrina | - | Two different letters at the same place. Low level of visual similarity |
| Rytm <> Ritmo | - | One different letter at the same place and one additional letter. Low level of visual similarity |

1.2 In case the words share **the same letters**, the place of letters should be considered

Examples:

| Legend: + high level of similarity - low level of similarity | | |
|--|------------------------------|--|
| Denomination | Visual Similarity assessment | Comments |
| Ole <> Elo | - | Two-letter difference; low level of visual similarity. |
| Andalus <> Sandalu | - | More than 2 letters difference since they all change place; low level of visual similarity. |
| Melord <> Meldor | - | |
| Renia <> Reina | + | The denominations consist of the same letters; two letters are reversed. There is a high level of visual similarity. |
| Casiana <> Casania | + | |



| Legend: + high level of similarity - low level of similarity | | |
|--|------------------------------|---|
| Denomination | Visual Similarity assessment | Comments |
| Etoile <> Etirole | + | |
| Voile <> Virole | + | |
| Reins <> Riens | + | |
| Reins <> Serin | - | The denominations consist of the same letters but in such a different order that there is a limited risk of visual confusion. |
| Voile <> Olive | - | |

1.3. A one-letter difference may be sufficient to exclude confusion despite the general assumption of a high level of visual similarity. This is the case where the different letter is prominent in a way that makes the denomination clearly distinct from another variety denomination, for instance, when the denomination is short (see point 1.3.2 below) or when the different letter is placed first in the denomination (see point 1.3.1 below).

It should be noted that attaching or separating words may play a role in the assessment of the visual similarity.

Examples:

| Legend: + high level of similarity ~ medium level of similarity - low level of similarity | | |
|--|------------------------------|---|
| Denomination | Visual Similarity assessment | Comments |
| Nectarsnow <> Nectarnow | + | The breeder has a series of the same species starting with 'Nectar'. The two denominations differ by only one letter, in the middle of the word. Attaching the two words results in a high level of visual similarity. |
| Nectar Snow <> Nectar Now | ~ | The breeder has a series of the same species starting with 'Nectar'. The two denominations differ by only one letter; the different word is separated by a blank space from the series identifier. The blank space and the use of a capital letter at the beginning of each individual word makes the visual difference more prominent. The level of visual similarity is medium. |



1.3.1 One-letter difference: first letter

Where the difference between denominations is in their first letter, there may be no confusion. The reason for this is that the visual difference is more noticeable than in cases where the different letter is hidden in the word.

Examples:

| Legend: + high level of similarity ~ medium level of similarity - low level of similarity | | |
|--|------------------------------|--|
| Denomination | Visual Similarity assessment | Comments |
| Meagan<>Reagan | ~ | Visually the different letter is prominently placed at the beginning of the words. Despite a certain degree of visual similarity due to the difference in the first letter, confusion may be excluded. |
| Kinky<>Binky | ~ | |
| Hagar<>Magar | ~ | |
| Anna<>Hanna | - | |
| Vasco <> Basco | - | |
| Vasco <> Wasco | + | Visually the different letter is prominently placed at the beginning of the words. However, the different letters are considered to be graphically close. Despite a certain degree of visual dissimilarity due to the difference in the first letter, confusion may be provided. |
| Pinky <> Binky | + | |
| Beronas <> Peronas | + | |
| Pascal <> Rascal | + | |

1.3.2 One-letter difference: short words

In principle, the shorter a word is, the more easily will be to consider and keep in mind all its single elements. In contrast, differences between longer words are less noticeable. As a general rule, denominations consisting of less than 5 characters are considered as short.

Examples:

| Legend: + high level of similarity - low level of similarity | | |
|--|------------------------------|---|
| Denomination | Visual Similarity assessment | Comments |
| Anja<>Anka | - | The denominations are considered to be visually dissimilar because they are short words. |
| Dati<>Dato | - | |



| Legend: + high level of similarity - low level of similarity | | |
|--|------------------------------|---|
| Denomination | Visual Similarity assessment | Comments |
| Diva<>Dida | - | |
| Dina<> Dima | + | Although these denomination are short, the different letter is visually not sufficiently prominent to avoid visual confusion. |
| Fiora <> Fiona | + | |
| Nika <> Nike | + | |

1.4 There may be a visual similarity where **2 or more letters simply change place**.




Examples:

| Legend: + high level of similarity - low level of similarity | | |
|--|------------------------------|---|
| Denomination | Visual Similarity assessment | Comments |
| Monper<>Monpre | + | The two different letters simply change place. There is a high level of visual similarity |
| Albaron<>Alboran | + | |
| Sedona<>Sedano<> Sadeno | + | |
| Fonia <>Fiona | + | |
| Bettani<>Bettina | + | |
| Albaron <> Alonbra | - | The denominations contain the same letters but in a such different order that there is a limited risk of visual confusion |
| Monper <> Menpro | - | |
| Bettina <> Bettain | - | |



1.5 A difference of one digit between numbers is suitable only in case of a series of denominations from the same applicant/title holder.

Examples:






| Legend:  high level of similarity  low level of similarity | | |
|--|---|--|
| Denomination | Visual Similarity assessment | Comments |
| Jean 1, Jean 2, Jean 3 |  | These denominations are visually similar but are suitable if they are part of a series of varieties of the same species. |

1.6. Denominations composed of several elements written in capital letters






When a denomination composed of several elements has to be written in capital letters and its components have to be pronounced individually, a difference of one letter or number is not sufficient for the proposal to be suitable if it suggests a series in comparison with another denomination designating a variety from another applicant/title holder, even if the applicant/title holder has not already started a series as defined under Article 7.

