

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 IV

GENERAL PROVISIONS RELATING TO PROCEEDINGS

CHAPTER I

Decisions, communications and documents

Article 53

Decisions

1 Any decision of the Office is to be signed by and to state the name of the member of staff duly authorised by the President of the Office in accordance with Article 35 of the basic Regulation.

2 Where oral proceedings are held before the Office, the decisions may be given orally. Subsequently, the decision in writing shall be served on the parties to proceedings in accordance with Article 64.

3 Decisions of the Office which are open to appeal under Article 67 of the basic Regulation or to direct action under Article 74 thereof shall be accompanied by a statement of that appeal or direct action if possible, together with the time limits provided for lodging such appeal or direct action. The parties to proceedings may not plead the omission of that statement.

4 Linguistic errors, errors of transcription and patent mistakes in decisions of the Office shall be corrected.

Article 54

Certificate for a Community plant variety right

1 Where the Office grants a Community plant variety right, it shall issue, together with the decision thereon, a certificate for the Community plant variety right as evidence of the grant.

2 The Office shall issue the certificate for the Community plant variety right in whichever official language or languages of the European Union is requested by the holder.

3 On request, the Office may issue a copy to the person entitled if it establishes that the original certificate has been lost or destroyed.

Article 55

Communications

Unless otherwise provided, any communication by the Office or an Examination Office shall include the name of the competent member of the staff.

Article 56

Right of audience

1 If the Office finds that a decision may not be adopted in the terms sought, it shall communicate the deficiencies noted to the party to the proceedings and shall require him to remedy those deficiencies within such time limit as it may specify. If the deficiencies noted and communicated are not remedied in good time, the Office shall proceed to take its decision.

2 If the Office receives observations from a party to proceedings, it shall communicate those observations to the other parties to the proceedings and shall require them, if it considers it necessary, to reply within such time limit as it may specify. If a reply is not received in good time, the Office shall disregard any document received later.

Article 57

Documents filed by parties to proceedings

1 Any documents filed by a party to proceedings shall be submitted by post, personal delivery or electronic means.

The details concerning electronic submissions shall be determined by the President of the Office.

2 The date of receipt of any document filed by parties to proceedings shall be deemed to be the date on which a document is in fact received on the premises or in the case of a document filed by electronic means, when the document is received electronically by the Office.

3 With the exception of annexed documents, any documents filed by parties to proceedings must be signed by them or their procedural representative.

Where a document is submitted to the Office by electronic means, it shall contain an electronic signature.

4 If a document has not duly been signed, or where a document received is incomplete or illegible, or where the Office has doubts as to the accuracy of the document, the Office shall inform the sender accordingly and shall invite him to submit the original of the document signed in accordance with paragraph 3, or to retransmit a copy of the original, within a time limit of one month.

Where the request is complied with within the period specified, the date of receipt of the signed document or of the retransmission shall be deemed to be the date of the receipt of the first document. Where the request is not complied with within the period specified, the document shall be deemed not to have been received.

5 Such document as must be communicated to other parties to proceedings as well as to the Examination Office concerned, or documents relating to two or more applications for a Community plant variety right or an exploitation right, shall be filed in a sufficient number of copies. Missing copies shall be provided at the expense of the party to the proceedings.

The first subparagraph shall not apply to documents submitted by electronic means.

Article 58

Documentary evidence

1 Evidence of final judgments and decisions, other than those of the Office, or other documentary evidence to be submitted by parties to proceedings, may be furnished by submitting an uncertified copy.

2 Where the Office has doubts as to the authenticity of the evidence referred to in paragraph 1, it may require submission of the original or a certified copy.

CHAPTER II

Oral proceedings and taking of evidence

Article 59

Summons to oral proceedings

1 The parties to proceedings shall be summoned to oral proceedings provided for in Article 77 of the basic Regulation and their attention shall be drawn to paragraph 2 hereof. At least one month's notice of the summons dispatched to the parties to proceedings shall be given unless the parties to proceedings and the Office agree on a shorter period.

2 If a party to proceedings who has duly been summoned to oral proceedings before the Office does not appear as summoned, the proceedings may continue without him.

