

Council Regulation (EC) No 2100/94 of 27
July 1994 on Community plant variety rights

PART THREE

THE COMMUNITY PLANT VARIETY OFFICE

CHAPTER IV

THE BOARDS OF APPEAL

Article 45

Establishment and powers

- 1 There shall be established within the Office one or more Boards of Appeal.
- 2 The Board or Boards of Appeal shall be responsible for deciding on appeals from the decisions referred to in Article 67.
- 3 The Board or Boards of Appeal shall be convened as necessary. The number of Boards of Appeal and the work allocation shall be determined in the implementing rules pursuant to Article 114.

Article 46

Composition of the Boards of Appeal

- 1 A Board of Appeal shall consist of a Chairman and two other members.
- 2 The Chairman shall select for each case the other members and their respective alternates from the list of qualified members established pursuant to Article 47 (2).
- 3 Where the Board of Appeal considers that the nature of the appeal so requires, it may call up to two further members from the aforesaid list for that case.
- 4 The qualifications required for the members of each Board of Appeal, the powers of individual members in the preparatory phase of the decisions and the voting conditions shall be determined in the implementing rules pursuant to Article 114.

Article 47

Independence of the members of the Boards of Appeal

- 1 The Chairmen of the Boards of Appeal and their respective alternates shall be appointed by the Council from a list of candidates for each chairman and each alternate which shall be proposed by the Commission after obtaining the opinion of the Administrative Council. The term of office shall be five years. It shall be renewable.

Status: Point in time view as at 31/01/2008.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 2100/94, CHAPTER IV. (See end of Document for details)

2 The other members of the Boards of Appeal shall be those selected pursuant to Article 46 (2), from a list of qualified members established on a proposal from the Office, for a term of five years, by the Administrative Council. The list shall be established for a term of five years. This shall be renewable for whole or part of the list.

3 The members of the Board of Appeal shall be independent. In making their decisions they shall not be bound by any instructions.

4 The members of the Boards of Appeal may not be members of the Committees referred to in Article 35 nor perform any other duties in the Office. The function of the members of the Boards of Appeal may be a part-time function.

5 The members of the Boards of Appeal may not be removed from office nor from the list respectively, during the respective term, unless there are serious grounds for such removal and the Court of Justice of the European Communities, on application by the Commission after obtaining the opinion of the Administrative Council takes a decision to this effect.

Article 48

Exclusion and objection

1 Members of the Boards of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to proceedings, or if they participated in the decision under appeal.

2 If, for one of the reasons mentioned in paragraph 1 or for any other reason, a member of a Board of Appeal considers that he should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.

3 Members of the Boards of Appeal may be objected to by any party to the appeal proceedings for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.

4 The Boards of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision, the member who withdraws or has been objected to shall be replaced in the Board of Appeal by his alternate.

Status:

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