In case the proposal does not suggest a series, a difference of one letter or number is not sufficient for the denomination to be suitable when the compared denomination is from the same breeder and the proposal is so long that it does not make the difference noticeable. Conversely, a difference of one letter or number does not prevent the denomination from being suitable when the compared variety is not from the same applicant and the proposal is sufficiently short to make the difference noticeable.

Examples:

| Legend:  not suitable  suitable  suitable with condition | | |
|--|---|---|
| Denomination | Suitability | Comments |
| ABC12345 <> ABC12346 |  | In principle, a one number difference at the end would make the denominations visually too similar. In this case, the pattern of the compared denominations suggests a series. This visual similarity may not constitute an impediment if both varieties are from the same applicant/title holder. |
| 12345A <> 12345B |  | In principle, a one letter difference at the end would make the denominations visually too similar. In this case, the pattern of the compared denominations suggests a series. This visual similarity may not constitute an impediment |












| Legend:  not suitable  suitable  suitable with condition | | |
|--|---|--|
| Denomination | Suitability | Comments |
| | | if both varieties are from the same applicant/title holder. |
| ABC1 <> AFC1 |  | These denominations are suitable, because their length makes the one element difference sufficiently noticeable. The same conclusion can be drawn even if they are not from the same applicant/title holder. |
| ABC12F45 <> ABC12345 |  | These denominations are not suitable, because they are not sufficiently short for the one element difference to be noticeable. The same conclusion can be drawn even if they are from the same breeder. |

2. Phonetic similarity

As regards the phonetic comparison, the overall phonetic impression produced by a denomination is particularly influenced by the number and sequence of its syllables. The common rhythm and intonation plays an important role. Consequently, the key elements for determining the overall phonetic impression of a denomination are the syllables and their particular sequence.

Examples:

| Legend:  high level of similarity  low level of similarity | | |
|--|---|---|
| Denomination | Phonetic similarity assessment | Comments |
| Meagan<>Reagan |  | The denominations are considered to be phonetically dissimilar . |
| Kinky<>Binky |  | |
| Hagar<>Magar |  | |
| Pinky<> Binky |  | The labial consonants 'P' and 'B' are phonetically very close. The denominations are considered to be phonetically similar. |
| Beronas <> Peronas |  | |
| Vasco <> Wasco |  | In certain EU languages, V and W are pronounced identically. The denominations are considered to be phonetically similar. |
| Vasco <> Basco |  | In Spanish, the letters V and B can be pronounced identically. The denominations are considered to be phonetically similar. |



| Legend: + high level of similarity - low level of similarity | | |
|--|---------------------------------------|--|
| Denomination | Phonetic similarity assessment | Comments |
| Anna <> Hanna | + | In certain EU languages, the letter H is silent and the denominations are pronounced identically. The denominations are considered to be phonetically identical. |
| Commodité<> Commodity | + | The two denominations consist of 4 syllables, 3 of them being identically pronounced. They differ by one letter only, which difference in pronunciation could be considered as not very strong. The denominations are considered to be phonetically similar. |

3. Conceptual similarity

From a conceptual point of view, two denominations are identical or similar when they share the same or analogous semantic content. The semantic content of a denomination is what it means, what it evokes.

The breeder/ applicant might always bring to the knowledge of the Office a meaning that was not recognised. The semantic content of a word should be looked at in dictionaries. If the word is in the dictionary, the described meaning will be its semantic content.

Examples:

| Legend: + high level of similarity - low level of similarity | | |
|--|---|--|
| Denomination | Conceptual similarity assessment | Comments |
| Meagan<>Reagan | - | The denominations are considered to be conceptually dissimilar . |
| Kinky<>Binky | - | |
| Hagar<>Magar | - | |
| Commodity<> Commodité | - | These English and French terms are considered as "false friends". They are conceptually different. |
| Quartz <> Kvartz | + | Kvartz is the transliteration of the Russian word Кварц, which has the same meaning as Quartz. The denominations are considered as conceptually identical. |



Denominations may consist of first names. First names are personal names given to someone at birth and used before a family name. As regards the conceptual comparison, if the denominations consist of variations of the same name, they are considered to be similar. Variations are highly similar first names derived from the same root. Gender is not considered when evaluating the conceptual difference.

Examples:

| Legend: + high level of similarity - low level of similarity | | |
|--|---|---|
| Denomination | Conceptual similarity assessment | Comments |
| Anna<>Hanna | + | The denominations are considered to be conceptually similar . |
| Valentino<>Valentin | + | |
| Jasmina<>Jazmin | + | |
| Noam <> Noa | - | The two denominations refer to different first names and are considered as conceptually dissimilar. |
| Ivona <> Ivana | - | The two denominations refer to different first names and are considered as conceptually dissimilar. |

The fact that certain names are spelled differently in different EU languages, does not change the outcome that they are conceptually similar since the same root can be identified

Examples:

| Legend: + high level of similarity - low level of similarity | | |
|--|---|--|
| Denomination | Conceptual similarity assessment | Comments |
| Richard<>Riccardo, Ricardo | + | The denominations are considered to be conceptually similar . |
| Christian<>Cristiano | + | |
| Carlotta<>Charlotte | + | |
| Paul <>Paolo, Pablo | + | |
| Nicola<>Nicholas, Nicklaus | + | |

However, the difference in spelling will be reflected in the conclusion of the visual and phonetic comparisons. Therefore, in some cases, even though the denominations are found to be conceptually identical or similar, taking into account the visual and phonetic differences, the outcome might be that the denominations are overall considered not similar. Therefore, in such cases, the visual and phonetical comparison will determine the suitability of the denominations.