Article 60

Taking of evidence by the Office

1 Where the Office considers it necessary to hear the oral evidence of parties to proceedings or of witnesses or experts, or to carry out an inspection, it shall take a decision to that effect, stating the means by which it intends to obtain evidence, the relevant facts to be proved and the date, time and place of hearing or inspection. If oral evidence from witnesses and experts is requested by a party to proceedings, the decision of the Office shall state the period of time within which the party to proceedings filing the request must make known to the Office the names and addresses of the witnesses and experts whom the party to proceedings wishes to be heard.

2 At least one month's notice of a summons dispatched to a party to proceedings, witness or expert to give evidence shall be given unless the Office and they agree to a shorter period. The summons shall contain:

- a an extract from the decision referred to in paragraph 1, indicating in particular the date, time and place of the investigation ordered and setting out the facts regarding which parties to proceedings, witnesses and experts are to be heard;
- b the names of the parties to proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Article 62(2), (3) and (4);
- c a statement that the party to proceedings, witness or expert may ask to be heard by the competent judicial or other authority in his country of domicile and a request that he inform the Office within a time limit to be fixed by the Office whether he is prepared to appear before it.

3 Before a party to proceedings, a witness or an expert may be heard, he shall be informed that the Office may request the competent judicial or other authority in his country of domicile to re-examine his evidence on oath or in some other binding form.

4 The parties to proceedings shall be informed of the hearing of a witness or expert before a competent judicial or other authority. They shall have the right to be present and to put questions to the testifying parties to proceedings, witnesses and experts, either through the intermediary of the authority or direct.

Article 61

Commissioning of experts

1 The Office shall decide in what form the report to be made by an expert whom it appoints shall be submitted.

2 The mandate of the expert shall contain:

- a a precise description of his task;
- b the time limit laid down for the submission of the report;
- c the names of the parties to the proceedings;
- d particulars of the rights which he may invoke under Article 62(2), (3) and (4).

3 For the purposes of the expert's report, the Office may require the Examination Office having conducted the technical examination of the variety concerned to make available material in accordance with instructions given. If necessary, the Office may also require material from parties to proceedings or third persons.

4 The parties to proceedings shall be provided with a copy and, where appropriate, a translation of any written report.

5 The parties to proceedings may object to an expert. Articles 48(3) and 81(2) of the basic Regulation shall apply *mutatis mutandis*.

6 Article 13(2) and (3) shall apply *mutatis mutandis* to the expert appointed by the Office. When appointing the expert, the Office shall inform him of the requirement of confidentiality.

Article 62

Costs of taking evidence

1 The taking of evidence may be made conditional upon deposit with the Office, by the party to proceedings who requested that such evidence be taken, of a sum to be quantified by the Office by reference to an estimate of the costs.

2 Witnesses and experts who are summoned by and who appear before the Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance may be granted to them.

3 Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts unless members of the staff of the Examination Offices, to fees for their work. Those payments shall be made to the witnesses after the taking of evidence and to the experts after they have fulfilled their duties or tasks.

4 Payments of amounts due pursuant to paragraphs 2 and 3 and in accordance with the details and scales laid down in Annex I shall be made by the Office.

Article 63

Minutes of oral proceedings and of taking of evidence

1 Minutes of oral proceedings and of the taking of evidence shall record the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties to proceedings, the testimony of the parties to proceedings, witnesses or experts and the result of any inspection.

2 The minutes of the testimony of a witness, expert or party to proceedings shall be read out or submitted to him so that he may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. Where his approval is not given, his objections shall be noted.

3 The minutes shall be signed by the employee who drew them up and by the employee who conducted the oral proceedings or the taking of evidence.

4 The parties to proceedings shall be provided with a copy and, where appropriate, a translation of the minutes.

CHAPTER III

Service

Article 64

General provisions on service

1 In proceedings before the Office, any service of documents to be made by the Office on a party to proceedings shall take the form of the original document, of an uncertified copy

thereof or a computer print-out. Documents emanating from other parties to proceedings may be served in the form of uncertified copies.

2 If a procedural representative has been appointed by one or more parties to proceedings, service shall be made on him in accordance with the provisions of paragraph 1.

3 Service shall be made:

- a by post in accordance with Article 65;
- b by delivery by hand in accordance with Article 66;
- c by public notice in accordance with Article 67; or
- d by electronic means or any other technical means in accordance with the second subparagraph.

The President of the Office shall determine the details concerning service by electronic means.

