

Ordinance on the Procedure of Examination of Distinctness, Uniformity and Stability of New Plant Varieties for the Purpose of Granting a Plant Breeder's Right and Registration of Varieties of May 10, 2011⁴

(adoption date: May 10, 2011; entry into force: June 11, 2011)

THE MINISTRY OF AGRICULTURE, FISHERIES AND RURAL DEVELOPMENT

1373

Pursuant to Article 18, paragraph 6 of the Plant Variety Protection Act (Official Gazette 131/97, 62/00 and 67/08), the Minister of Agriculture, Fisheries and Rural Development hereby issues the

ORDINANCE

ON THE PROCEDURE OF EXAMINATION OF DISTINCTNESS, UNIFORMITY
AND STABILITY OF NEW PLANT VARIETIES FOR THE PURPOSE
OF GRANTING A PLANT BREEDER'S RIGHT AND
REGISTRATION OF VARIETIES

I. GENERAL INFORMATION

Article 1

This Ordinance lays down the procedure and the way of examining distinctness, uniformity and stability (hereinafter: DUS) of new plant varieties for the purpose of granting a plant breeder's right and registration of varieties, as well as the time limits for the delivery of propagating material (seed or seedlings) necessary for carrying out the DUS testing.

II. EXAMINING PROCEDURE

Article 2

(1) The DUS testing procedure for a new plant variety includes examining of varieties in the field trial and laboratory, which is carried out according to procedures and methods that are in compliance with the general and technical guides in force of the International Convention for the Protection of New Varieties of Plants (hereinafter: UPOV Convention) and/or the Community Plant Variety Office (hereinafter: CPVO).

(2) The DUS testing of new plant varieties in the field trial and laboratory shall be carried out by the Croatian Centre for Agriculture, Food and Rural Affairs, the Institute for Seed and Seedlings (hereinafter: the Croatian Centre) or competent institution (hereinafter: examiner) determined by the Croatian Centre, in accordance with the UPOV or CPVO technical guides for each species.

(3) The Croatian Centre may also entrust the conduct of DUS testing of a new plant variety to an examiner outside the Republic of Croatia in the country which signed international agreements and conventions that the Republic of Croatia has also signed and became a party in, but only in the cases where the DUS examiner of a new plant variety has already been appointed by the competent office for the protection of new plant varieties in that country. In such cases, the Croatian Centre shall previously establish whether agro-ecological conditions in the country where testing is to be carried out are comparable with agro-ecological conditions in the Republic of Croatia.

(4) Mutual obligations, rights and the mode of cooperation between the Croatian Centre and the examiner shall be determined in a contract.

⁴ Translation provided by the Croatian Authorities.

(5) The Croatian Centre shall submit to the examiner a copy of technical questionnaire and a request for the conduct of DUS testing.

Article 3

(1) Where the Croatian Centre is not in possibility to designate in respect of a new plant variety the DUS examiner in the Republic of Croatia or in the UPOV Convention signatory state, then, on request by the Croatian Centre, the applicant himself or the person authorised by him shall organise the DUS testing of a new plant variety.

(2) In absence of both practical experience in DUS testing for a certain species and technical guide in some other country, the Croatian Centre shall prepare a technical guidelines for DUS testing of a new plant variety in accordance with the principles set out in the general guide. The Croatian Centre shall inform UPOV and CPVO respectively on prepared technical guides, publish the same and issue an approval of the examiner, before DUS testing of a new variety.

Article 4

(1) The Croatian Centre shall provide the applicant with information on the DUS examiner, the necessary quantity and quality of seed or seedling material for DUS testing, the address for delivery of the material and the deadline for delivery.

The applicant shall ensure all necessary documentation in cases where the testing is to be carried out outside the Republic of Croatia.

(2) In cases where the right of a priority has been claimed, and the first application for the grant of a plant breeder's right in the country of first application has been rejected or withdrawn, the seed or seedling material for DUS testing shall be delivered within six months for agricultural plants, or within one year for trees and grape vine, claimed from the day of rejection or withdrawing in the country of first application.

Article 5

Seed and seedling material for DUS testing shall be delivered untreated, unless the institution in charge of the testing so requests or authorises its treatment. In cases where the mentioned treatment has been carried out, information thereof must be provided.

Article 6

(1) The minimum duration of DUS testing new plant varieties in field trials shall be two years or two independent growing cycles. Where appropriate, this testing period can be extended for additional years for the purpose of determining uniformity and/or stability of the tested variety.

