This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

►**B**

COMMISSION REGULATION (EC) No 1239/95

of 31 May 1995

establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office

(OJ L 121, 1.6.1995, p. 37)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Regulation (EC) No 448/96 of 12 March 1996	L 62	3	13.3.1996

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

▼B

COMMISSION REGULATION (EC) No 1239/95

of 31 May 1995

establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights [1], and in particular Article 114 thereof,

Whereas Regulation (EC) No 2100/94 (hereinafter referred to as 'the Basic Regulation') creates a new Community system of plant variety rights, whereby a plant variety right is valid throughout the Community;

Whereas such a system should be carried out in an effective manner as soon as possible by the Community Plant Variety Office, which is assisted by Examination Offices in conducting the technical examination of the plant varieties concerned and which may avail itself of the services of designated national agencies or one of its own sub-offices established for that purpose; whereas, in that regard, it is indispensable to define the relationship between the Office and its own sub-offices, the Examination Offices and national agencies;

Whereas decisions of the Office may be appealed against before its Board of Appeal which should be established and provisions on its procedure should be adopted; whereas further Boards of Appeal may be established, if necessary, by the Administrative Council;

Whereas certain provisions of Articles 23, 29, 34, 35, 36, 42, 45, 46, 49, 50, 58, 81, 85, 87, 88 and 100 of the Basic Regulation already explicitly provide that detailed rules shall or may be drawn up for their implementation; whereas other detailed rules should be drawn up for the same purpose if clarification is required;

Whereas the entry into effect of a transfer of a Community plant variety right or a transfer of an entitlement thereto should be defined in the rules relating to the entries to the Registers;

Whereas the Administrative Council of the Community Plant Variety Office has been consulted;

Whereas the rules provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

TITLE I

PARTIES TO PROCEEDINGS, OFFICE AND EXAMINATION OFFICES

CHAPTER I

PARTIES TO PROCEEDINGS

Article 1

Parties to proceedings

1. The following persons may be party to proceedings before the Community Plant Variety Office, hereinafter referred to as 'the Office':

(a) the applicant for a Community plant variety right;

(b) the objector referred to in Article 59 (2) of the Basic Regulation;

[1] OJ No L 227, 1. 9. 1994, p. 1.

▼B

(c) the holder or holders of the Community plant variety right, hereinafter referred to as 'the holder';

(d) any person whose application or request is a prerequisite for a decision to be taken by the Office.

2. The Office may allow participation in the proceedings by any person other than those referred to in paragraph 1 who is directly and individually concerned, upon written request.

3. Any natural or legal person as well as any body qualifying as a legal person under the law applicable to that body shall be considered a person within the meaning of paragraphs 1 and 2.

Article 2

Designation of parties to proceedings

1. A party to proceedings shall be designated by his name and address.

2. Names of natural persons shall be indicated by the person's family name and given names. Names of legal persons as well as companies or firms shall be indicated by their official designations.

3. Addresses shall contain all the relevant administrative information, including the name of the State in which the party to proceedings is resident or where his seat or establishment is located. Only one address should preferably be indicated for each party to proceedings; where several addresses are indicated, only the address mentioned first shall be taken into account, except where the party to proceedings designates one of the other addresses as an address for service.

4. Where a party to proceedings is a legal person, it shall also be designated by the name and address of the natural person legally representing the party to proceedings by virtue of the relevant national legislation. The provisions of paragraph 2 shall apply *mutatis mutandis* to such natural person.

The Office may permit derogations from the provisions of the first sentence of the first subparagraph.

5. Where the Commission or a Member State is party to proceedings, it shall communicate a representative for each proceeding in which it takes part.

Article 3

Languages of parties to proceedings

1. A language, being an official language of the Communities, chosen by a party to proceedings for use in the document first submitted to the Office and signed for the purpose of submission shall be used by the party to proceedings until a final decision is delivered by the Office.

2. If a party to proceedings files a document signed for that purpose by him in any other official language of the Communities than that to be used pursuant to paragraph 1, the document shall be deemed to have been received when the Office holds a translation thereof, provided by other services. The Office may permit derogations from this requirement.

3. If, in oral proceedings, a party uses a language other than the official language of the Communities used by the competent members of the staff of the Office, by other parties to proceedings, or by both, being the language to be used by him, he shall make provision for simultaneous interpretation into that official language. If no such provision is made, oral proceedings may continue in the languages used by the competent members of the staff of the Office and by other parties to the proceedings.

▼B

Article 4

Languages in oral proceedings and in the taking of evidence

1. Any party to proceedings and any witness or expert who gives evidence in oral proceedings may use any of the official languages of the European Community.

2. Should the taking of evidence referred to in paragraph 1 be allowed at the request of a party to proceedings, then, should a party to proceedings, a witness or expert be unable to express himself adequately in any of the official languages of the European Communities, he may be heard only if the party who made the request makes provision for interpretation into the languages used jointly by all parties to proceedings or, in the absence thereof, by the members of the staff of the Office.