4 Documents or copies thereof containing actions for which service is provided for in Article 79 of the basic Regulation shall be served by registered letter with advice of delivery served by postal means; it can also be served by electronic means to be determined by the President of the Office.

Article 65

Service by post

1 Service on addressees not having their domicile or their seat or establishment within the Community and who have not appointed a procedural representative in accordance with Article 82 of the basic Regulation shall be effected by posting the documents to be served by ordinary letter to the addressee's last address known to the Office. Service shall be deemed to have been effected by posting even if the letter is returned as undeliverable.

2 Where service is effected by registered letter, whether or not with advice of delivery, this shall be deemed to have been delivered to the addressee on the tenth day following its posting, unless the letter has failed to reach the addressee or has reached him on a later day; in the event of any dispute, it shall be for the Office to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.

3 Service by registered letter, whether or not with advice of delivery, shall be deemed to have been effected even if the addressee refuses to accept the letter or to acknowledge receipt thereof.

4 Where service by post is not covered by paragraphs 1, 2 and 3, the law of the State on the territory of which the service is made shall apply.

Article 66

Service by hand delivery

On the premises of the Office, service of a document may be effected by delivery by hand to the addressee, who shall on delivery acknowledge its receipt. Service shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Article 67

Public notice

If the address of the addressee cannot be established, or if service in accordance with Article 64(4) has proved to be impossible even after a second attempt by the Office, service shall be effected by public notice, to be issued in the periodical publication referred to in Article 89 of the basic Regulation. The President of the Office shall determine details as to the issue of a public notice.

Article 68

Irregularities in service

If the Office is unable to prove that a document which has reached the addressee has been duly served, or if provisions relating to its service have not been observed, the document shall be deemed to have been served on the date established by the Office as the date of receipt.

CHAPTER IV

Time limits and interruption of proceedings

Article 69

Computation of time limits

- 1 Time limits shall be laid down in terms of full years, months, weeks or days.
- 2 Time limits shall run from the day following the day on which the relevant event occurred, the event being either an action or the expiry of another time limit. Unless otherwise provided, the event considered shall be the receipt of the document served, where the action consists in service.
- 3 Notwithstanding the provisions of paragraph 2, the time limits shall run from the 15th day following the day of publication of a relevant action, where the action is either the public notice referred to in Article 67, a decision of the Office unless served to the relevant person, or any action of a party to proceedings to be published.
- 4 When a time limit is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred; where the relevant subsequent month has no day bearing the same number the time limit shall expire on the last day of that month.
- 5 When a time limit is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred; where the relevant subsequent month has no day bearing the same number the period shall expire on the last day of that month.

6 Where a time limit is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Article 70

Duration of time limits

Where either the basic Regulation or this Regulation specifies a time limit to be determined by the Office, such a time limit shall be not less than one month and not more than three months. In certain special cases, the time limit may be extended by up to six months upon a request presented before the expiry of such time limit.

Article 71

Extension of time limits

1 If a time limit expires on a day on which the Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered in the locality in which the Office is situated, the time limit shall extend until the first day thereafter on which the Office is open for receipt of documents and on which ordinary mail is delivered. The days referred to in the first sentence shall be as stated and communicated by the President of the Office before the commencement of each calendar year.

2 If a time limit expires on a day on which there is a general interruption or a subsequent dislocation in the delivery of mail in a Member State or between a Member State and the Office, the time limit shall be extended until the first day following the end of the period of dislocation or interruption in the delivery of mail for parties to proceedings having their domicile or seat or establishment in the Member State concerned or having appointed procedural representatives with a seat in that State. Should the Member State concerned be the State in which the Office is located, this provision shall apply to all parties to proceedings. The duration of the period of interruption or dislocation shall be as stated and communicated by the President of the Office.

As regards documents submitted by electronic means, the first subparagraph shall apply *mutatis mutandis* in cases where there is an interruption of the connection of the Office to the electronic means of communication.

3 Paragraphs 1 and 2 shall apply *mutatis mutandis* to the national agencies, or the sub-offices designated, pursuant to Article 30(4) of the basic Regulation as well as to the Examination Offices.