4. Overall assessment

Examples:

| Legend : + high level of similarity ~ medium level of similarity - low level of similarity x Not suitable ✓ Suitable | | | | | |
|---|-------------------|---------------------|-----------------------|-------------|--|
| Denominations | Visual similarity | Phonetic similarity | Conceptual similarity | Suitability | Comment |
| Meagan <> Reagan | ~ | - | - | ✓ | <p>There is one different letter only, but the different letter is placed in the front position of the denomination. The position of this letter, the visual difference between the letters 'M' and 'R' result in a medium level of visual similarity.</p> <p>The different letter creates a sufficient phonetic difference resulting in a low level of phonetic similarity.</p> <p>Meagan is recognisable as a female first name and Reagan as the name of a former US President. The denominations are therefore conceptually distinct.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |
| Kinky <> Binky | ~ | - | - | ✓ | <p>There is one different letter only, but the different letter is placed in the front position of the denomination. The position of this letter, the visual difference between the letters 'K' and 'B' result in a medium level of visual similarity.</p> <p>The different letter creates a sufficient phonetic difference resulting in a low level of phonetic similarity.</p> <p>Both 'Kinky' and 'Binky' have a meaning. Denominations are therefore conceptually distinct.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |



| Legend : + high level of similarity ~ medium level of similarity - low level of similarity x Not suitable ✓ Suitable | | | | | |
|---|---|---|---|---|---|
| Pinky <> Binky | + | + | - | x | <p>There is one different letter only, but the different letter is placed in the front position of the denomination. The position of this letter, the visual similarity between the letters 'P' and 'B' results in a high level of visual similarity.</p> <p>The different letter does not create a sufficient phonetic difference resulting in a high level of phonetic similarity.</p> <p>Both 'Pinky' (Rosy) and 'Binky' have a meaning, the denominations are therefore conceptually distinct.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| Selene <> Celene | ~ | + | + | x | <p>There is one different letter only, but the different letter is placed in the front position of the denomination. The position of the letter, the visual difference between the letters 'S' and 'C' result in a medium level of visual similarity.</p> <p>The different letter does not create a sufficient phonetic difference, resulting in a high level of phonetic similarity.</p> <p>'Selene' and 'Celene' are variants of the same female first name and are therefore conceptually similar.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| Castello <> Pastello | ~ | - | - | ✓ | <p>There is one different letter only, but the different letter is placed in the front position of the denomination. The position of this letter, the visual difference between the letters 'C' and 'P' result in a medium level of visual similarity.</p> <p>The different letter creates a sufficient phonetic difference resulting in a low level of phonetic similarity.</p> <p>Both Italian words 'Castello' (Castle) and 'Pastello' (Pastel) have a meaning, the denominations are therefore</p> |



| Legend : + high level of similarity ~ medium level of similarity - low level of similarity ✗ Not suitable ✓ Suitable | | | | | |
|---|----------|----------|----------|----------|---|
| | | | | | <p>conceptually distinct. The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |
| Commodity <> Commodity | + | + | - | ✗ | <p>There is one different letter only, the different letter is placed in the end position of the denomination which results in a high level of visual similarity. The different letter does not create a sufficient phonetic difference, resulting in a high level of phonetic similarity. The English word 'Commodity' has a different meaning than the French word 'Commodity'; the denominations are therefore conceptually distinct. The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| Anna <> Hanna | - | + | + | ✗ | <p>There is one different letter only, but this is an additional letter, placed in the front position of the denomination which results in a low level of visual similarity. The different letter does not create a sufficient phonetic difference (at least in some EU languages) resulting in a high level of phonetic similarity. 'Anna' and 'Hanna' are variants of the same female first name and are therefore conceptually similar. The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| Anka <> Anja | - | - | + | ✓ | <p>There is one different letter only, placed in the middle of the denominations which are short words, resulting in a low level of visual similarity. The different letter creates a sufficient phonetic difference resulting in a low level of phonetic similarity. 'Anka' and 'Anja' are variants of the same female first name and are conceptually similar. The overall assessment leads to conclude that there is no risk of</p> |



| Legend : + high level of similarity ~ medium level of similarity - low level of similarity ✗ Not suitable ✓ Suitable | | | | | |
|---|---|---|---|---|--|
| | | | | | confusion between the two denominations. The proposal is suitable . |
| Elsa <> Elza | - | + | + | ✗ | There is one different letter only, placed in the middle of the denominations which are short words, resulting in a low level of visual similarity. The different letter does not creates a sufficient phonetic difference resulting in a high level of phonetic similarity. 'Elsa' and 'Elza' are variants of the same female first name and are conceptually similar. The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable . |
| Power <> Poker | + | - | - | ✓ | There is one different letter only, placed in the middle of the denominations, resulting in a high level of visual similarity. The different letter creates a sufficient phonetic difference resulting in a low level of phonetic similarity. 'Power' and 'Poker' have a different meaning in English and are therefore conceptually distinct. The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable . |
| Topic <> Tonic | + | - | - | ✓ | There is one different letter only, placed in the middle of the denominations, resulting in a high level of visual similarity. The different letter creates a sufficient phonetic difference resulting in a low level of phonetic similarity. 'Topic' and 'Tonic' have a different meaning in English and are therefore conceptually distinct. The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable . |



| Legend : + high level of similarity ~ medium level of similarity - low level of similarity ✗ Not suitable ✓ Suitable | | | | | |
|---|----------|----------|-----------|----------|---|
| Slide <> Slice | + | - | - | ✓ | <p>There is one different letter only, placed in the middle of the denominations, resulting in a high level of visual similarity.</p> <p>The different letter creates a sufficient phonetic difference resulting in a low level of phonetic similarity.</p> <p>'Slide' and 'Slice' have a different meaning in English and are therefore conceptually distinct.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |
| Ruby <> Rugby | + | - | - | ✓ | <p>There is one different letter only, this is an additional letter placed in the middle of the denomination, resulting in a high level of visual similarity.</p> <p>The different letter creates a sufficient phonetic difference resulting in a low level of phonetic similarity.</p> <p>'Ruby' and 'Rugby' have a different meaning in English and are therefore conceptually distinct.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |
| Monper <> Monpre | + | + | NA | ✗ | <p>There is a 2-letter difference, the two letters are identical but have simply changed place resulting in a high level of visual similarity.</p> <p>This change does not create a sufficient phonetic difference resulting in a high level of phonetic similarity.</p> <p>'Monper' and 'Monpre' have no meaning; the concept is not relevant in this case.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| Albaron <> Alb o ran | + | + | - | ✗ | <p>There is a 2-letter difference, the two letters are identical but have simply changed place resulting in a high level of visual similarity.</p> <p>This change does not create a sufficient phonetic difference resulting in a high level of</p> |



| Legend : + high level of similarity ~ medium level of similarity - low level of similarity ✗ Not suitable ✓ Suitable | | | | | |
|---|----------|----------|----------|---|--|
| | | | | <p>phonetic similarity. The geographical places 'Albaron' and 'Alboran' may not be very well known.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> | |
| Fiona <> Fonia | + | - | - | ✓ | <p>There is a 2-letter difference, the two letters are identical but have simply changed place resulting in a high level of visual similarity. This change creates a sufficient phonetic difference resulting in a low level of phonetic similarity. Both 'Fiona' and 'Fonia' have a meaning and are therefore considered as conceptually distinct.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |
| Diamant <> Diamond | - | + | + | ✗ | <p>There are two different letters which result in a low level of visual similarity. The different letters do not create a sufficient phonetic difference resulting in a high level of phonetic similarity. 'Diamant' and 'Diamond' have the same meaning; they are therefore considered as conceptually identical.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| Crystal <> Kristall | - | + | + | ✗ | <p>There are three different letters which result in a low level of visual similarity. The different letters do not create a sufficient phonetic difference resulting in a high level of phonetic similarity. 'Crystal' and 'Kristall' have the same meaning; they are therefore considered as conceptually identical.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |



| Legend : + high level of similarity ~ medium level of similarity - low level of similarity ✗ Not suitable ✓ Suitable | | | | | |
|---|---|---|---|---|--|
| <p>Cascada <> Kaskad</p> | - | + | + | ✗ | <p>There are three different letters which result in a low level of visual similarity. The different letters do not create a sufficient phonetic difference resulting in a high level of phonetic similarity. 'Cascada' and 'Kaskad' have the same meaning; they are therefore considered as conceptually identical. The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| <p>Carnevale <> Karnaval</p> | - | + | + | ✗ | <p>There are three different letters which result in a low level of visual similarity. The different letters do not create a sufficient phonetic difference resulting in a high level of phonetic similarity. 'Carnevale' and 'Karnaval' have the same meaning; they are therefore considered as conceptually identical. The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| <p>Attac <> Atak</p> | + | + | + | ✗ | <p>There are two different letters, one of them is a double of a common letter, which result in a high level of visual similarity. The different letters do not create a sufficient phonetic difference resulting in a high level of phonetic similarity. 'Attac' and 'Atak' are considered as misspelled forms of 'Attack' and are considered therefore as conceptually identical. The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| <p>Praetorian <> Pretoria</p> | ~ | ~ | - | ✓ | <p>Despite the two different letters, the visual difference is not prominent and result in a medium level of visual similarity. The different letters do not create a sufficient phonetic difference resulting in a medium level of phonetic similarity.</p> |



| Legend : + high level of similarity ~ medium level of similarity - low level of similarity ✗ Not suitable ✓ Suitable | | | | | |
|---|---|---|---|---|--|
| | | | | | <p>'Praetorian' and 'Pretoria' have a different meaning; they are considered therefore as not conceptually identical.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |
| Josephine <> Josefine | - | + | + | ✗ | <p>There are two different letters which result in a low level of visual similarity.</p> <p>The different letters do not create a sufficient phonetic difference resulting in a high level of phonetic similarity.</p> <p>'Josephine' and 'Josefine' are variant of the same female first name; they are therefore considered as conceptually identical.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| Richard <> Riccardo | - | - | + | ✓ | <p>There are two different letters which result in a low level of visual similarity.</p> <p>The different letters create a sufficient phonetic difference resulting in a low level of phonetic similarity.</p> <p>'Richard' and 'Riccardo' are variant of the same male first name; they are therefore considered as conceptually identical.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |
| Nicola <> Nicholas | - | + | + | ✗ | <p>There are two different letters which result in a low level of visual similarity.</p> <p>The different letters do not create a sufficient phonetic difference resulting in a high level of phonetic similarity.</p> <p>'Nicola' and 'Nicholas' are variant of the same first name; they are therefore considered as conceptually identical.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two</p> |



| Legend : + high level of similarity ~ medium level of similarity - low level of similarity ✗ Not suitable ✓ Suitable | | | | | |
|---|---|---|---|---|--|
| | | | | | denominations. The proposal is not suitable . |
| Nicola <> Niklaus | - | - | + | ✓ | <p>There are two different letters which result in a low level of visual similarity.</p> <p>The different letters create a sufficient phonetic difference resulting in a low level of phonetic similarity.</p> <p>'Nicola' and 'Niklaus' are variant of the same first name; they are therefore considered as conceptually identical.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |
| Christian <> Kristijan | - | + | + | ✗ | <p>There are two different letters which result in a low level of visual similarity.</p> <p>The different letters do not create a sufficient phonetic difference resulting in a high level of phonetic similarity.</p> <p>'Christian' and 'Kristijan' are variant of the same first name; they are therefore considered as conceptually identical.</p> <p>The overall assessment leads to conclude that there is a risk of confusion between the two denominations. The proposal is not suitable.</p> |
| Christian <> Christen | - | - | + | ✓ | <p>There are two different letters which result in a low level of visual similarity.</p> <p>The different letters create a sufficient phonetic difference resulting in a low level of phonetic similarity.</p> <p>'Christian' and 'Christen' are variant of the same first name; they are therefore considered as conceptually identical.</p> <p>The overall assessment leads to conclude that there is no risk of confusion between the two denominations. The proposal is suitable.</p> |