The Office may permit derogations from the first subparagraph.

3. Statements made by the members of the staff of the Office, by parties to proceedings, witnesses or experts in one of the official languages of the European Communities during oral proceedings or taking of evidence shall be entered in the minutes in the language used. Statements made in any other language shall be entered in the language used by the members of the staff of the Office.

Article 5

Translation of documents of parties to proceedings

1. If a party to proceedings files a document in a language other than an official language of the European Communities, the Office may require a translation of the documents received to be made by the party to the proceedings into the language to be used by that party or by the competent members of the staff of the Office.

2. Where a translation of a document is to be filed or is filed by a party to proceedings, the Office may require the filing, within such time as it may specify, of a certificate that the translation corresponds to the original text.

3. Failure to file the translation referred to in paragraph 1 and the certificate referred to in paragraph 2 shall lead to the document's being deemed not to have been received.

CHAPTER II

THE OFFICE

Section 1

Committees of the Office

Article 6

Qualification of members of the Committees

1. The Committees referred to in Article 35 (2) of the Basic Regulation shall, at the discretion of the President of the Office, be composed of technically or legally qualified members, or both.

2. A technical number shall hold a degree, or shall be qualified by recognized experience, in the field of plant science.

3. A legally qualified member shall be a graduate in law or qualified by recognized experience in the field of intellectual property or plant variety registration.

▼B

Article 7

Decisions of the Committee

1. A Committee shall, besides taking the decisions referred to in Article 35 (2) of the Regulation, deal with:

— the non-suspension of a decision pursuant to Article 67 (2) of the Basic Regulation,

— interlocutory revision pursuant to Article 70 of that Regulation,

— the *restitutio in integrum* pursuant to Article 80 of that Regulation, and

— the award of costs pursuant to Article 85 (2) of that Regulation and Article 75 of this Regulation.

2. A decision of the Committee shall be taken by a majority of its members.

Article 8

Power of individual members of the Committees

1. The Committee shall designate one of its members as rapporteur on its behalf.

2. The rapporteur may in particular:

(a) perform the duties under Article 25 and monitor the submission of reports by the Examination Offices;

(b) pursue the procedure within the Office, including the communication of any deficiencies to be remedied by a party to proceedings and the setting of time limits; and

(c) ensure a close consultation and exchange of information with the parties to the proceedings.

Article 9

Role A the President

The President of the Office shall ensure the consistency of decisions taken under his authority. He shall in particular lay down the conditions under which decisions on objections lodged pursuant to Article 59 of the Basic Regulation, and also decisions pursuant to Articles 61, 62, 63 or 66 of that Regulation, are taken.

Article 10

Consultations

Members of the staff of the Office may use, free of charge, the premises of national agencies designated pursuant to Article 30 (4) of the Basic Regulation, and those of Examination Offices, for holding periodical consultation days with parties to proceedings and third persons.

Section 2

Boards of Appeal

Article 11

Boards of Appeal

1. For the purpose of deciding on appeals from the decisions referred to in Article 67 of the Basic Regulation, a Board of Appeal is hereby established. If necessary, the Administrative Council may, on a proposal from the Office, establish more Boards of Appeal. In that event, it shall determine the allocation of work between the Boards of Appeal thus established.

2. Each Board of Appeal shall consist of technical and legally qualified members; Article 6 (2) and (3) shall apply *mutatis mutandis*. The chairman shall be a legally qualified number.

▼B

3. The examination of an appeal shall be assigned by the chairman of the Board of Appeal to one of its members as rapporteur. Such assignment may include, where appropriate, the taking of evidence.

4. Decisions of the Board of Appeal shall be taken by a majority of its members.

Article 12

Registry attached to a Board of Appeal

1. The President of the Office shall attach a registry to the Board of Appeal; members of the staff of the Office shall be excluded from the registry if they have participated in proceedings relating to the decisions under appeal.

2. The employees of the registry shall in particular be responsible for:

— drawing up the minutes of oral proceedings and taking evidence pursuant to Article 63 of this Regulation,

— apportioning costs pursuant to Article 85 (5) of the Basic Regulation and Article 76 of this Regulation, and

— confirming any settlement of costs referred to in Article 77.

CHAPTER III

EXAMINATION OFFICES

Article 13

Designation of an Examination Office referred to in Article 55 (1) of the Basic Regulation

1. When the Administrative Council entrusts the competent office in a Member State with responsibility for technical examination, the President of the Office shall notify the designation to such office, hereinafter referred to as Examination Office. It shall take effect on the day of issue of the notification by the President of the Office. This provision shall apply *mutatis mutandis* to the cancellation of the designation of an Examination Office, subject to Article 15 (6) of this Regulation.

2. A member of the staff of the Examination Office taking part in a technical examination is not allowed to make any unauthorized use of, or disclose to any unauthorized person, any facts, documents and information coming to their knowledge in the course of or in connection with the technical examination; they shall continue to be bound by this obligation after the termination of the technical examination concerned, after leaving the service and after the cancellation of the designation of the Examination Office concerned.

