

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)

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.

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,

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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 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.

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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.

[^{F12} 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.](#)

Article 5

Translation of documents of parties to proceedings

[^{F11} 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

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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.

[^{F13} 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.]

Textual Amendments

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Article 7

Decisions of the Committee

- 1 A Committee shall, besides taking the decisions referred to in Article 35(2) of the basic Regulation, deal with:
 - the non-suspension of a decision pursuant to Article 67(2) of the basic Regulation,
 - interlocutory revision pursuant to Article 70 of the basic Regulation,
 - the *restitutio in integrum* pursuant to Article 80 of the basic Regulation, and
 - the award of costs pursuant to Article 85(2) of the basic Regulation and Article 75 of this Regulation.
- 2 A decision of the Committee shall be taken by a majority of its members.

Article 8

Power of individual members of the Committees

- 1 The Committee shall designate one of its members as rapporteur on its behalf.
- 2 The rapporteur may in particular:
 - a perform the duties under Article 25 and monitor the submission of reports by the Examination Offices, referred to in Articles 13 and 14;
 - b pursue the procedure within the Office, including the communication of any deficiencies to be remedied by a party to proceedings and the setting of time limits; and
 - c ensure a close consultation and exchange of information with the parties to the proceedings.

Article 9

Role of the President

The President of the Office shall ensure the consistency of decisions taken under his authority. He shall in particular lay down the conditions under which decisions on objections lodged pursuant to Article 59 of the basic Regulation, and also decisions pursuant to Articles 61, 62, 63 or 66 of that Regulation, are taken.

[^{F1}Article 10

Consultations

Members of the staff of the Office may use, free of charge, the premises of national agencies referred to in Article 30(4) of the basic Regulation and those of Examination Offices and agencies referred to in Article 13 and Article 14, respectively, of this Regulation, for holding periodical consultation days with parties to proceedings and third persons.]

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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.](#)

Section 2

Boards of Appeal

Article 11

Boards of Appeal

1 For the purpose of deciding on appeals from the decisions referred to in Article 67 of the basic Regulation, a Board of Appeal is established. If necessary, the Administrative Council may, on a proposal from the Office, establish more Boards of Appeal. In that event, it shall determine the allocation of work between the Boards of Appeal thus established.

2 Each Board of Appeal shall consist of technical and legally qualified members. Article 6(2) and (3) shall apply *mutatis mutandis*. The chairman shall be a legally qualified member.

3 The examination of an appeal shall be assigned by the chairman of the Board of Appeal to one of its members as rapporteur. Such assignment may include, where appropriate, the taking of evidence.

4 Decisions of the Board of Appeal shall be taken by a majority of its members.

[^{F25} The Chairman and the members of the Board of Appeal shall receive remuneration for the performance of their assignments. That remuneration shall be determined by the Administrative Council of the Office and be based on a proposal by the President of the Office.]

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 12

Registry attached to a Board of Appeal

1 The President of the Office shall attach a registry to the Board of Appeal; members of the staff of the Office shall be excluded from the registry if they have participated in proceedings relating to the decisions under appeal.

2 The employees of the registry shall in particular be responsible for:
— drawing up the minutes of oral proceedings and taking evidence pursuant to Article 63 of this Regulation,

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- apportioning costs pursuant to Article 85(5) of the basic Regulation and Article 76 of this Regulation, and
- confirming any settlement of costs referred to in Article 77 of this Regulation.

CHAPTER III

Examination Offices

Article 13

Designation of an Examination Office referred to in Article 55(1) of the basic Regulation

[^{F1} Where the Administrative Council entrusts the competent office in a Member State with responsibility for the technical examination for certain genera or species, the President of the Office shall notify such office, hereinafter referred to as ‘the Examination Office’, of that fact, hereinafter referred to as ‘the designation of an Examination Office’. That designation shall take effect on the day of that notification. This provision shall apply *mutatis mutandis* to the amendment or cancellation of the designation of an Examination Office, subject to Article 15(6) of this Regulation.]

[^{F2}1a The Administrative Council may make the designation of an Examination Office, or an extension of the scope of an existing designation of an Examination Office subject to compliance with the relevant requirements, guidelines and procedures of the Office.

Should an Examination Office make use of technically qualified bodies referred to in Article 56(3) of the basic Regulation, the Examination Office shall ensure compliance with the relevant requirements, guidelines and procedures of the Office.

The Office shall conduct an audit to check whether the Examination Office complies with the relevant requirements, guidelines and procedures of the Office. Following an audit, the Office shall draw up an audit report.

The Administrative Council shall base its decision on the designation of an Examination Office on the audit report drawn up by the Office.

1b For the extension of the scope of an existing designation of an Examination Office initiated by the Office, the Administrative Council may, in the absence of an audit report, base its decision on a report drawn up by the Office in which compliance with the relevant requirements, guidelines and procedures of the Office is assessed.