Article 72

Interruption of proceedings

- 1 Proceedings before the Office shall be interrupted:
- a in the event of the death or legal incapacity of the applicant for, or holder of, a Community plant variety right or of the applicant for an exploitation right to be granted by the Office or of the person entitled to enjoy such exploitation right, or of the procedural representative of any of those parties; or
 - b in the event of a supervening legal impediment to such person's continuation of proceedings before the Office, due to some action taken against his property.

2 When the necessary particulars in respect of the identity of the person authorised to continue proceedings as party thereto or procedural representative have been entered in the relevant register, the Office shall inform such person and the other parties that the proceedings shall be resumed as from the date to be determined by the Office.

3 The time limits in force shall begin afresh as from the day on which proceedings are resumed.

4 The interruption of proceedings shall not affect the pursuit of the technical examination or verification of the variety concerned by an Examination Office where the relevant fees have already been paid to the Office.

CHAPTER V

Procedural representatives

Article 73

Designation of a procedural representative

1 Any designation of a procedural representative shall be communicated to the Office. The communication shall contain the name and address of the procedural representative; Article 2(2) and (3) shall apply *mutatis mutandis*.

2 Without prejudice to Article 2(4), the communication referred to in paragraph 1 shall also identify as such any employee of the party to proceedings. An employee may not be designated as a procedural representative within the meaning of Article 82 of the basic Regulation.

3 Failure to comply with the provisions of paragraphs 1 and 2 shall lead to the communication being deemed not to have been received.

4 A procedural representative whose mandate has ended shall continue to be considered as procedural representative until the termination of his mandate has been communicated to the Office. Subject to any provisions to the contrary contained therein, a mandate shall however, terminate *vis-à-vis* the Office upon the death of the person who conferred it.

5 If there are two or more parties to proceedings acting in common, which have not notified a procedural representative to the Office, the party to the proceedings first named in an application for a Community plant variety right or for an exploitation right to be granted by the Office or in an objection shall be deemed to be designated as the procedural representative of the other party or parties to the proceedings.

Article 74

Credentials of procedural representatives

1 Where the appointment of a procedural representative is notified to the Office, the necessary signed credentials shall be presented for inclusion in the files within such period as the Office may specify unless otherwise provided. If the credentials are not filed in due time, any procedural step taken by the procedural representative shall be deemed not to have been taken.

2 Credentials may cover one or more proceedings and shall be filed in the corresponding number of copies. General credentials enabling a procedural representative to act in all the proceedings of the party giving the credentials may be filed. A single document embodying the general credentials shall be sufficient.

3 The President of the Office may determine the contents of, and make available, forms for credentials, including the general credentials referred to in paragraph 2, free of charge.

CHAPTER VI

Apportionment and determination of costs

Article 75

Awards of costs

1 A decision as to costs shall be dealt with in the decision on the revocation or cancellation of a Community plant variety right, or the decision on the appeal.

2 In the case of an award of costs pursuant to Article 85(1) of the basic Regulation, the Office shall set out that award in the statement of the grounds of the decision on the revocation or cancellation of a Community plant variety right, or the decision on the appeal. The parties to proceedings may not plead the omission of that indication.

Article 76

Determination of costs

1 A request for the determination of costs shall be admissible only if the decision has been taken in respect of which the determination of costs is required and if, in the event of an appeal against such decision, the Board of Appeal has decided upon that appeal. A bill of costs, with supporting documents, shall be attached to the request.

2 Costs may be determined once their credibility is established.

3 Where one party to proceedings incurs the costs of another party to the proceedings, it shall not be required to reimburse any costs other than those referred to in paragraph 4. Where the successful party to proceedings is represented by more than one agent, adviser or advocate, the losing party shall bear the costs referred to in paragraph 4 for one such person only.

4 The costs essential to proceedings shall cover:

- a costs of witnesses and experts paid by the Office to the witness or expert concerned;
- b expenses for travel and subsistence of a party to proceedings and an agent, adviser or advocate duly designated as a procedural representative before the Office, within the relevant scales applicable to witnesses and experts laid down in Annex I;
- c remuneration of an agent, adviser or advocate duly designated as the procedural representative of a party to proceedings before the Office, within the scales laid down in Annex I.

Article 77

Settlement of costs

In the event of a settlement of costs referred to in Article 85(4) of the basic Regulation, the Office shall confirm such settlement in a communication to the parties to the proceedings. Where such communication confirms also a settlement as to the amount of costs to be paid, a request for the determination of costs shall be inadmissible.