3. Paragraph 2 shall apply *mutatis mutandis* to material of the plant variety which has been made available to the Examination Office by the applicant.

4. The Office shall monitor compliance with paragraphs 2 and 3 and shall decide on the exclusion of or objections raised to members of the staff of Examination Offices in accordance with Article 81 (2) of the Basic Regulation.

Article 14

Designation of an Examination Office referred to in Article 55 (2) of the Basic Regulation

1. Where the Office intends to entrust agencies with responsibility for the technical examination of varieties in accordance with Article 55 (2) of the Basic Regulation, it shall transmit an explanatory statement on the technical suitability of such agency as Examination Office to the Administrative Council for consent.

2. Where the Office intends to establish its own sub-office for the technical examination of varieties, it shall transmit an explanatory statement on the technical and economic appropriateness of estab-

▼B

lishing such a sub-office for that purpose and on the siting of such sub-office to the Administrative Council for consent.

3. When the Administrative Council gives its consent to the explanatory statements referred to in paragraphs 1 and 2, the President of the Office may notify such designation to the agency referred to in paragraph 1, or may publish the designation of a sub-office as referred to in paragraph 2 in the *Official Journal of the European Communities*. It may be cancelled only with the consent of the Administrative Council. Article 13 (2) and (3) shall apply *mutatis mutandis* to the members of the staff of the agency referred to in paragraph 1.

Article 15

Procedure for designation

1. The designation of an Examination Office shall be effected by a written agreement between the Office and the Examination Office providing for the performance of the technical examination of plant varieties by the Examination Office and for the payment of the fee referred to in Article 58 of the Basic Regulation. In the case of a sub-office referred to in Article 14 (2) of this Regulation, the designation shall be by internal rules on working-methods issued by the Office.

2. The effect of the written agreement shall be such that acts performed or to be performed by members of the staff of the Examination Office in accordance therewith shall be considered, as far as third parties are concerned, to be acts of the Office.

3. Where the Examination Office intends to avail itself of the services of other technically qualified bodies in accordance with Article 56 (3) of the Basic Regulation, such bodies shall be named in the written agreement with the Office. Article 81 (2) of the Basic Regulation and Article 13 (2) and (3) of this Regulation shall apply *mutatis mutandis* to the staff members concerned, who shall sign a written undertaking to observe confidentiality.

4. Payment of the fee by the Office to the Examination Office shall be within the scales to be inserted later in this Regulation, by 31 December 1999, on the basis of the requirements laid down in Article 93 (1) hereof. The scales, once adopted, may be amended only subject to amendment of Commission Regulation (EC) No 1238/95 [1] (fees).

5. The Examination Office shall periodically submit to the Office a breakdown of the costs of the technical examination performed and of the maintenance of the necessary reference collections. In the circumstances set out in paragraph 3, a separate auditing report of the bodies shall be submitted to the Office by the Examination Office.

6. Any cancellation of designation of an Examination Office may not take effect prior to the day on which revocation of the written agreement referred to in paragraph 1 takes effect.

[1] See page 31 of this Official Journal.

▼B

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. The application for a Community plant variety right shall be filed in duplicate at the Office, or in triplicate at the national agencies or sub-offices established pursuant to Article 30 (4) of the Basic Regulation.

2. The 'information' sent to the Office under indent (b) of Article 49 (1) 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 the following forms available free of charge, to be filled out and signed by the applicant:

(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.

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, 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 indent (b) of Article 49 (1) of the Basic Regulation and Article 16 (2) of this Regulation.

▼B

Article 18

Conditions referred to in Article 50 (1) of the Basic Regulation

1. If the Office finds that the application does not comply with the conditions 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 the Regulation.

2. An application complies with the condition in indent (i) of Article 50 (1) 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 in indent (j) of Article 50 (1) 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 as 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 Council Directive 90/220/EEC [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

[1] OJ No L 117, 8. 5. 1990, p. 15.

▼B

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);

(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 90/220/EEC, 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 the aforesaid Directive.

Article 20

Claiming priority

If the applicant claims a right of priority for an applications 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), 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 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 the test guidelines. The date and the species concerned of the decision shall be published in the Official Gazette referred to in Article 87 of this Regulation.

▼B

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 in paragraph 1, Article 22 (2) of this Regulation 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 to 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) of this Regulation shall cooperate in all phases of a technical examination. Cooperation shall cover at least the following aspects:

(a) monitoring of the conduct of the technical examination, including inspection of the locations of the test plots and the methods used for the tests by the rapporteur; and

(b) without prejudice to other investigations by the Office, information from the Examination Office about details of any previous disposal of the variety;

(c) 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 the 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 such interim report direct to the applicant.