For the extension of the scope of an existing designation of an Examination Office initiated by an Examination Office, the Administrative Council shall base its decision on an audit report drawn up by the Office.

1c Based on an audit report, the Administrative Council may decide to cancel, or reduce the scope of, an existing designation of an Examination Office.

Based on a request by an Examination Office, to which the Office agrees, the scope of an existing designation of an Examination Office may be reduced. The Office shall implement the reduction in the agreement referred to in Article 15(1).]

2 A member of the staff of the Examination Office taking part in a technical examination shall not be allowed to make any unauthorised use of, or disclose to any unauthorised person, any facts, documents and information coming to their knowledge in the course of or in connection

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with the technical examination. They shall continue to be bound by this obligation after the termination of the technical examination concerned, after leaving the service and after the cancellation of the designation of the Examination Office concerned.

3 Paragraph 2 shall apply *mutatis mutandis* to material of the plant variety which has been made available to the Examination Office by the applicant.

[^{F2}The Office may develop guiding principles concerning the use by Examination Offices of plant material that has been submitted for distinctiveness, uniformity and stability testing in the framework of applications for a Community plant variety right. Such guiding principles may include conditions under which such plant material may be transferred between Examination Offices.]

4 The Office shall monitor compliance with paragraphs 2 and 3 and shall decide on the exclusion of or objections raised to members of the staff of Examination Offices in accordance with Article 81(2) of the basic Regulation.

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.](#)
- 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.](#)

[^{F1}Article 14]

Designation of an agency or establishment of a sub-office referred to in Article 55(2) of the basic Regulation

[^{F11} Where the Office intends to entrust an agency with responsibility for the technical examination of varieties in accordance with Article 55(2) of the basic Regulation, hereinafter referred to as ‘the designation of an agency’, it shall transmit an explanatory statement on the technical suitability of that agency as an Examination Office to the Administrative Council for consent. Article 13(1a), (1b) and (1c) shall apply *mutatis mutandis*.]

2 Where the Office intends to establish its own sub-office for the technical examination of varieties in accordance with Article 55(2) of the basic Regulation, it shall transmit an explanatory statement on the technical and economic appropriateness of establishing such a sub-office for that purpose and on the siting of such sub-office to the Administrative Council for consent.

[^{F13} Where the Administrative Council gives its consent to the explanatory statements referred to in paragraphs 1 and 2, the President of the Office shall notify the designation of an agency to the agency concerned, or shall publish the establishment of a sub-office in the *Official Journal of the European Union*. Such designation or establishment may be cancelled only with the consent of the Administrative Council. Article 13(2) and (3) shall apply *mutatis mutandis* to the members of the staff of the agency referred to in paragraph 1 of this Article.]

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Textual Amendments

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Article 15

Procedure for designation

[^{F1}1 The designation of an Examination Office or agency shall take effect by a written agreement between the Office and the Examination Office or agency, providing for the performance by the Examination Office or agency of the technical examination of plant varieties for certain genera and species and for the payment by the Office of the fee referred to in Article 58 of the basic Regulation. In the case of a sub-office referred to in Article 14(2) of this Regulation, the establishment shall be by internal rules on working methods issued by the Office.

2 The effect of the written agreement referred to in paragraph 1 shall be such that acts performed after the signing of that agreement or to be performed by members of the staff of the Examination Office in accordance therewith shall be considered, as far as third parties are concerned, to be acts of the Office.]

3 Where the Examination Office intends to avail itself of the services of other technically qualified bodies in accordance with Article 56(3) of the basic Regulation, such bodies shall be named in the written agreement with the Office. Article 81(2) of the basic Regulation and Article 13(2) and (3) of this Regulation shall apply *mutatis mutandis* to the staff members concerned, who shall sign a written undertaking to observe confidentiality.

4 The Office shall pay the Examination Office a fee for the conduct of the technical examination, on the basis of full recovery of costs incurred. The Administrative Council shall determine uniform methods for calculating the costs and the uniform constituents of the costs, which shall apply to all designated Examination Offices.

[^{F15} An Examination Office shall periodically submit to the Office on request a breakdown of the costs of the technical examinations performed and of the maintenance of the necessary reference collections. In the circumstances set out in paragraph 3, a separate auditing report of the bodies shall be submitted to the Office by the Examination Office.

In the circumstances set out in paragraph 3, the Examination Office shall take into account costs incurred by such a body. The Office shall lay down the format of breakdown of the costs. If, after two requests from the Office, the Examination Office fails to provide the Office with the breakdown of the costs within the deadline established by the Office, the fee referred to in paragraph 4 may be reduced by 20 %.

6 Any cancellation or amendment of the designation of an Examination Office or agency may not take effect prior to the day on which the revocation of the written agreement referred to in paragraph 1 takes effect.]

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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.

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