Commission Implementing Regulation (EU) 2019/1978 of 26 November 2019 amending Regulation (EC) No 1238/95 as regards the fees payable to the Community Plant Variety Office

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1978

of 26 November 2019

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)], 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 and establishes a list of those alternative forms. In order to increase flexibility and simplify the processes it is appropriate to include such list of alternative forms of payment in the rules on working methods established by the Administrative Council of the Office on the basis of Article 36(1)(d) of Regulation (EC) No 2100/94.

(2) Article 4(1) of Regulation (EC) No 1238/95 sets out the date to be regarded as the date on which payment is received. Based on experience in processing payments, it is necessary to clarify that the full amount of the transfer is to be entered in a bank account held by the Office to ensure that no pending obligations exist towards the Office.

(3) Article 5 of Regulation (EC) No 1238/95 requires the person having made a payment to the Office to indicate in writing his name and the purpose of the payment. If the purpose of the payment cannot be established, the Office sends a reminder within two months. To increase the efficiency of handling payments, this deadline should be reduced from two months to one month.

(4) Article 7(1) of Regulation (EC) No 1238/95 establishes the application fee. In order to encourage the use of the Office's online electronic application system the fee for submission of applications by other means, such as paper applications, should be increased from EUR 650 to EUR 800. Moreover, practical experience has shown that the use of the online electronic application system would become more efficient if it was complemented with the obligatory use of the Office's paperless communication platform for any further exchanges with the Office.

(5) According to Article 7(7) of Regulation (EC) No 1238/95 the Office is to retain EUR 150 of the application fee if the application is not valid under Article 50 of Regulation (EC) No 2100/94. In order to decrease the administrative burden, the entirety of the application fee should be refunded.

(6) In relation to the annual fee, Article 9(4) of Regulation (EC) No 1238/95 lays down that the Office does not refund any payments which have been effected in order to keep the Community plant variety right in force. Experience has shown that, in order to improve transparency, a refund may be provided for if the Office has received a surrender between the date of payment and the anniversary of the date of grant.

(7) Annex I to Regulation (EC) No 1238/95 sets out the level of fees for arranging and carrying out the technical examination of a variety which is the subject of an application for a Community plant variety right ('the examination fee'), payable to the Office..

(8) The Administrative Council of the Office has decided to follow the principle of 100 % cost recovery so that the examination offices are reimbursed based on the average real costs of examinations.

(9) Moreover, experience with technical examinations shows that examination fees may change over time for some cost groups. The fees charged by the Office should therefore reflect the total amount of the fees for the respective cost groups to be paid by the Office to the Examination Offices. The fees set out in Annex I to Regulation (EC) No 1238/95 should therefore be modified for all the cost groups concerned.

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

(11) This Regulation should apply from 1 April 2020 in order to allow sufficient time for the Office and the stakeholders to adapt to those amendments.

(12) 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:

(1) In Article 3, paragraph 2 is replaced by the following:

2. The President of the Office may allow alternative forms of payment in accordance with rules on working methods which shall be established pursuant to Article 36(1)(d) of Council Regulation (EC) No 2100/94.

(2) In Article 4, paragraph 1 is replaced by the following:

1. The date on which a payment of fees and surcharges shall be considered to have been received by the Office shall be the date on which the full amount of the transfer referred to in Article 3(1) is entered in a bank account held by the Office.

(3) In Article 5, paragraph 2 is replaced by the following:

2. If the Office cannot establish the purpose of a payment, it shall require the person having made the payment to inform it thereof in writing within one month. If the purpose is not indicated within that period, the payment shall be deemed not to have been made and shall be refunded to the person having made it.

(4) Article 7 is amended as follows:

(a) Paragraph 1 is 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 accept the Terms and Conditions of use of the secure electronic communications platform maintained by the Office and shall use that platform for submitting applications referred to in the first subparagraph and other documents, receiving notifications and documents sent by the Office, replying to such notifications and performing other actions.

The applicant shall pay a fee of EUR 800 for the processing of an application submitted by means other than through the Office's online application system.

(b) 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 refund the application fee when notifying the applicant of the deficiencies found in the application.

(5) In Article 9, paragraph 4 is replaced by the following:

4. The Office shall not refund any payments in relation to the annual fee which have been effected in order to keep the Community plant variety right in force, unless the Office has received a surrender of a Community plant variety right between the date for payment and the anniversary of the date grant as specified under point (b) of paragraph 2. Surrenders received after the anniversary of the date grant shall not be taken into account for such payments.

(6) Annex I is replaced by the text in the Annex to this Regulation.

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*.

It shall apply from 1 April 2020.

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