▼B

Article 27

Other examination reports

1. An examination report on the results of any technical examination without 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:

— 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,

— 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,

— the Office has had the opportunity to monitor the conduct of the technical examination concerned, and

— 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 paragaph 1 to constitute a sufficient basis for a decision, it may follow the procedure under Article 55 of the Regulation, after consultation of 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.

▼M1

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:

— those related to the material, as referred to in paragraph 1, first indent,

— 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,

— 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

— those related to the availability of reports, as laid down in paragraph 1, fourth indent.

▼B

Section 3

Variety denomination

Article 28

Proposal for a variety denomination

The proposal for a variety denomination shall be signed and shall be filed in duplicate at the Office, or, if the proposal accompanies the

▼B

application for a Community plant variety right filed at the national agency designated, or sub-office established, pursuant to Article 30 (4) of the Regulation, in triplicate. The Office shall make available, free of charge, a form for the purposes of proposing a variety denomination.

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.

2. Where the Office establishes at the time of receipt of the results of the technical examination pursuant to Article 57 (1) of the 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 the 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.

CHAPTER II

OBJECTION

Article 31

Filing of objections

1. Objections under Article 59 of the Basic Regulation shall contain:

(a) the name of the applicant and the file number of the application to which the objection is lodged;

(b) the designation of the objector as party to proceedings as set out in Article 2 of this Regulation;

(c) if the objector has appointed a procedural representative, his name and the address;

(d) a statement on the contention referred to in Article 59 (3) of the Basic Regulation on which the objection is based, and on particulars, items of evidence and arguments presented in support of the objection.

2. If several objections in respect of the same application for a Community plant variety right are filed, the Office may deal with those objections in one set of proceedings.

Article 32

Rejection of objections

1. If the Office finds that the objection does not comply with Article 59 (1) and (3) of the Basic Regulation or Article 31 (1) (d) of this Regulation or that it does not provide sufficient identification of the application against which objection is lodged, it shall reject the objection as inadmissible unless such deficiencies have been remedied within such time limit it may specify.

2. If the Office notes that the objection does not comply with other provisions of the Basic Regulation or of this Regulation, it shall reject the objection as inadmissible unless such deficiences have been remedied prior to the expiry of the objection periods.

▼B

CHAPTER III

MAINTENANCE OF COMMUNITY PLANT VARIETY RIGHTS

Article 33

Obligations of the holder under Article 64 (3) of the Basic Regulation

1. The holder shall permit inspection of material of the variety concerned and of the location where the identity of the variety is preserved, in order to furnish the information necessary for assessing the continuance of the variety in its unaltered state, pursuant to Article 64 (3) of the Regulation.

2. The holder shall be required to keep written records in order to facilitate verification of appropriate measures referred to in Article 64 (3) of the Regulation.

Article 34

Technical verification of the protected variety

Without prejudice to Article 87 (4) of the Regulation, a technical verification of the protected variety shall be conducted in accordance with the test guidelines duly applied when the Community plant variety right was granted in respect of that variety. Articles 22 and 24 to 27 of this Regulation shall apply *mutatis mutandis* to the Office, the Examination Office and to the holder.

Article 35

Other material to be used for a technical verification

When the holder has submitted material of the variety in accordance with Article 64 (3) of the Basic Regulation, the Examination Office may, with the consent of the Office, verify the submitted material by inspecting other material which has been taken from holdings where material is produced by the holder, or with his consent, or taken from material being marketed by him, or with his consent, or taken by official bodies in a Member State by virtue of their powers.

Article 36

Amendments of the variety denominations

1. Where the variety denomination has to be amended in accordance with Article 66 of the Regulation, the Office shall communicate the grounds thereof to the holder, shall set up a time limit within which the holder must submit a suitable proposal for an amended variety denomination, and shall state that, should he fail to do so, the Community plant variety right may be cancelled pursuant to Article 21 of the Regulation. Each proposal of the holder shall be filed in duplicate at the Office.

2. Where the proposal for an amended variety denomination cannot be approved by the Office, the Office shall without delay inform the holder, shall again set a time limit within which the holder must submit a suitable proposal, and shall state that, should he fail to comply, the Community plant variety right may be cancelled pursuant to Article 21 of the Regulation.

3. Articles 31 and 32 of this Regulation shall apply *mutatis mutandis* to an objection lodged pursuant to Article 66 (3) of the Basic Regulation.

▼B

CHAPTER IV

COMMUNITY EXPLOITATION RIGHTS TO BE GRANTED BY THE OFFICE

Section 1

Compulsory exploitation rights

Article 37

Applications for a compulsory exploitation right

1. The application for a compulsory exploitation right shall contain:

(a) the designation of the applicant and the opposing holder of the variety concerned as parties to proceedings;

(b) the variety denomination and the plant species of the variety or varieties concerned;

(c) a proposal for the type of acts to be covered by the compulsory exploitation right;

(d) a statement setting out the public interest concerned, including details of facts, items of evidence and arguments presented in support of the public interest claimed;

(e) in the case of an application referred to in Article 29 (2) of the Basic Regulation, a proposal for the category of persons to which the compulsory exploitation right shall be granted, including, as the case may be, the specific requirements related to that category of persons.