1. 'Closely related species'

'Closely related species' shall have the meaning as defined in the Annex to the guidelines. This situation should be taken into account in the overall assessment.

Comment:

'Closely related species' is a notion stemming from the UPOV Convention for the purpose of assessing the suitability of denominations: it is deemed to be confusing if 2 varieties belonging to 2 'closely related' species bear the same or a similar denomination. The general rule is that all species belonging to a genus are closely related. UPOV has developed a set of exceptions to this rule with the UPOV classes (see Annex 1 to the UPOV Explanatory Notes on PVDs): on the one hand, some species belonging to different genera are grouped together and that should still be considered as closely related (See Annex 1, Part I) whereas, on the other hand, species which belong to the same genus are not considered as closely related (See Annex 1, Part II). This grouping is based on experience with no particular botanical background.

In certain cases, the difference between two closely related species can play a role in the assessment of the similarity and the risk of confusion between the two varieties. This is the case, when the level of similarity between the denominations compared is medium and the risk of confusion between two species is unlikely among professionals. The consideration of the species as a supportive criterion should always be evaluated on a case-by-case basis.

Examples: denomination proposal '**Impact**' for a variety of *Prunus persica* L.

| Legend: | | ✘ not suitable | ✔ suitable |
|---------------------------------------|---|--|------------|
| 'Impact' <i>Prunus persica</i> L. | | Comments | |
| Impact <i>Prunus avium</i> L. | ✘ | The denomination proposal is identical to another denomination in the same UPOV class. | |
| Impakt <i>Prunus avium</i> L. | ✘ | The denomination proposal is visually similar and phonetically identical to another denomination in the same UPOV class. | |
| Impactu <i>Prunus avium</i> L. | ✔ | There is a medium level of visual and phonetic similarity but the denomination proposal concerns another species which lowers the risk of confusion between the two varieties. The denomination proposal would not be suitable in case of the same species. | |



2. 'A variety no longer remains in existence' shall be considered to mean a variety of which material no longer exists;

Comment:

Various sources including unofficial registers may be used for this purpose.

In particular, a network of International Cultivar Registration Authorities (non-statutory) registers ornamental varieties and supplies useful information. Provided the information is made available to the CPVO, the denomination of such varieties will be considered in the assessment if it can be confirmed that these varieties still exist. Information provided by the KAVB (Dutch Royal General Bulb Growers' Association) is for example extensively made use of.

3. 'An official register of plant varieties' shall be considered as a reference to the common catalogue of varieties of agricultural plant species or of vegetable species, the EU variety register of fruit genera and species (Fruit Reproductive Material Information System, FRUMATIS), the common catalogue of vine varieties or to any register compiled and maintained by the Community Plant Variety Office, the OECD, or by an official body of the Member States of the EU or the European Economic Area, or of a contracting party to UPOV.

In the absence of clear rules at legislative level the Office applies the following principle. It is considered that the denomination of a variety which has been registered in a plant variety rights register or in an official National list for the purpose of marketing authorisation has anteriority over the denomination of a variety which has been proposed but not registered yet. If both potentially similar variety denominations are linked to varieties which are still under procedure, the firstly published denomination in an official gazette is deemed to have anteriority. Finally, if none of the proposals for denomination have been published, the anteriority is with the denomination which has first been proposed.

It should be noted that the freely accessible CPVO Variety Finder and the services provided regarding the cooperation in variety denominations constitute a suitable tool to communicate formal denomination proposals which have not been published yet: denominations which have been the subject of a request for advice from the CPVO are stored in the database and made available in subsequent tests. Their availability gives an indication that this denomination might be published in the near future.



4. 'A variety the denomination of which has acquired no special significance': the denomination of a variety which has at one time been entered in an official register of plant varieties and thereby acquired special significance shall in each case be considered to have lost that special significance on the expiry of a 10-year period after deletion from that register, if this variety has not acquired significance by other means since then, e.g. through commerce.

Comment:

This provision should be considered in its context:

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

In interpreting this provision, the definition of Article 5(2)(d) of Regulation 2021/384 shall be considered.

In the explanations below, the material of the variety is supposed no longer to exist.

Significance acquired by virtue of official registration

In relation to a variety once entered into an official register, the general assumption should be that its denomination has thereby acquired special significance. This notwithstanding, the following considerations must be taken into account:

- The expiry of a ten-year period since the variety was deleted from the register may lead to the conclusion that, despite the entry of a variety on a register, its denomination has lost any significance conferred thereby.

Unless there are exceptional circumstances, the Office applies the ten-year period. However, it should be recalled that the UPOV Guidelines on Variety Denominations generally discourage the re-use of variety denominations.

- In those cases where the variety has never been marketed and has been withdrawn before registration, the utilisation of the same or a similar denomination is possible without time restriction. The same principle applies under Article 63.3.f below.
- Where a variety was registered for an unusually short period (e.g.: a few days), the fact of registration alone may be considered not to have conferred significance.

