

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 V

INFORMATION GIVEN TO THE PUBLIC

CHAPTER I

Registers, public inspection and publications

Section 1

The Registers

Article 78

Entries related to proceedings and to Community plant variety rights, to be entered in the Registers

- 1 The following ‘other particulars’ referred to in Article 87(3) of the basic Regulation shall be entered in the Register of Applications for Community Plant Variety Rights:
 - a date of publication where such publication is a relevant event for the computation of time limits;
 - b any objection, together with its date, the name and address of the objector and those of his procedural representative;
 - c priority data (date and State of the earlier application);
 - d any institution of actions in respect of claims referred to in Article 98(4) and Article 99 of the basic Regulation as to entitlement to the Community plant variety right, and the final decision in, or of any other termination of, any such action.
- 2 The following ‘other particulars’ referred to in Article 87(3) of the basic Regulation shall be entered in the Register of Community Plant Variety Rights, upon request:
 - a the giving of a Community plant variety right as a security or as the object of any other rights *in rem*; or
 - b any institution of actions in respect of claims referred to in Article 98(1) and (2) and Article 99 of the basic Regulation and relating to the Community plant variety right, and the final decision in, or of any other termination of, any such action.
- 3 The President of the Office shall decide upon the details of the entries to be made and may decide upon further particulars to be entered in the Registers for the purpose of the management of the Office.

The President of the Office shall determine the form of Registers. The Registers may be maintained in the form of an electronic database.

Article 79

Entry of transfer of a Community plant variety right

1 Any transfer of Community plant variety rights shall be entered in the Register of Community Plant Variety Rights on production of documentary evidence of the transfer, or of official documents confirming the transfer, or of such extracts from those documents as suffice to establish the transfer. The Office shall retain a copy of those pieces of documentary evidence in its files.

The President of the Office shall determine the form in and the conditions under which those pieces of documentary evidence are to be retained in the files of the Office.

2 The entry of a transfer may be refused only in the event of failure to comply with the conditions laid down in paragraph 1 and in Article 23 of the basic Regulation.

3 Paragraphs 1 and 2 shall apply to any transfer of an entitlement to a Community plant variety right for which an application has been entered in the Register of Applications for Community Plant Variety Rights. The reference to the Register of Community Plant Variety Rights shall be understood as a reference to the Register of Applications for Community Plant Variety Rights.

Article 80

Conditions for entries in the Registers

Without prejudice to other provisions of the basic Regulation or of this Regulation, a request for an entry or a deletion of an entry in the Registers may be made by any interested person. The request shall be made in writing, accompanied by supporting documents.

Article 81

Conditions for specific entries in the Registers

1 Where a Community plant variety right applied for or granted is concerned by bankruptcy or like proceedings, an entry to this effect shall be made, free of charge, in the Register for Community Plant Variety Rights at the request of the competent national authority. This entry shall also be deleted at the request of the competent national authority, free of charge.

2 Paragraph 1 shall apply *mutatis mutandis* to the institution of actions in respect of claims referred to in Articles 98 and 99 of the basic Regulation and the final decision in, or of any other termination of, any such action.

3 Where varieties are identified respectively as initial and essentially derived, a request for entry by all the parties to proceedings may be made jointly or separately. In the event of a request from only one party to proceedings, the request shall be accompanied by sufficient documentary evidence of the actions referred to in Article 87(2)(h) of the basic Regulation to replace the request of the other party.

4 Where the entry of a contractual exclusive exploitation right or of a Community plant variety right given as security or as the subject of rights *in rem* is requested, such request shall be accompanied by sufficient documentary evidence.

Article 82

Public inspection of the Registers

1 The Registers shall be open for public inspection on the premises of the Office.

Access to the Registers and the documents held therein shall be granted under the same terms and conditions as apply to the access to documents held by the Office within the meaning of Article 84.

2 On-the-spot inspection of the Registers shall be free of charge.

The production and delivery of extracts from the Registers in any form that requires the processing or manipulating of data other than the mere reproduction of a document or parts thereof shall be subject to the payment of a fee.

3 The President of the Office may provide for public inspection of the Registers on the premises of national agencies, or sub-offices designated, pursuant to Article 30(4) of the basic Regulation.

Section 2

Keeping of documents, public inspection of documents and varieties grown

Article 83

Keeping of the files

1 Documents, either in the form of originals or copies relating to proceedings shall be kept in files, a file number being attached to such proceedings, except for those documents relating to the exclusion of, or objection to, members of the Board of Appeal, or to the staff of the Office or the Examination Office concerned, which shall be kept separately.

2 The Office shall keep one copy of the file referred to in paragraph 1 (file copy) which shall be considered the true and complete copy of the file. The Examination Office may keep a copy of the documents relating to such proceedings (examination copy), but shall ensure delivery of those originals which the Office does not hold.