2. The application referred to in Article 29 (1) or (5) shall be accompanied by documents evidencing his unsuccessful request for a contractual exploitation right from the opposing holder.

3. The application referred to in Article 29 (2) of the Regulation shall be accompanied by documents evidencing the unsuccessful requests of persons for a contractual exploitation right from the opposing holder. Should the Commission or a Member State be the applicant for a compulsory exploitation right, the Office may waive this condition in the case of *force majeure*.

4. A request for a contractual exploitation right shall be considered unsuccessful within the meaning of paragraphs 2 and 3 if:

(a) the opposing holder has not given a final reply to the person seeking such right within a reasonable period; or

(b) the opposing holder has refused to grant a contractual exploitation right to the person seeking it; or

(c) the opposing holder has offered a contractual exploitation right to the person seeking it, on obviously unreasonable fundamental terms including those relating to the royalty to be paid, or on terms which, seen as a whole, are obviously unreasonable.

Article 38

Examination of the application for a compulsory exploitation right

1. Oral proceedings and the taking of evidence shall in principle be held together in one hearing.

2. Requests for further hearings shall be inadmissible except for those requests based on circumstances which have undergone change during or after the hearing.

3. Before taking a decision, the Office shall invite the parties concerned to come to an amicable settlement on a contractual exploitation right. If appropriate, the Office shall make a proposal for such an amicable settlement.

▼B

Article 39

Tenure of a Community plant variety right during the proceedings

1. If the commencement of an action in respect of a claim referred to in Article 98 (1) of the Basic Regulation against the holder has been entered in the Register of Community Plant Variety Rights, the Office may suspend the proceedings on the grant of a compulsory exploitation right. It shall not resume them prior to the entry in the same Register of the final judgment upon, or any other termination of, such action.

2. If a transfer of the Community plant variety right is binding on the Office, the new holder shall enter the proceedings as party thereto, upon request of the applicant, if that applicant has unsuccessfully requested the new holder to grant him a contractual exploitation right within two months of receipt of communication from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights. A request from the applicant shall be accompanied by sufficient documentary evidence of his vain attempt and, if appropriate, of the conduct of the new holder.

3. In the case of an application referred to in Article 29 (2) of the Regulation, the new holder shall enter the proceedings as party thereto. The provisions of paragraph 1 shall not apply.

Article 40

Contents of the decision on the application

The written decision shall be signed by the President of the Office. The decision shall contain:

(a) a statement that the decison is delivered by the Office;

(b) the date when the decision was taken;

(c) the names of the members of the committee having taken part in the proceedings;

(d) the names of the parties to proceedings and of their procedural representatives;

(e) the reference to the opinion of the Administrative Council;

(f) a statement of the issues to be decided;

(g) a summary of the facts;

(h) the grounds on which the decision is based;

(i) the order of the Office; if need be, the order shall include the stipulated acts covered by the compulsory exploitation right, the specific conditions pertaining thereto and the category of persons, including where appropriate the specific requirements relating to that category.

Article 41

Grant of a compulsory exploitation right

1. The decision to grant a compulsory exploitation right shall contain a statement setting out the public interest involved.

2. The following grounds may in particular constitute a public interest:

(a) the protection of life or health of humans, animals or plants;

(b) the need to supply the market with material offering specific features; or

(c) the need to maintain the incentive for continued breeding of improved varieties.

3. The compulsory exploitation right shall be non-exclusive.

4. The compulsory exploitation right may not be assigned, otherwise than together with that part of an enterprise which makes use of the compulsory exploitation right, or, in the circumstances set out in

▼B

Article 29 (5) of the Basic Regulation, together with the assignment of the rights over of an essentially derived variety.

Article 42

Conditions pertaining to the person to whom a compulsory exploitation right is granted

1. Without prejudice to the other conditions referred to in Article 29 (3) of the Basic Regulation, the person to whom the compulsory exploitation right is granted shall dispose of appropriate financial and technical capacities to make use of the compulsory exploitation right.

2. Compliance with the conditions pertaining to the compulsory exploitation right and laid down in the decision thereupon shall be considered a 'circumstance' under Article 29 (4) of the Basic Regulation.

3. The Office shall provide that the person to whom a compulsory exploitation right is granted may not bring a legal action for infringement of a Community plant variety right unless the holder has refused or neglected to do so within two months after being so requested.

Article 43

Category of persons satisfying specific requirements

1. Any person intending to make use of a compulsory exploitation right who comes under the category of person satisfying specific requirements referred to in Article 29 (2) of the Basic Regulation shall declare his intention to the Office and to the holder by registered letter with advice of delivery. The declaration shall include:

(a) the name and address of that person as laid down for parties to proceedings pursuant to Article 2 of this Regulation;

(b) a statement on the facts meeting the specific requirements;

(c) a statement setting out the acts to be effected; and

(d) an assurance that that person disposes of appropriate financial resources as well as information about the technical capacity for making use of the compulsory exploitation right.