Significance acquired by virtue of registration by non-statutory authority

Varieties, which material is closely monitored by non-statutory authorities and that have been entered in their register could be considered as having acquired significance by virtue of registration provided that these non-statutory registers are regularly maintained, updated and published. These registers should provide all necessary information allowing to identify the variety, its breeder, its registration status and the relevant date.



Significance acquired by marketing

Where a variety was never registered but extensively marketed, the significance of the denomination must simply be assessed on the basis of any perceived continued impact of the denomination within the industry.

It should be noticed in this respect that the CPVO has included commercial registers in its procedures to check the suitability of variety denominations for similarity. Information about the Dutch commercial registers maintained by Floricode (non-statutory authority for registration and judgement of floricultural crops in The Netherlands) and Naktuinbouw (List of names of Perennials and Woody Plants) are regularly received.

Acceptance by the Office of the re-use of a denomination

A denomination can be re-used when the following conditions are cumulatively fulfilled: the concerned original variety must i) no longer be in cultivation; and ii) have ceased to exist as breeding material; and iii) must not be found in a gene or seed bank; and the concerned denomination must iv) have rarely been used in publications; and v) its re-use is unlikely to cause confusion. At the expiry of a ten-year period since the variety, the denomination of which is being re-used, was deleted from the register, the above criteria will be presumed satisfied. However, objections against the published denomination proposal may be lodged based on the fact that one of the cited criteria is not being fulfilled and the re-use of the denomination should thus be rejected. Such objection will have to rely on sound evidence of clear circumstances proving that at least one of the above criteria is not met.



Article 5

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

(Article 63 (3)(d) of Regulation 2100/94)

Designations which are commonly used for the marketing of goods or which have to be kept free under other legislation shall be considered to mean in particular:

1. Currency denominations, or terms associated with weights and measures;
2. Expressions that, by virtue of legislation, shall not be used for purposes other than those envisaged by that legislation.

Comment:

Currencies or terms associated with weights and measures should be understood in relation to plant varieties. As a consequence, no longer existing currencies or terms not associated with the marketing of plant varieties are suitable.

Examples:

Currencies: 'Euros', 'Dollar', 'Escudo', 'Real' are not suitable

Terms associated with weights and measures: 'Kilo', are not suitable; 'Joule', 'Dioptre', 'Celsius', 'Fahrenheit', 'Newton' are suitable

Examples of expressions which contains an element that, by virtue of legislation, is not to be used for purposes other than those envisaged by that legislation; can be a name or abbreviation of an international organisation excluded from trade mark protection under an international convention (cf. Art. 6 ter (1)(b) of the Paris Convention).

Another example is Council Regulation the 834/2007 on organic production and labelling of organic products. In particular, according to article 23.1 of that Regulation, *1. For the purposes of this Regulation a product shall be regarded as bearing terms referring to the organic production method where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials are described in terms suggesting to the purchaser that the product, its ingredients or feed materials have been obtained in accordance with the rules laid down in this Regulation. In particular, the terms listed in the Annex, their derivatives or diminutives, such as 'bio' and 'eco', alone or combined, may be used throughout the Community and in any Community language for the labelling and advertising of products which satisfy the requirements set out under or pursuant to this Regulation.*

Examples: 'Biostar' is not suitable



Article 6

There is an impediment for the designation of a variety denomination where it is liable to give offence in one of the Member States or is contrary to public policy

(Article 63 (3)(e) of Regulation 2100/94)

This heading would cover names of unsavoury characters from recent history, words with an offensive or abusive meaning in a language of the EU.

Comments:

The origin and the language of the application play a major role in the identification of the concept. In respect of offensive or sensitive terms, only denominations in breach of Article 63.3(e) of Basic Regulation can lead to the refusal of the proposal.

A denomination that is considered as suitable within the EU but could be considered as sensitive in countries outside the EU will not lead to a systematic refusal of the denomination. However, if the Office is made aware of a potential issue regarding the meaning of that denomination outside the EU, it will inform the applicant, so that he/she can make an informed decision on how he/she wishes to proceed with the denomination proposal.



Article 7

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 any other party to the proceedings

(Article 63 (3)(f) of Regulation 2100/94)

A variety denomination shall be considered to mislead or to cause confusion if:

1. It conveys the false impression that the variety has particular characteristics or value;

Comment:

Descriptive characteristics of the variety are frequently indicated or suggested in the variety denomination. Such indications or suggestions are not suitable if they cannot be attributed to the variety, especially if the characteristics are mentioned in the technical DUS protocol for the species in question and do not match the description established for the variety.

However, it should be evaluated whether the characteristic indicated is of nature to mislead the user of the variety. For example, 'Blue Star' might be considered to be misleading for an ornamental variety where the flower colour is not blue, where this will not be the case for a sugar beet variety.

Also, some words indicating characteristics might have another meaning. The colour indication should in any case not be misleading as to the characteristic for the denomination to be approved.

Examples:

'Ruby Renet' not suitable for an apple variety if the variety is not red; 'Blackbird' or 'Blackburn' for an eggplant should be a very dark variety.

2. it conveys the false impression that the variety is related to, or derived from, another specific variety;

Comment:






The false impression that a variety is related to or derived from another specific variety arises especially when the denominations of varieties of a same species have words in common. This is the case when a breeder starts to build up a series of denominations with a common word. As a rule of thumb, a series is deemed to be established with at least 2 denominations from the same breeder sharing that word. Another denomination containing that word and proposed by another breeder for a variety of the same species but not related to this series is not suitable. However, if a word is only used for one variety instead of in a series, that word can be used by different breeders.