(2) DUS testing shall be normally conducted at one trial place. However, it can be conducted at more than one trial place in the following cases: minimisation of the total testing period, a reserve trial location, different agro-climatic conditions, additional tests and the DUS testing on the basis of information for the same characteristic which was tested at different trial places.

(3) The trial for DUS testing includes new plant varieties (hereinafter: candidate varieties) and variety reference collections. Candidate variety is compared with other candidate varieties and the varieties in reference collection for the purpose of determining distinctness.

(4) Reference collection comprises:

1. varieties grown in the Republic of Croatia,
2. other varieties of common knowledge grown in comparable geographical areas,
3. similar varieties stated by the applicant,
4. in the case of hybrids, all parental lines of common knowledge,
5. other varieties under testing,
6. example varieties from UPOV or CPVO technical guide.

Article 7

(1) A variety is defined by its characteristics and those characteristics present a basis for DUS testing. DUS testing determines the characteristics of a new plant variety (specified in technical guides) which are relevant for examination of distinctness, uniformity and stability, without taking into consideration the characteristics for economic importance.

(2) After the first year of testing, the examiner shall provide a preliminary report on the results of testing the distinctness, uniformity and stability and possible problems in performing the trial. The Preliminary Report form (PI-DUS) is printed along with this Ordinance and forms an integral part thereof.

(3) After the testing has been concluded (after the second year), the Croatian Centre shall produce a final report on the examination of the distinctness, uniformity and stability, based on the UPOV or CPVO model. If the report is positive, it shall contain a description of the variety in the form of an annex. The Final Report form (I-DUS) is printed along with this Ordinance and forms an integral part thereof.

(4) Having performed the DUS testing, the examiner shall submit without delay the reports and variety description to the Croatian Centre in the cases where the Croatian Centre itself has not been the examiner.

III. THE DUS TESTING METHOD

Article 8

(1) The DUS testing method of new plant varieties is based on visual assessment and measuring of certain characteristics of a variety.

(2) Due to environmental influences which, to a greater or lesser degree can modify the expression of genetically conditioned qualitative and quantitative characteristics, as a general rule, those characteristics which can be the least influenced by the environmental factors shall be determined.

(3) UPOV or CPVO technical guides for individual species or for plant variety groupings contain the tables with mandatory and additional characteristics, the states of expression of characteristics, the growth stages for assessing the characteristics, the manner of assessing the characteristics and the plant variety samples for each state of expression of individual characteristic.

(4) By way of a written proposal which includes an explanation, the applicant may also request a determination of additional characteristics. The Croatian Centre shall decide whether additional characteristics shall be determined and if so which of them shall be determined.

Article 9

Two varieties shall be deemed distinct if the difference between them:

- has been determined at least at one testing place,
- is clear, and
- consistent/stable.

Article 10

In the case of true qualitative characteristics, the distinctness between two varieties is deemed to be clear, if one or more characteristics show the expressions which fall within two different states of expression in accordance with the technical guide. In the case of other qualitatively observed characteristics in determining distinctness, a possible variation in the distinctness between the varieties must be observed taking into account the year or testing place.

Article 11

In the case of examination of distinctness for measured quantitative characteristics, the difference between two varieties is deemed to be clear if the determined level of probability is 1% as the result of corresponding statistical method.

Article 12

(1) „Side-by-side“ visual comparison shall be used for determining clear distinctness of a variety, which is based on direct visual comparison of the varieties which are insufficiently different in the test.

(2) In the case of self-pollinated varieties and vegetatively propagated varieties, there is a relatively small variation within the varieties and therefore a visual determination of distinctness is adequate. On the other hand, in the case of cross-pollinated varieties and certain types of hybrid varieties a determination of distinctness via a direct comparison requires a special attention because a variation within the variety can be great.

Article 13

(1) The difference is deemed stable if it has the same sign in two subsequent, or in two out of three growing cycles.

(2) For the purpose of confirmation of stability, this difference must re-appear in the next testing, and the best way to do it is by means of a direct comparison. The number of cases must ensure the same statistical probability of determined difference, which would have been obtained by measuring that characteristic.

Article 14

If in the case of individually assessed characteristics the difference between two varieties is clear, then a combination of information on such characteristics can be used for determination of distinctness. In this case, the level of reliability must be comparable with the levels laid down in Article 11, 12 and 13 of this Ordinance.