2. Upon request, the Office shall enter a person in the Register of Community Plant Variety Rights if such person has fulfilled the conditions relating to the declaration referred to in paragraph 1. Such person shall not be entitled to make use of the compulsory exploitation right prior to the entry. The entry shall be communicated to that person and the holder.

3. Article 42 (3) of this Regulation shall apply *mutatis mutandis* to a person entered pursuant to paragraph 2. Any judgment, or other termination, of the legal action in respect of the act of infringement shall apply to the other persons entered or to be entered.

4. The entry referred to in paragraph 2 may be deleted on the sole grounds that the specific requirements laid down in the decision on the grant of a compulsory exploitation right or the financial and technical capacities established pursuant to paragraph 2 have undergone change more than one year after the grant of the compulsory exploitation right and within any time limit stipulated in that grant. The deletion of the entry shall be communicated to the person entered and the holder.

▼B

Section 2

Exploitation rights pursuant to Article 100 (2) of the Basic Regulation

Article 44

Exploitation rights pursuant to Article 100 (2) of the Basic Regulation

1. A request for a contractual non-exclusive exploitation right from a new holder, as referred to in Article 100 (2) of the Basic Regulation, shall be made, in the case of the former holder within two months, or in the case of a person having enjoyed an exploitation right within four months, of receipt of notification from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights.

2. An application for an exploitation right to be granted pursuant to Article 100 (2) of the Basic Regulation shall be accompanied by documents supporting the unsuccessful request referred to in paragraph 1. The provisions of Articles 37 (1) (a), (b), (c) and (4), 38, 39 (3), 40 except letter (f), 41 (3) and (4) and 42 of this Regulation shall apply *mutatis mutandis*.

TITLE III

PROCEEDINGS BEFORE THE BOARD OF APPEAL

Article 45

Contents of the notice of appeal

The notice of appeal shall contain:

(a) the designation of the appellant as party to appeal proceedings in accordance with Article 2 of this Regulation;

(b) the file number of the decision against which the appeal is lodged and a statement as to the extent to which amendment or cancellation of the decision is sought;

Article 46

Receipt of the notice of appeal

Where the Office receives a notice of appeal, it shall mark it with a file number of the appeal proceedings and the date of receipt at the Office and shall notify the appellant of the time limit for setting out the grounds of the appeal; any omission of such notice may not be pleaded.

Article 47

Participation as party to the appeal proceedings

1. The Office shall promptly transmit a copy of the notice of appeal marked with the file number and the date of its receipt to the parties to proceedings having participated in the proceedings before the Office.

2. The parties to proceedings referred to in paragraph 1 may intervene as parties to the appeal proceedings within two months of transmission of a copy of the notice of appeal.

Article 48

Role of the Office

1. The body of the Office referred to in Article 70 (1) of the Basic Regulation and the chairman of the Board of Appeal shall ensure by internal preparatory measures that the Board of Appeal can examine the case immediately after its remittal; the chairman shall in particular select the two other members in accordance with Article 46 (2) of that Regulation and shall designate a rapporteur, prior to the remittal of the case.

▼B

2. Prior to the remittal of the case, the body of the Office referred to in Article 70 (1) of the Basic Regulation shall promptly transmit a copy of the documents received by a party to the appeal proceedings to the other parties to the appeal proceedings.

3. The President of the Office shall provide for the publication of the information referred to in Article 89 of this Regulation, prior to the remittal of the case.

Article 49

Rejection of the appeal as inadmissible

1. If the appeal does not comply with the provisions of the Basic Regulation and in particular Articles 67, 68 and 69 thereof or those of this Regulation and in particular Article 45 thereof, the Board of Appeal shall so inform the appellant and shall require him to remedy the deficiencies found, if possible, within such period as it may specify. If the appeal is not rectified in good time, the Board of Appeal shall reject it as inadmissible.

2. Where an appeal is lodged against a decision of the Office against which an action under Article 74 of the Basic Regulation is likewise lodged, the Board of Appeal shall forthwith submit the appeal as an action to the Court of Justice of the European Communities, with the consent of the appellant; if the appellant does not consent, it shall reject the appeal as inadmissible. In the case of the submission of an appeal to the Court of Justice, such an appeal shall be deemed to have been lodged with the Court of Justice as at the date of receipt at the Office under Article 46 of this Regulation.

Article 50

Oral proceedings

1. After the remittal of the case, the chairman of the Board of Appeal shall, without delay, summon the parties to the appeal proceedings to oral proceedings as provided for in Article 77 of the Basic Regulation and shall draw their attention to the contents of Article 59 (2) of this Regulation.

2. The oral proceedings and the taking of evidence shall in principle be held in one hearing.

3. Requests for further hearings shall be inadmissible except for requests based on circumstances which have undergone change during or after the hearing.

