Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (recast)

COMMISSION REGULATION (EC) No 874/2009

of 17 September 2009

establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office

(recast)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights[(1)], and in particular Article 114 thereof,

Whereas:

(1) Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office[(2)] has been substantially amended several times[(3)]. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Regulation (EC) No 2100/94 (the basic Regulation) creates a new Community system of plant variety rights, whereby a plant variety right is valid throughout the Community.

(3) Such a system should be carried out in an effective manner by the Community Plant Variety Office (the Office), which is assisted by Examination Offices in conducting the technical examination of the plant varieties concerned and which may avail itself of the services of designated national agencies or one of its own sub-offices established for that purpose. In that regard, it is indispensable to define the relationship between the Office and its own sub-offices, the Examination Offices and national agencies.

(4) A fee for the conduct of the technical examination should be paid by the Office to the Examination Offices on the basis of full recovery of costs incurred. Uniform methods for the calculation of the costs should be established by the Administrative Council.

(5) Decisions of the Office may be appealed against before its Board of Appeal. Provisions on the procedure of the Board of Appeal should be adopted. Further Boards of Appeal may be established, if necessary, by the Administrative Council.

(6) Examination reports made under the responsibility of authorities of a Member State or a third country which is a member of the International Union for the Protection of New Varieties of Plants (UPOV) should be considered a sufficient basis for decision.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 874/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7) The use of electronic means for the filing of applications, objections or appeals and the service of documents by the Office should be permitted. Moreover, the Office should be given the possibility to issue certificates for Community plant variety rights in electronic form. Publication of information regarding Community plant variety rights should also be possible by electronic means. Finally, the electronic storage of files relating to proceedings should be allowed.

(8) The President of the Office should be empowered to determine all necessary details with respect to the use of electronic means of communication or storage.

(9) Certain provisions of Articles 23, 29, 34, 35, 36, 42, 45, 46, 49, 50, 58, 81, 85, 87, 88 and 100 of the basic Regulation already explicitly provide that detailed rules shall or may be drawn up for their implementation. Other detailed rules should be drawn up for the same purpose if clarification is required.

(10) The entry into effect of a transfer of a Community plant variety right or a transfer of an entitlement thereto should be defined in the rules relating to the entries in the Registers.

(11) The Administrative Council of the Community Plant Variety Office has been consulted.

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

HAS ADOPTED THIS REGULATION:

TITLE I

PARTIES TO PROCEEDINGS, OFFICE AND EXAMINATION OFFICES

CHAPTER I

Parties to proceedings

Article 1

Parties to proceedings

1 The following persons may be party to proceedings before the Community Plant Variety Office, hereinafter referred to as ‘the Office’:

a the applicant for a Community plant variety right;

b the objector referred to in Article 59(2) of Regulation (EC) No 2100/94, hereinafter referred to as ‘the basic Regulation’;

c the holder or holders of the Community plant variety right, hereinafter referred to as ‘the holder’;

d any person whose application or request is a prerequisite for a decision to be taken by the Office.

2 The Office may allow participation in the proceedings by any person other than those referred to in paragraph 1 who is directly and individually concerned, upon written request.

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3 Any natural or legal person as well as any body qualifying as a legal person under the law applicable to that body shall be considered a person within the meaning of paragraphs 1 and 2.

Article 2

Designation of parties to proceedings

[F1 1 Parties to proceedings shall be designated by their name, address and email address, where an email address is used by the party concerned.

2 Natural persons shall be indicated by their family name and given names. Legal persons as well as companies or firms shall be indicated by their official designations, as recorded in the respective Member State or third country.**]**

3 Addresses shall contain all the relevant administrative information, including the name of the State in which the party to proceedings is resident or where his seat or establishment is located. Only one address should preferably be indicated for each party to proceedings; where several addresses are indicated, only the address mentioned first shall be taken into account, except where the party to proceedings designates one of the other addresses as an address for service.

The President of the Office shall determine the details concerning the address including any relevant details of other data communication links.

