Changes to legislation: *Commission Implementing Regulation (EU) 2015/2206 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commission Implementing Regulation (EU) 2015/2206 of 30 November 2015 amending Regulation (EC) No 1238/95 as regards the fees payable to the Community Plant Variety Office

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2206

of 30 November 2015

amending Regulation (EC) No 1238/95 as regards the fees payable to the Community Plant Variety Office

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community Plant Variety Rights[(1)] ('the Basic Regulation'), and in particular Article 113 thereof,

After consulting the Administrative Council of the Community Plant Variety Office,

Whereas:

(1) Article 3(2) of Commission Regulation (EC) No 1238/95[(2)] provides that the President of the Community Plant Variety Office (the Office) may allow alternative forms of payment of fees and surcharges, including by the delivery or remittance of certified cheques. However, it is considered too burdensome to holders to require certified cheques as a means of payment. Moreover, it is necessary to ensure payments via electronic means.

(2) Article 5(1) of Regulation (EC) No 1238/95 requires a person making a payment of fees or surcharges to indicate his name and the purpose of such payment. Taking into account that a payment may arrive to the Office for which it may be impossible to establish the identity of the person making the payment and to refund to this person, it would be appropriate that this money is retained by the Office as other revenue.

(3) Article 7 of Regulation (EC) No 1238/95 sets out provisions concerning the level of the application fee payable to the Office for the processing of applications for grant of a Community plant variety right. In order to provide an effective, efficient and expeditious examination of applications, it is important to encourage the filing of applications by electronic means via web form. For this reason, it would be appropriate to reduce the fee paid for processing of the application in case of filing and submission of an application by electronic means.

(4) The wording in Article 7(2) of Regulation (EC) No 1238/95 with regard to designation and entrustments of sub-offices and national agencies needs to be aligned with the Basic Regulation.

(5) Article 7(7) of Regulation (EC) No 1238/95 regulates the refund of application fees for the applications which are not valid under Article 50 of the Basic Regulation. Based on the experience gained by the Office concerning the cost linked with the processing

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of applications for grant of Community plant variety rights which are not valid, it is appropriate to reduce the amount of the application fee retained by the Office.

(6) Article 8 of Regulation (EC) No 1238/95 concerns fees for the technical examination of a variety. In case of an examination report on the result of a technical examination which has already been carried out by an entrusted Examination Office prior to the date of application for Community Plant Variety Right referred to in Article 8(5), it is appropriate to specify that the fee should be determined by the President of the Office after consultation of the Administrative Council of the Office.

(7) Article 12(1)(c) of Regulation (EC) No 1238/95 provides that the President of the Office is to fix the fees in respect of the Official Gazette of the Office. The periodical publication of the Official Gazette of the Office is only published in electronic version and no longer in print and it reflects the content of the databases of the Office. Such a publication does not require any additional particular and thus a specific fee should be abolished.

(8) Article 13 of Regulation (EC) No 1238/95 concerns surcharges. Experience has shown that additional work of the Office, referred to in Article 13(1) and (2)(b), on variety denominations, due to their initial non-compliance to requirements laid down or on amendments in the event of prior conflicting right of a third party, is habitual and does not require increased resources. Therefore, any surcharges for that additional work are not justified.

(9) Article 13(2)(a) provides that the Office may levy a surcharge to the annual fee if the holder has failed to pay the annual fee. In such cases the Office may initiate a procedure for cancellation of the protection. Experience has shown that the Office does not levy a surcharge for the failure to pay the annual fee and therefore this provision should be deleted.

(10) Articles 93(3) and 94 of Commission Regulation (EC) No 1239/95[(3)] have not been taken over by Commission Regulation (EC) No 874/2009[(4)]. Therefore, paragraphs (3) and (4) of Article 14 of Regulation (EC) No 1238/95 which refer to those provisions should be deleted.

(11) Regulation (EC) No 1238/95 should therefore be amended accordingly.

(12) It would be appropriate that the proposed amendments apply as from 1 January 2016, to align with the beginning of the new financial year for the budget of the Office.

(13) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Community Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1238/95 is amended as follows:

(a) In Article 3, paragraph 2 is amended as follows:

(i) point (a) is replaced by the following:

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(a) delivery or remittance of cheques which are made payable in euros to the Office;;

(ii) point (d) is replaced by the following:

(d) payment via electronic means, either by payment card or direct debit..

(b) In Article 5, the following paragraph 3 is added:

3. If after enquiry with the bank concerned, the identity of the person making the payment cannot be confirmed and the amount cannot be refunded to any particular person, the amount shall be considered as other revenues within the deadlines outlined in the internal financial provisions of the Office referred to in Article 112 of the Basic Regulation and adopted by the Administrative Council of the Office..

(c) Article 7 is amended as follows:

(i) Paragraphs 1 and 2 are replaced by the following:

1. The applicant for a Community Plant Variety Right (the applicant) shall pay a fee of EUR 450 for the processing of an application filed and submitted via a web form by electronic means, made through the Office's online application system.

The applicant shall pay a fee of EUR 650 for the processing of an application submitted by means other than through the Office's online application system.

2 The applicant shall take the necessary steps for payment of the application fee, in accordance with Article 3 of this Regulation, prior to or on the date on which the application is filed, directly at the Office or at one of the sub-offices established or national agencies entrusted pursuant to Article 30(4) of the Basic Regulation..

(ii) Paragraph 7 is replaced by the following:

7. Where the application fee is received but the application is not valid under Article 50 of the basic Regulation, the Office shall retain EUR 150 of the application fee and refund the remainder when notifying the applicant of the deficiencies found in the application..

(d) In Article 8(5), the following sentence is added:

The amount of that fee shall be determined by the President of the Office after consultation of the Administrative Council and shall be published in the Official Gazette of the Office..

(e) In Article 12(1), point (c) is deleted.

(f) Article 13 is deleted.

(g) In Article 14, paragraphs 3 and 4 are deleted.

Article 2

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