Article 15

The variety must be sufficiently uniform, having regard to the particular features which are the consequence of characteristics of its propagation. For a variety to be deemed uniform, the variation shown by the variety depending on breeding system and occurrence of atypical plants caused by incidental mixing, mutations or other causes must be restricted to the necessary level for an accurate description, determining of distinctness and ensuring stability. This requires a certain tolerance in respect of the presence of atypical plants which shall show difference depending on the propagation system.

Article 16

For vegetatively propagated varieties and self-pollinated varieties, the maximum permitted number of atypical plants shall depend on the sample size as well as the plant species, and shall be determined in UPOV or CPVO technical guides for DUS testing.

Article 17

Cross-pollinated, including synthetic, varieties demonstrate mostly a wider range of variation within the variety when compared with the self-pollinated varieties and sometimes it is difficult to distinguish atypical plants. Therefore it is not possible to define a fixed tolerance. Instead, a limit of relative tolerance should be used when comparing them with already known comparable varieties. The number of permitted atypical plants is determined for each variety in UPOV or CPVO technical guides for DUS testing.

Article 18

Single-cross hybrids are treated as mainly self-pollinated varieties referred to in Article 17 of this Ordinance. Other hybrid categories are treated in connection with the plant species and the method of breeding. The permitted variation for certain types of hybrids in connection with the plant species and the breeding method are published in the UPOV or CPVO technical guides for DUS testing.

Article 19

(1) Stability of a variety shall be determined by careful observation of maintaining the variety in the forthcoming years of testing by comparing it with the first test year and with the sample stored at the Croatian Centre. Stability of a variety shall be determined with a lower reliability than distinctness or uniformity. In most cases, once the tested sample has demonstrated uniformity, is material shall also be deemed stable.

2) Where necessary, stability can be determined by a parallel sowing of a new sample and the sample stored at the Croatian Centre with the purpose of confirmation whether both samples show the same characteristics.

Article 20

The Croatian Centre shall publish in its official gazette the numbers of transposed UPOV or CPVO technical guides for DUS testing for each individual species, within 30 days at the latest after the submission of the first application for the protection of the variety of the mentioned plant species.

Article 21

On the date of entry into force of this Ordinance, the Ordinance on the procedure of examination of distinctness, uniformity and stability (DUS) of plant varieties for the purpose of obtaining the plant breeder's right (Official Gazette 63/01) shall cease to have effect.

Article 22

This Ordinance shall enter into force on the eighth day after the day of its publication in the Official Gazette.

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Reg. No.: 525-02-1-0004/11-2
Zagreb, 10 May 2011

Deputy Prime Minister and the Minister of Agriculture,
Fisheries and Rural Development
Petar Čobanković, m. p.

PI-DUS Form

Preliminary Report on DUS testing

1. Registration number of the reporting office
2. Test requester
3. Registration number of the requester
- 4. The plant breeder's designation**
- 5. Date of submitting the request in the requester's country**
6. Applicant (name and address)
7. Representative or proxy (name and address)
8. Variety denomination, to which plant variety it belongs/Latin name
9. Species denomination, to which variety it belongs/Croatian name
10. Variety denomination
11. Plant breeder (name and address)
12. Test performer/examiner
13. Test area and place
14. Test time period
15. Date and place of issue of the previous report
16. GENERAL INFORMATION
 - a) Seed material of the variety was not submitted ()
 - b) Seed material does not meet the requirements ()
 - c) The test failed ()
17. TEST RESULTS
 - a) No objections
 - b) Objections
18. Planned date of the final report on testing
19. Objection: This preliminary report has no prior influence to the final report.
20. Signature.

I-DUS Form

Report on DUS testing

1. Registration number of the reporting office
2. Test requester
3. Registration number of the requester
- 4. The plant breeder's designation**
- 5. Date of submitting the request in the requester's country**
6. Applicant (name and address)
7. Representative or proxy (name and address)
8. Variety denomination, to which plant variety it belongs/Latin name
9. Species denomination, to which variety it belongs/Croatian name

10. Variety denomination
11. Plant breeder (name and address)
12. Test performer/examiner
13. Test area and place
14. Test time period
15. Date and place of issue of the report
16. DUS TESTING RESULTS AND CONCLUSION

(a) Report on distinctness

The variety

- is clearly distinct from any other variety ()
- is not clearly distinct from all varieties which are generally known to us ().

(b) Report on uniformity

The variety

- is clearly uniform ()
- is not clearly uniform ()

by respecting the particularities of sexual reproduction or vegetative propagation.

(c) Report on stability

The variety

- is stable ()
- is not stable ()

in essential characteristics.

If the result is positive, the variety description is to be attached to the report

17. Objections
18. Signature