

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 II

**SPECIFIC PROCEEDINGS BEFORE THE OFFICE**

*CHAPTER I*

*Application for a Community plant variety right*

*Section 1*

*Actions of the applicant*

*Article 16*

**Filing of the application**

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.

2 The information sent to the Office in accordance with Article 49(1)(b) of the basic Regulation shall contain:

- particulars for identifying the applicant and, where appropriate, his procedural representative,
- the national agency or sub-office at which the application for a Community plant variety right was filed, and
- the provisional designation of the variety concerned.

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.

## Article 17

### Receipt of the application

1 Where a national agency designated pursuant to Article 30(4) of the basic Regulation or a sub-office established thereunder, receives an application, it shall forward to the Office, together with the application to be forwarded in accordance with Article 49(2) of the basic Regulation, a confirmation of receipt. The confirmation of receipt shall include the file number of the national agency or sub-office, the number of forwarded documents and the date of receipt at the national agency or sub-office. A copy of the forwarded receipt shall be issued to the applicant by the national agency or sub-office.

2 Where the Office receives an application from the applicant direct or via a sub-office or a national agency, it shall, without prejudice to other provisions, mark the documents making up the application with a file number and the date of receipt at the Office and shall issue a receipt to the applicant. The receipt shall include the file number of the Office, the number of documents received, the date of receipt at the Office and the date of application within the meaning of Article 51 of the basic Regulation. A copy of the receipt shall be issued to the national agency or sub-office via which the Office has received the application.

3 If the Office receives an application via a sub-office or national agency more than one month after its filing by the applicant, the 'date of application' within the meaning of Article 51 of the basic Regulation may not be earlier than the date of receipt at the Office, unless the Office establishes on the basis of sufficient documentary evidence that the applicant has forwarded an information to it in accordance with Article 49(1)(b) of the basic Regulation and Article 16(2) of this Regulation.

## Article 18

### Conditions laid down in Article 50(1) of the basic Regulation

1 If the Office finds that the application does not comply with the conditions laid down in Article 50(1) of the basic Regulation, it shall notify to the applicant the deficiencies it has found, stating that only such date as sufficient information remedying those deficiencies is received shall be treated as the date of application for the purposes of Article 51 of that Regulation.

2 An application complies with the condition laid down in Article 50(1)(i) of the basic Regulation only if date and country of any first disposal within the meaning of Article 10(1) of that Regulation are indicated, or if, in the absence of such disposal a declaration is made that no such disposal has occurred.

3 An application complies with the condition laid down in Article 50(1)(j) of the basic Regulation only if the date and the country given in any earlier application for the variety are, to the best of the applicant's knowledge, indicated in respect of:

- an application for a property right in respect of the variety, and
- an application for official acceptance of the variety for certification and marketing where official acceptance includes an official description of the variety,

in a Member State or a Member of the International Union for the Protection of New Varieties of Plants.

## Article 19

### Conditions referred to in Article 50(2) of the basic Regulation

1 If the Office finds that the application does not comply with the provisions of paragraphs 2, 3 and 4 of this Article or with Article 16 of this Regulation, it shall apply Article 17(2) hereof, but shall require the applicant to remedy the deficiencies it has found within such time limit as it may specify. Where those deficiencies are not remedied in good time the Office shall without delay refuse the application, pursuant to Article 61(1)(a) of the basic Regulation.

2 The application shall contain the following details:

- a the nationality of the applicant, if he is a natural person, and his designation as party to proceedings referred to in Article 2 of this Regulation and, if he is not the breeder, the name and address of the breeder;
- b the Latin name of the genus, species or sub-species to which the variety belongs, and the common name;
- c the characteristics of the variety which, in the applicant's opinion, are clearly distinguishable from other varieties, such other varieties being named (if appropriate) as reference varieties for testing;
- d breeding, maintenance and propagation of the variety, including information on:
  - the characteristics, the variety denomination or, in the absence thereof, the provisional designation, and the cultivation of any other variety or varieties the material of which has to be used repeatedly for the production of the variety, or
  - characteristics which have been genetically modified, where the variety concerned represents a genetically modified organism within the meaning of Article 2(2) of Directive 2001/18/EC of the European Parliament and of the Council<sup>(1)</sup>;
- e the region and the country in which the variety was bred or discovered and developed;
- f date and country of any first disposal of varietal constituents or harvested material of the variety, for the purposes of assessing novelty in accordance with Article 10 of the basic Regulation, or a declaration that such disposal has not yet occurred;
- g the designation of the authority applied to and the file number of the applications referred to in Article 18(3) of this Regulation;
- h existing national plant variety rights or any patent for the variety operating within the Community.