Examples:





A breeder has a series 'Samba Patio', 'Samba Pleasure' and 'Samba Delight'. This breeder monopolizes the word 'Samba' and another breeder proposing 'Samba Treasure' for a variety of the same species should prove the link to the series.

Example: Biologic relation - A denomination proposal '**Cherry Reagan**' where a series 'Cream Reagan', 'Sweet Reagan', 'Yellow Reagan' already exists.

| Legend:  not suitable  suitable  suitable with conditions | | |
|--|---|---|
| 'Cherry Reagan' Vs 'Cream Reagan', 'Sweet Reagan', 'Yellow Reagan' | Same breeder | Different breeder |
| Biologic relation |  |  Suitable unless the original breeder refuses |
| No biologic relation |  |  |

This biologic relation is not required if at least one of the two denominations compared refers to a different and unequivocal concept, so that this concept prevails over the suggestion of a biologic relation between the varieties.

Examples

| Legend:  not suitable  suitable | | |
|---|---|--|
| Denomination | Suitability | Comments |
| Union Jack <> Black Jack |  | The national flag of the United Kingdom and the famous casino game come immediately to mind, so that the concepts override any suspicion of biologic relation between the varieties. |
| Versailles Palace <> Grand Palace |  | Grand palace is commonly used as a name for movie theaters or hotels. It will not be confused with the name of the French Palace of Versailles. |

Words qualifying the variety or words considered as generic cannot be monopolised. If a word cannot be monopolised, its reuse does not require the assessment of the biologic relation.



A word is considered as generic when it has already been used by different breeders for two different varieties of the same species without biologic relationship. Everybody can build a series based on a generic word, but cannot prevent others from using it. Nobody can monopolize a generic term.

Varieties are considered to be related if they come from the same applicant or breeder or if they have the same genetic background.

Examples:

Before the breeder mentioned above built up his series 'Samba Patio', 'Samba Pleasure' and 'Samba Delight', another breeder had earlier a denomination 'Samba' for a variety of the same species not linked to the series. A mutation of 'Samba' can be named 'Red Samba' even if it is not linked to the series.

Once a breeder has named his rose variety 'Salmon Wave', a new rose variety can be called 'Salmon Carpet'.

A wheat variety can be called 'Salmon'. If another breeder wishes to name his new wheat variety 'Salmon Skin', the existence of a biologic relation to 'Salmon' is compulsory, provided that the breeder of 'Salmon' started a series.

The false impression that a variety is related to or derived from another specific variety also arises when an adjective or any term qualifying the variety is added to an existing denomination.

Examples:

| Denomination | Comments |
|---------------------------------|--|
| Red Impact<>Impact | The denomination proposal 'Red Impact' leads to think that the variety is a mutation of 'Impact'. The proposal is suitable provided that the biologic relation between the two varieties is established. |

3. By dint of its similarity to a well-known trading name other than a registered trade mark or variety denomination, it suggests that the variety is another variety, or conveys a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder;

Comment:

In case a denomination is similar to a well-known trade name, the risk of confusion as to a biologic relation between the varieties or the identity of the breeder is not assessed. For instance, no biologic relation will be required between a variety bearing the denomination 'Arctic' and a variety bearing the trade name "Arctic Nymph".

However, the identity or the similarity between the denomination and the trade name will be assessed under Art. 63.3(c) of (EC) 2100/94 provided that this commercial name belongs to a register as described



under Art. 4. 4 of these explanatory notes. For instance, a denomination 'Arctic' will be considered as too similar to a trade name "Artic".

4. it contains comparatives and superlatives which may be misleading as to the characteristics of the variety. In particular, a denomination is not suitable if it exaggerates the merits of the variety and might become confusing through the later introduction of new varieties having comparable characteristics.

Comment:

Comparatives may reflect the situation correctly at a certain point in time but no longer in the future. Denominations are considered in their potential figurative sense when assessing whether they are comparatives or superlatives.

Examples:

'Margareta Fastest', where 'Margareta' exists

5. it contains 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;

Comment:

Companies might use an abbreviation for their identification in variety denominations. It should be noted that the abbreviation established to identify company A cannot be used by company B for the denominations of varieties not bred by company A. If several companies were involved in the breeding of a variety, the established abbreviation of any of these companies in the denomination would be suitable.

Examples:

A variety 'ABC Ambition' is registered with DEF as the Breeder and title holder. ABC is the name of the company which bought the license for the marketing and also acts as a procedural representative for PBR. ABC is not suitable in the denomination because this company is not the breeder nor its successor in title.



6. it contains the name of a geographical name that would be likely to deceive the user as to the characteristics or value of the variety.

Comment:

In general, names of cities, regions or countries are suitable as denominations.

In case the denomination proposal contains a geographical name and the species of the variety in question is widely grown in the area designed by that geographical name, the denomination would be deemed to be misleading as to the origin of the variety if it does not come from that region.

Examples:

Bretagne is a region in the northwest of France that has acquired reputation for the production of cauliflower varieties. A cauliflower variety 'Queen of Bretagne' would be suitable if the variety originates from that region.



Article 8

There is an impediment for the designation of a variety denomination where, in the case of a variety which has already been entered:

(a) in one of the Member States

(b) in a Member of the International Union for the Protection of New Varieties of Plants; or

(c) in another State for which it has been established in a Community act that varieties are evaluated there under rules which are equivalent to those laid down in the Directives on common catalogues;

in an official register of plant variety rights or material thereof and has been marketed there for commercial purposes, and the proposed variety denomination differs from that which has been registered or used there, unless the latter one is the object of an impediment pursuant to paragraph 3

(63 (4) of Regulation 2100/94)

Where there is an impediment under Article 2 to 7 above, the Office must administer a synonym.