Article 51

Examination of appeals

Unless otherwise provided, the provisions relating to proceedings before the Office shall apply to appeal proceedings *mutatis mutandis;* parties to proceedings shall in that regard be treated as parties to appeal proceedings.

Article 52

Decision on the appeal

1. Within three months after closure of the the oral proceedings, the decision on the appeal shall be forwarded in writing to the parties to the appeal proceedings.

2. The decision shall be signed by the chairman of the Board of Appeal and by the rapporteur designated pursuant to Article 48 (1) of this Regulation. The decision shall contain:

(a) a statement that the decision is delivered by the Board of Appeal;

(b) the date when the decision was taken;

(c) the names of the chairman and of the other members of the Board of Appeal having taken part in the appeal proceedings;

▼B

(d) the names of the parties to the appeal proceedings and their procedural representatives;

(e) a statement of the issues to be decided;

(f) a summary of the facts;

(g) the grounds on which the decision is based;

(h) the order of the Board of Appeal, including, where necessary, a decision as to the award of costs or the refund of fees.

3. The written decision of the Board of Appeal shall be accompanied by a statement that further appeal is possible, together with the time limit for lodging such further appeal. The parties to the appeal proceedings may not plead the omission of the statement.

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 authorized 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.

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

3. On request, the Office may issue a duplicate 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

▼B

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. 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 of the Office, on the national agency, or the sub-office designated pursuant to Article 30 (4) of the Basic Regulation.

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

3. With the consent of the Administrative Council, the Office may allow documents of a party to proceedings to be filed by telegraph, telex, telecopier, or other information equipment and lay down conditions governing their use.

4. If a document has not duly been signed or has been allowed to be filed in accordance with paragraph 3, the party to proceedings shall be required to supply the original of the document signed pursuant to the provision of paragraph 2 within a time limit of one month. If such document is supplied within such time limit, the date of receipt of the former document shall be maintained; otherwise, it shall be deemed not to have been received.

5. The Office may permit a derogation from the time limit required under paragraph 4 where the party to proceedings concerned may file the document concerned only at the Office direct. Such derogation may not exceed two further weeks.

6. Such documents 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, must be filed in a sufficient number of copies. Missing copies shall be provided at the expense of the party to the proceedings.

Article 58

Documentary evidence

1. Documentary evidence of final judgments or decisions other than those of the Office shall be deemed sufficient where a copy thereof is furnished that has been certified by the court or authority responsible for the judgment or decision.

2. Documentary evidence of other documents to be submitted by parties to proceedings shall be deemed sufficient where it is the original document or a certified copy thereof.

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

▼B

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) to (4) of this Regulation;

(c) a statement that the party to proceedings, witness or expert may ask to the 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 another 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) to (4) of this Regulation.

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.

▼B

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 the Annex 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 on a party to proceedings shall take the form of the original document, in the case of the certificate, or of a copy of the original document certified by the Office. Copies of documents emanating from other parties to proceedings shall not require such certification.

▼B

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 of this Regulation;

(b) by delivery by hand in accordance with Article 66 hereof;

(c) by public notice in accordance with Article 67 hereof.

Article 65

Service by post

1. Documents or copies thereof containing actions for which service is provided in Article 79 of the Regulation shall be served by registered letter with advice of delivery.

2. 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.

3. 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 10th 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.

4. 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.

5. Where service by post is not covered by paragraphs 1 to 4, 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 65 (1) 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 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.

▼B

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 of this Regulation, 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 extend until the first day following the end of the period of interruption or dislocation for parties to proceedings having their domicile or seat or establishment in the 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

▼B

interruption or dislocation shall be as stated and communicated by the President of the Office.

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 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 authorized 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 interrruption 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) of this Regulation shall apply *mutatis mutandis*.

2. Without prejudice to Article 2 (4), the communication referred to in paragraph 1 shall also identify as such employee of the party to proceedings. An employee may not be designated as 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 proceedings first named in an application for a Community plan 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 proceedings.

▼B

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 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 the 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 the Annex;

(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 the Annex.

▼B

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.

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 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 Articles 98 (4) and 99 of the Regulation as to entitlement to the Community plant variety right, and the final decision in, or of any other termination of, such action.

2. The following 'other particulars' referred to in Article 87 (3) of the 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 on claims referred to in Articles 98 (1) and (2) and 99 of the Regulation and relating to the Community plant variety right, and the final decision in, or of any other termination of, such institution.

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.

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 papers in its files.

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 Article 23 of the Regulation.

▼B

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 involved in 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 on claims referred to in Artcile 98 and 99 of the Regulation and the final decision in, or of any other termination of, such institution.

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 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 acompanied 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.

2. Extracts from the Registers shall be delivered at the request of any person on receipt of payment of an administrative fee.

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

Section 2

Keeping of documents, public inspection of documents and varieties grown

Article 83

Keeping of the files

1. Documents 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.

▼B

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 at all times ensure delivery of those originals which the Office does not hold.

