

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 III

Examination Offices

Article 13

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

1 When the Administrative Council entrusts the competent office in a Member State with responsibility for technical examination, the President of the Office shall notify the designation to such office, hereinafter referred to as ‘the Examination Office’. It shall take effect on the day of issue of the notification by the President of the Office. This provision shall apply *mutatis mutandis* to the cancellation of the designation of an Examination Office, subject to Article 15(6) of this Regulation.

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 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.

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.

Article 14

Designation of an Examination Office referred to in Article 55(2) of the basic Regulation

1 Where the Office intends to entrust agencies with responsibility 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 suitability of such agencies as an Examination Office to the Administrative Council for consent.

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.

3 When the Administrative Council gives its consent to the explanatory statements referred to in paragraphs 1 and 2, the President of the Office may notify such designation to the agencies referred to in paragraph 1, or may publish the designation of a sub-office as referred to in paragraph 2 in the *Official Journal of the European Union*. It 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.

Article 15

Procedure for designation

1 The designation of an Examination Office shall be effected by a written agreement between the Office and the Examination Office providing for the performance of the technical examination of plant varieties by the Examination Office and for the payment 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 designation shall be by internal rules on working methods issued by the Office.

2 The effect of the written agreement shall be such that acts performed 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.

5 The Examination Office shall periodically submit to the Office a breakdown of the costs of the technical examination 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.

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