

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⁽¹⁾;
- 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.

(1) [OJ L 106, 17.4.2001, p. 1.](#)