Commission Regulation (EC) No 355/2008 of 21 April 2008 amending Regulation (EC) No 1239/95 as regards the use of electronic means of communication in proceedings before the Community Plant Variety Office (Text with EEA relevance)

COMMISSION REGULATION (EC) No 355/2008

of 21 April 2008

amending Regulation (EC) No 1239/95 as regards the use of electronic means of communication in proceedings before the Community Plant Variety Office

(Text with EEA relevance)

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,

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

Whereas:

(1) The rules provided for in 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)] should be simplified, in particular by allowing the use of electronic means of communication.

(2) It is appropriate to simplify, on the one hand, the filing of applications, objections or appeals and, on the other, the service of documents by the Community Plant Variety Office (the Office) by permitting the use of electronic means. 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, electronic storage of files relating to proceedings should be allowed to improve efficiency.

(3) 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.

(4) Regulation (EC) No 1239/95 should therefore be amended accordingly.

(5) 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 1239/95 is amended as follows:

1. in Article 2, paragraph 3 is replaced by the following:

Changes to legislation: Commission Regulation (EC) No 355/2008 is up to date with all changes known to be in force on or before 27 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

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.;

2. Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. An application for a Community plant variety right shall be filed at the Office, at the national agencies designated or the sub-offices established pursuant to Article 30(4) of the Basic Regulation.

Where the application is filed at the Office it may be filed in paper format or by electronic means. Where it is filed at the national agencies or sub-offices it shall be filed in paper format in duplicate.;

(b) paragraph 3 is replaced by the following:

3. The Office shall make available the following forms free of charge:

a an application form and a technical questionnaire, for the purposes of filing an application for a Community plant variety right;

b a form for forwarding the information referred to in paragraph 2, indicating the consequences of any failure of the forwarding.

4 The applicant shall fill in and sign the forms provided for in paragraph 3. Where the application is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.;

3. Article 28 is replaced by the following:

Article 28

Proposal for a variety denomination

The proposal for a variety denomination shall be signed and shall be filed at the Office, or, if the proposal accompanies the application for a Community plant variety right filed at the national agency designated or the sub-office established pursuant to Article 30(4) of the Basic Regulation, in duplicate.

The Office shall make available, free of charge, a form for the purposes of proposing a variety denomination.

Where the proposal for a variety denomination is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.;

4. in Article 36, the last sentence of paragraph 1 is deleted and the following paragraph 4 is added:

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4. Where the proposal for an amendment of a variety denomination is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.;

5. in Article 52, paragraph 1 is replaced by the following:

1. Within three months after closure of the oral proceedings, the decision on the appeal shall be forwarded in writing, by any means provided for in Article 64(3), to the parties to the appeal proceedings.;

6. in paragraph 2 of Article 53, the second sentence is replaced by the following:

‘Subsequently, the decision in writing shall be served on the parties to proceedings in accordance with Article 64.’;

7. in Article 54(3), the word ‘duplicate’ is replaced by ‘copy’;

8. Articles 57 and 58 are replaced by the following:

Article 57

Documents filed by parties to proceedings

1 Any documents filed by a party to proceedings shall be submitted by post, personal delivery or electronic means.

The details concerning electronic submissions shall be determined by the President of the Office.

2 The date of receipt of any document filed by parties to proceedings shall be deemed to be the date on which a document is in fact received on the premises or in the case of a document filed by electronic means, when the document is received electronically by the Office.

3 With the exception of annexed documents, any documents filed by parties to proceedings must be signed by them or their procedural representative.

Where a document is submitted to the Office by electronic means, it shall contain an electronic signature.

4 If a document has not duly been signed, or where a document received is incomplete or illegible, or where the Office has doubts as to the accuracy of the document, the Office shall inform the sender accordingly and shall invite him to submit the original of the document signed in accordance with paragraph 3, or to retransmit a copy of the original, within a time limit of one month.

Where the request is complied with within the period specified, the date of receipt of the signed document or of the retransmission shall be deemed to be the date of the receipt of the first document. Where the request is not complied with within the period specified, the document shall be deemed not to have been received.

5 Such document must be communicated to other parties to proceedings as well as to the Examination Office concerned, or documents relating to two or more applications for a Community plant variety right or an exploitation right, shall be filed in a sufficient number of copies. Missing copies shall be provided at the expense of the party to the proceedings.

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The first subparagraph shall not apply to documents submitted by electronic means.

Article 58

Documentary evidence

1 Evidence of final judgments and decisions, other than those of the Office, or other documentary evidence to be submitted by parties to proceedings, may be furnished by submitting an uncertified copy.

2 Where the Office has doubts as to the authenticity of the evidence referred to in paragraph 1, it may require submission of the original or a certified copy.;

9. Article 64 is replaced by the following:

Article 64

General provisions on service

1 In proceedings before the Office, any service of documents to be made by the Office on a party to proceedings shall take the form of the original document, of an uncertified copy thereof or a computer print-out. Documents emanating from other parties to proceedings may be served in the form of uncertified copies.

2 If a procedural representative has been appointed by one or more parties to proceedings, service shall be made on him in accordance with the provisions of paragraph 1.

3 Service shall be made:

a by post in accordance with Article 65;

b by delivery by hand in accordance with Article 66;

c by public notice in accordance with Article 67; or

d by electronic means or any other technical means in accordance with the second subparagraph of this paragraph.

The President of the Office shall determine the details concerning service by electronic means.

4 Documents or copies thereof containing actions for which service is provided in Article 79 of the Basic Regulation shall be served by registered letter with advice of delivery served by postal means; it can also be served by electronic means to be determined by the President of the Office.;

10. in Article 65, paragraph 1 is deleted;

11. in Article 67, ‘Article 65(1)’ is replaced by ‘Article 64(4)’;

12. in Article 71, paragraph 2 is replaced by the following:

2. If a time limit expires on a day on which there is a general interruption or a subsequent dislocation in the delivery of mail in a Member State or between a Member State and the Office, the time limit shall be extended until the first day following the end of the period of dislocation or interruption in the delivery of mail for parties to proceedings having their domicile or seat or establishment in the Member