

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 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.