3 The Office may call for any necessary information and documentation, and, if necessary, sufficient drawings or photographs for the conduct of the technical examination within such time limit as it shall specify.

4 Where the variety concerned represents a genetically modified organism within the meaning of Article 2(2) of Directive 2001/18/EC, the Office may require the applicant to transmit a copy of the written attestation of the responsible authorities stating that a technical examination of the variety under Articles 55 and 56 of the basic Regulation does not pose risks to the environment according to the norms of that Directive.

## *Article 20*

### **Claiming priority**

If the applicant claims a right of priority for an application within the meaning of Article 52(2) of the basic Regulation, which is not the earliest of those to be indicated pursuant to the first indent of Article 18(3) of this Regulation, the Office shall state that a priority date can only be given to such earlier application. Where the Office has issued a receipt including the date of filing of an application which is not the earliest of those to be indicated, the priority date notified shall be considered void.

## *Article 21*

### **Entitlement to a Community plant variety right during proceedings**

1 When the commencement of an action against the applicant in respect of a claim referred to in Article 98(4) of the basic Regulation has been entered in the Register of Applications for Community plant variety rights, the Office may stay the application proceedings. The Office may set a date on which it intends to continue the proceedings pending before it.

2 When a final decision in, or any other termination of, the action referred to in paragraph 1 has been entered in the Register of Applications for Community plant variety rights, the Office shall resume proceedings. It may resume them at an earlier date, but not prior to the date already set pursuant to paragraph 1.

3 Where entitlement to a Community plant variety right is validly transferred to another person for the purposes of the Office, that person may pursue the application of the first applicant as if it were his own, provided that he gives notice to this effect to the Office within one month of the entry of final judgment in the Register of Applications for Community plant variety rights. Fees due pursuant to Article 83 of the basic Regulation and already paid by the first applicant shall be deemed to have been paid by the subsequent applicant.

## *Section 2*

### ***Conduct of the technical examination***

## *Article 22*

### **Decision on test guidelines**

1 Upon proposal of the President of the Office, the Administrative Council shall take a decision as to test guidelines. The date of the decision and the species concerned by it shall be published in the Official Gazette referred to in Article 87.

2 In the absence of a decision of the Administrative Council as to test guidelines, the President of the Office may take a provisional decision thereon. The provisional decision shall lapse on the date of the decision of the Administrative Council. Where the provisional decision of the President of the Office deviates from the decision of the Administrative Council, a

technical examination started prior to the decision of the Administrative Council shall not be affected. The Administrative Council may decide otherwise, if circumstances so dictate.

### *Article 23*

#### **Powers vested in the President of the Office**

1 Where the Administrative Council takes a decision on test guidelines, it shall include a power whereby the President of the Office may insert additional characteristics and their expressions in respect of a variety.

2 Where the President of the Office makes use of the power referred to in paragraph 1, Article 22(2) shall apply *mutatis mutandis*.

### *Article 24*

#### **Notification by the Office of the Examination Office**

In accordance with Article 55(3) of the basic Regulation, the Office shall transmit copies of the following documents relating to the variety to the Examination Office:

- (a) the application form, the technical questionnaire and each additional document submitted by the applicant containing information needed for the conduct of the technical examination;
- (b) the forms filled out by the applicant pursuant to Article 86 of this Regulation;
- (c) documents relating to an objection based on the contention that the conditions laid down in Articles 7, 8 and 9 of the basic Regulation have not been met.