3 The original documents filed by parties to the proceedings which form the basis of any electronic files may be disposed of after a period following their reception by the Office.

4 The President of the Office shall determine the details as to the form in which the files are to be kept, the period during which files are to be kept and the period referred to in paragraph 3.

Article 84

Access to documents held by the Office

1 The Administrative Council shall adopt the practical arrangements for access to the documents held by the Office, including the Registers.

2 The Administrative Council shall adopt the categories of documents of the Office that are to be made directly accessible to the public by way of publication, including publication by electronic means.

Article 85

Inspection of the growing of the varieties

1 A request for inspection of the growing of the varieties shall be addressed in writing to the Office. With the consent of the Office, access to the test plots shall be arranged by the Examination Office.

2 Without prejudice to Article 88(3) of the basic Regulation, general access to the test plots by visitors shall not be affected by the provisions of this Regulation, provided that all grown varieties are coded, that appropriate measures against any removal of material are taken by the Examination Office entrusted and are approved by the Office, and that all necessary steps are taken to safeguard the rights of the applicant for, or holder of, a Community plant variety right.

3 The President of the Office may lay down the details of the procedure for the inspection of the growing of the varieties, and may review the safeguards to be provided under paragraph 2.

Article 86

Confidential information

For the purpose of keeping information confidential, the Office shall make available, free of charge, forms to be used by the applicant for a Community plant variety right in order to request the withholding of all data relating to components as referred to in Article 88(3) of the basic Regulation.

Section 3

Publications

Article 87

Official Gazette

1 The publication to be issued at least every two months pursuant to Article 89 of the basic Regulation shall be called the Official Gazette of the Community Plant Variety Office (hereinafter the Official Gazette).

2 The Official Gazette shall also contain the information entered in the Registers pursuant to Article 78(1)(c) and (d), Article 78(2) and Article 79.

3 The President of the Office shall determine the manner in which the Official Gazette is published.

Article 88

Publication of applications for exploitation rights to be granted by the Office and decisions thereon

The date of receipt of an application for an exploitation right to be granted by the Office and of delivery of the decision on such application, the names and addresses of the parties to proceedings and the form of order sought, or decided upon, shall be published in the Official Gazette. In the case of a decision to grant a compulsory licence, the contents of such decision shall likewise be published.

Article 89

Publication of appeals and decisions thereon

The date of receipt of a notice of appeal and of delivery of the decision on such appeal, the names and addresses of the parties to the appeal proceedings and the form of order sought, or decided upon, shall be published in the Official Gazette.

CHAPTER II

Administrative and legal cooperation

Article 90

Communication of information

1 Information to be exchanged in accordance with Article 90 of the basic Regulation shall be communicated directly between the authorities referred to in that provision.

2 The communication of information referred to in Article 91(1) of the basic Regulation by or to the Office may be effected through the competent plant variety offices of the Member States, free of charge.

3 Paragraph 2 shall apply *mutatis mutandis* to the communication of information referred to in Article 91(1) of the basic Regulation effected to or by the Examination Office. The Office shall receive a copy of such communication.

Article 91

Inspection by or via courts or public prosecutors' offices of the Member States

1 The inspection of files under Article 91(1) of the basic Regulation shall be of copies of the files issued by the Office exclusively for that purpose.

2 Courts or public prosecutors' offices of the Member States may, in the course of proceedings before them, lay the documents transmitted by the Office open to inspection by third parties. Such inspection shall be subject to Article 88 of the basic Regulation; the Office shall not charge any fee for it.

3 The Office shall, at the time of transmission of the files to the courts or public prosecutor's offices of the Member States, indicate the restrictions to which the inspection of documents relating to applications for, or to grants of Community plant variety rights is subject pursuant to Article 88 of the basic Regulation.

Article 92

Procedure for letters rogatory

1 Each Member State shall designate a central authority which will undertake to receive letters rogatory issued by the Office and to transmit them to the court or authority competent to execute them.

2 The Office shall draw up letters rogatory in the language of the competent court or authority or shall attach to such letters a translation into that language.

3 Subject to paragraphs 4 and 5, the competent court or authority shall apply its own law as to the procedures to be followed in executing such requests. In particular, it shall apply suitable coercive measures in accordance with its law.

4 The Office shall be informed of the time when, and the place where, the enquiry or other legal measures is to take place and shall inform the parties to proceedings, witnesses and experts concerned.

5 If so requested by the Office, the competent court or authority shall permit the attendance of the staff of the Office concerned and allow them to question any person giving evidence, either directly or through the competent court or authority.

6 The execution of letters rogatory shall not give rise to any charge of fees or to costs of any kind. Nevertheless, the Member State in which letters rogatory are executed shall have the right to require the Office to reimburse any fees paid to experts and interpreters and the costs arising from the procedure under paragraph 5.