4 Where a party to proceedings is a legal person, it shall also be designated by the name and address of the natural person legally representing the party to proceedings by virtue of the relevant national legislation. The provisions of paragraph 2 shall apply *mutatis mutandis* to such natural person.

The Office may permit derogations from the provisions of the first sentence of the first subparagraph.

5 Where the Commission or a Member State is party to proceedings, it shall communicate a representative for each proceeding in which it takes part.

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016 amending Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office.

Article 3

Languages of parties to proceedings

1 A language, being an official language of the European Union, chosen by a party to proceedings for use in the document first submitted to the Office and signed for the purpose of submission shall be used by the party to proceedings until a final decision is delivered by the Office.

[F2 A successor in title as referred to in Article 23(1) of the basic Regulation may however request that another official language of the European Union be used during future

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proceedings, provided that such request is submitted upon the entry of the transfer of a Community plant variety right into the Register of Community Plant Variety Rights.**]**

2 If a party to proceedings files a document signed for that purpose by him in any other official language of the European Union than that to be used pursuant to paragraph 1, the document shall be deemed to have been received when the Office holds a translation thereof, provided by other services. The Office may permit derogations from this requirement.

3 If, in oral proceedings, a party uses a language other than the official language of the European Union used by the competent members of the staff of the Office, by other parties to proceedings, or by both, being the language to be used by him, he shall make provision for simultaneous interpretation into that official language. If no such provision is made, oral proceedings may continue in the languages used by the competent members of the staff of the Office and by other parties to the proceedings.

Textual Amendments

F2 Inserted by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016 amending Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office.

Article 4

Languages in oral proceedings and in the taking of evidence

1 Any party to proceedings and any witness or expert who gives evidence in oral proceedings may use any of the official languages of the European Union Communities.

[F1 2 Should the taking of evidence referred to in paragraph 1 be allowed at the request of a party to proceedings, then, should a party to proceedings, a witness or expert be unable to express himself adequately in any of the official languages of the European Union, he may be heard only if the party who made the request makes provision for interpretation into the official language of the European Union used by all parties to proceedings or by the members of the staff of the Office.

Parties to the proceedings, a witness or expert, and the members of the staff of the Office or the Board of Appeal may agree that during the oral proceedings only one of the official languages of the European Union shall be used.

The Office may allow derogations from the first subparagraph.**]**

3 Statements made by the members of the staff of the Office, by parties to proceedings, witnesses or experts in one of the official languages of the European Union during oral proceedings or taking of evidence shall be entered in the minutes in the language used. Statements made in any other language shall be entered in the language used by the members of the staff of the Office.

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016 amending Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office.

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 874/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Article 5

Translation of documents of parties to proceedings

[F1 1 Where a party to proceedings files a document in a language other than any official language of the European Union, the Office may require from that party a translation of that document into one of the official languages of the European Union used by that party or by the members of the staff of the Office or of the Board of Appeal.

2 Where a translation of a document is filed by a party to proceedings, the Office may require the filing, within such time as it may specify, of a certificate that the translation corresponds to the original text. The translations of lengthy documents may be confined to extracts or summaries. The Office or the Board of Appeal may however, either at their own motion or at the request of a party to the proceeding, at any time require a more extensive or complete translation of such documents.

Parties to proceedings and the members of the staff of the Office or of the Board of Appeal may agree to have a translation of a document in only one of the official languages of the European Union.**]**

3 Failure to file the translation referred to in paragraph 1 and the certificate referred to in paragraph 2 shall lead to the document being deemed not to have been received.

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016 amending Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office.

CHAPTER II

The Office

Section 1

Committees of the Office

Article 6

Qualification of members of the Committees

1 The Committees referred to in Article 35(2) of the basic Regulation shall, at the discretion of the President of the Office, be composed of technical or legally qualified members, or both.

2 A technical member shall hold a degree, or shall be qualified by recognised experience, in the field of plant science.

[F1 3 A legally qualified member shall be a graduate in law with recognised experience in the field of intellectual property, plant variety rights or plant variety registration.**]**