### *Article 25*

#### **Cooperation between the Office and the Examination Office**

The staff of the Examination Office responsible for the technical examination and the rapporteur designated in accordance with Article 8(1) shall cooperate in all phases of a technical examination. Cooperation shall cover at least the following aspects:

- (a) the monitoring of the conduct of the technical examination, including the inspection of the locations of the test plots and the methods used for the tests by the rapporteur;
- (b) without prejudice to other investigations by the Office, information from the Examination Office about details of any previous disposal of the variety; and
- (c) the submission by the Examination Office to the Office of interim reports on each growing period.

## Article 26

### Form of the examination reports

1 The examination report referred to in Article 57 of the basic Regulation shall be signed by the responsible member of the staff of the Examination Office and shall expressly acknowledge the exclusive rights of disposal of the Office under Article 57(4) of that Regulation.

2 The provisions of paragraph 1 shall apply *mutatis mutandis* to any interim reports to be submitted to the Office. The Examination Office shall issue a copy of each interim report direct to the applicant.

## Article 27

### Other examination reports

1 An examination report on the results of any technical examination which has been carried out or is in the process of being carried out for official purposes in a Member State by one of the offices responsible for the species concerned pursuant to Article 55(1) of the basic Regulation may be considered by the Office to constitute a sufficient basis for decision, provided that:

- a the material submitted for the technical examination has complied, in quantity and quality, with any standards that may have been laid down pursuant to Article 55(4) of the basic Regulation;
- b the technical examination has been carried out in a manner consistent with the designations by the Administrative Council pursuant to Article 55(1) of the basic Regulation, and has been conducted in accordance with the test guidelines issued, on general instructions given, pursuant to Article 56(2) of that Regulation and Articles 22 and 23 of this Regulation;
- c the Office has had the opportunity to monitor the conduct of the technical examination concerned; and
- d where the final report is not immediately available, the interim reports on each growing period are submitted to the Office prior to the examination report.

2 Where the Office does not consider the examination report referred to in paragraph 1 to constitute a sufficient basis for a decision, it may follow the procedure laid down in Article 55 of the basic Regulation, after consulting the applicant and the Examination Office concerned.

3 The Office and each competent national plant variety office in a Member State shall give administrative assistance to the other by making available, upon request, any examination reports on a variety, for the purpose of assessing distinctiveness, uniformity and stability of that variety. A specific amount shall be charged by the Office or the competent national plant variety office for the submission of such a report, such amount being agreed by the offices concerned.

4 An examination report on the results of a technical examination which has been carried out or is in the process of being carried out for official purposes in a third country which is Member of the International Union for the Protection of New Varieties of Plants may be considered by the Office to constitute a sufficient basis for decision, provided the technical examination complies with the conditions laid down in a written agreement between the Office and the competent authority of such third country. Such conditions shall at least include:

- a those related to the material, as referred to in point (a) of paragraph 1;

- b that the technical examination has been conducted in accordance with the test guidelines issued, or general instructions given, pursuant to Article 56(2) of the basic Regulation;
- c that the Office has had the opportunity to assess the suitability of facilities for carrying out a technical examination for the species concerned in that third country and to monitor the conduct of the technical examination concerned; and
- d those related to the availability of reports, as laid down in point (d) of paragraph 1.

### *Section 3*

#### ***Variety denomination***

##### *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) of this Regulation as regards the signature.

##### *Article 29*

#### **Examination of a proposal**

1 Where the proposal does not accompany the application for a Community plant variety right or where a proposed variety denomination cannot be approved by the Office, the Office shall without delay communicate this to the applicant, shall require him to submit a proposal or a new proposal and shall indicate the consequences of failure to do so.

2 Where the Office establishes at the time of receipt of the results of the technical examination pursuant to Article 57(1) of the basic Regulation that the applicant has not submitted any proposal for a variety denomination, it shall without delay refuse the application for a Community plant variety right in accordance with Article 61(1)(c) of that Regulation.

##### *Article 30*

#### **Guidelines for variety denomination**

The Administrative Council shall adopt guidelines establishing uniform and definitive criteria for determining impediments to the generic designation of a variety denomination referred to in Article 63(3) and (4) of the basic Regulation.

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**Status:** This is the original version (as it was originally adopted).

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- (1) OJ L 106, 17.4.2001, p. 1.