“Official register of plant varieties”

An “official register of plant varieties” shall be considered as a reference to the common catalogue of varieties of agricultural plant species or of vegetable species, the EU variety register of fruit genera and species (Fruit Reproductive Material Information System, FRUMATIS), the common catalogue of vine varieties or to any register compiled and maintained by the Community Plant Variety Office, or by an official body of the Member States of the EU or the European Economic Area, or of a contracting party to UPOV.

Comment:

In the ornamental sector, varieties commercialised are sometimes listed in commercial registers like the registers held by Floricode (Dutch organisation for the registration and coding of floriculture products), the KAVB (Dutch Royal General Bulb Growers' Association) and Naktuinbouw. It is checked that varieties applied for Community plant variety rights bear the same denomination as in these registers if they have already been commercialised.



Article 9

These Guidelines shall enter into force on the same day of the 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.

Angers,
Marien VALSTAR
Chairperson of the Administrative Council



ANNEX

CLOSELY RELATED SPECIES

“Closely related species” as specified in Article 63(3)(c) of Council Regulation 2100/94 and referred to in Article 4(d) of these Guidelines should have the following meaning:

- a) As a general rule, for genera and species not covered by the list of classes in this Annex, a genus is considered to be a class
- b) If there are more than one class within a genus, the list of classes in Part I below shall apply
- c) If classes encompass more than one genus, the list of classes in Part II below shall apply.

Part I

Classes within a genus

| <u>Classes</u> | <u>Botanical names</u> |
|----------------|--|
| Class 1.1: | Brassica oleracea |
| Class 1.2: | Brassica other than Brassica oleracea |
| Class 2.1: | Beta vulgaris L.. var. alba DC., Beta vulgaris L. var. altissima |
| Class 2.2: | Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: B. vulgaris L. var. rubra L.), B. vulgaris L. var. cicla L., B. vulgaris L. ssp. vulgaris var. vulgaris. |
| Class 2.3: | Beta other than classes 2.1 and 2.2. |
| Class 3.1: | Cucumis sativus |
| Class 3.2: | Cucumis melo |
| Class 3.3: | Cucumis other than classes 3.1 and 3.2 |
| Class 4.1: | Solanum tuberosum L. |
| Class 4.2: | Tomato & Tomato rootstocks: <ul style="list-style-type: none">○ Solanum lycopersicum L. (Lycopersicon esculentum Mill.)○ Solanum cheesmaniae (L. Ridley) Fosberg (Lycopersicon cheesmaniae L. Riley)○ Solanum chilense (Dunal) Reiche (Lycopersicon chilense Dunal)○ Solanum chmielewskii (C.M. Rick et al.) D.M. Spooner et al. (Lycopersicon chmielewskii C. M. Rick et al.)○ Solanum galapagense S.C. Darwin & Peralta (Lycopersicon cheesmaniae f. minor (Hook. f.) C. H. Müll.) (Lycopersicon cheesmaniae var. minor (Hook. f.) D. M. Porter) |



- Solanum habrochaites S. Knapp & D.M. Spooner
(Lycopersicon agrimoniifolium Dunal)
(Lycopersicon hirsutum Dunal)
(Lycopersicon hirsutum f. glabratum C. H. Müll.)
- Solanum pennellii Correll
(Lycopersicon pennellii (Correll) D'Arcy)
- Solanum peruvianum L.
(Lycopersicon dentatum Dunal)
(Lycopersicon peruvianum (L.) Mill.)
- Solanum pimpinellifolium L.
(Lycopersicon pimpinellifolium (L.) Mill.)
(Lycopersicon racemigerum Lange)

And hybrids between those species

Class 4.3: Solanum melongena L.

Class 4.4: Solanum other than classes 4.1, 4.2 and 4.3

Part II

Classes encompassing more than one genus

| <u>Classes</u> | <u>Botanical names</u> |
|----------------|--|
| Class 201: | Secale, Triticale, Triticum |
| Class 202: | Megathyrus, Panicum, Setaria, Steinchisma |
| Class 203*: | Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum and Poa |
| Class 204* | Lotus, Medicago, Ornithopus, Onobrychis, Trifolium |
| Class 205: | Cichorium, Lactuca |
| Class 206: | Petunia and Calibrachoa |
| Class 207: | Chrysanthemum and Ajania |
| Class 208: | (Statice) Goniolimon, Limonium, Psylliostachys |
| Class 209: | (Waxflower) Chamelaucium, Verticordia |
| Class 210: | Jamesbrittania and Sutera |
| Class 211: | Mushrooms |
| | <ul style="list-style-type: none"> ○ Agaricus ○ Agrocybe ○ Auricularia ○ Dictyophora ○ Flammulina ○ Ganoderma ○ Grifola |



- Hericium
- Hypsizigus
- Lentinula
- Lepista
- Lyophyllum
- Meripilus
- Mycoleptodonoides
- Naematoloma
- Panellus
- Pholiota
- Pleurotus
- Polyporus
- Sparassis
- Tricholoma

Class 212: Verbena L. and Glandularia J.F.Gmel.

Class 213: Eupatorium L.

- Acanthostyles R. M. King & H. Rob.
- Ageratina Spach
- Asplundianthus R. M. King & H. Rob.
- Bartlettina R. M. King & H. Rob.
- Campuloclinium DC.
- Chromolaena DC.
- Conoclinium DC.
- Cronquistianthus R. M. King & H. Rob.
- Eutrochium Raf.
- Fleischmannia Sch. Bip.
- Praxelis Cass.
- Viereckia R. M. King & H. Rob.

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