3. The President of the Office shall determine details as to the form of the files to be kept.

Article 84

Inspection of documents

1. A written request for the inspection of documents shall be addressed to the Office.

2. Inspection of documents shall take place on the premises of the Office. However, on request, inspection of documents may take place on the premises of the national agencies or sub-offices designated pursuant to Article 30 (4) of the Regulation on the territory of the Member State in which the person making the request is resident or has his seat or establishment.

3. On request, the Office shall permit inspection of the documents by issuing copies thereof to the person requesting them. Such copies may be subject to separate fees. On request, the documents may also be inspected by way of a communication in writing of the information contained therein. However, the Office may require the person concerned to view the documents personally should it deem this to be appropriate in view of the quantity of information to be supplied.

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 plot 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 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’).

▼B

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

Article 88

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

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 exploitation right, the contents of such decision shall likewise be published.

Article 89

Publication of appeals and decisions thereupon

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 direct between the authorities referred to in that provision.

2. Communication of information referred to in Article 91 (1) of the 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 communication of information under Article 91 (1) of the 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 proscutors' offices of the Member States

1. Inspection of files under Article 91 (1) of the Regulation shall be of duplicate file copies 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.

▼B

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 has 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.

TITLE VI

FINAL PROVISIONS

Article 93

Transitional provisions

1. In accordance with Article 15 (4) of this Regulation, the Office shall pay the Examination Office a fee for the conduct of the technical examination, on the basis of full recovery of costs incurred. By 27 April 1997 the Administrative Council shall have determined uniform methods for calculating the costs and the uniform constituents of the costs, which shall apply to all designated Examination Offices.

2. The Administrative Council shall take a decision by 27 October 1996 on the test guidelines referred to in Article 22 of this Regulation; the President of the Office shall submit a proposal for such test guidelines by 27 April 1996, taking into account those examination reports which form part of the findings referred to in Article 116 (3) of the Basic Regulation.

3. The applicant for a Community plant variety right pursuant to Article 116 (1) or (2) of the Basic Regulation shall provide a certified copy of the findings referred to in Article 116 (3) of that Regulation by 30 November 1995. Such copy shall include the relevant documents relating to the proceedings for the grant of a national plant variety right and shall be certified by the authority before which the proceedings were held. Where such certified copy is not provided in good time, Article 55 of the Basic Regulation shall apply.

Article 94

Derogations

Notwithstanding Article 27 (1) of this Regulation, the Office may consider examination reports on the results of a technical examination on that variety for official purposes in a Member State provided that examination has begun by 27 April 1996 unless a decision by the Administrative Council on the test guidelines concerned has been taken prior to that date.

▼B

Article 95

Entry into force

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 27 shall apply until 30 June 1998.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

▼B

ANNEX

1. The compensation payable to witnesses and experts in respect of travel and subsistence expenses provided for in Article 62 (2) shall be calculated as follows:

1.1. Travel expenses:

For the outward and return journey between the domicile or seat and the place where oral proceedings are held or where evidence is taken:

(a) the cost of the first-class rail transport including usual transport supplements shall be paid where the total distance by the shortest rail route does not exceed 800 km;

(b) the cost of the tourist-class air transport shall be paid where the total distance by the shortest rail route exceeds 800 km or the shortest route requires a sea-crossing.

1.2. Subsistence expenses shall be paid equal to the daily subsistence allowance of officials in grades A4 to A8 as laid down in Article 13 of Annex VII of the Staff Regulations of Officials of the European Communities.

1.3. When a witness or expert is summoned to proceedings at the Office he will receive with the summons a travel order containing details of those amounts payable under 1.1 and 1.2, together with a request form covering an advance on expenses. Before an advance can be paid to a witness or expert his entitlement must be certified by the member of the staff of the Office who ordered the evidence to be taken or, in the case of appeal proceedings, the chairman of the responsible Board of Appeal. The request form must therefore be returned to the Office for certification.

2. The compensation payable to witnesses in respect of loss of earnings provided for in Article 62 (3) shall be calculated as follows:

2.1. If a witness is required to be absent for a total period of more than 12 hours or less, the compensation for loss of earnings shall be equal to one sixtieth of the basic monthly salary of an employee of the Office at the lowest step of grade A4.

2.2. If a witness is required to be absent for a total period of more than 12 hours, he shall be entitled to payment of further compensation equal to one sixtieth of the basic salary referred to in 2.1 in respect of each further period of 12 hours which is commenced.

3. The fees payable to experts provided for in Article 62 (3) shall be determined, case by case, taking into account a proposal by the expert concerned. The Office may decide to invite the parties to proceedings to submit their comments on the amount proposed. Fees may be paid to an expert only if he adduces evidence by supporting documents of not being a member of the staff of an Examination Office.

4. Payments to witnesses or experts for loss of earnings or fees under points 2 and 3 will be made following certification of the entitlement of the witness or expert concerned by the member of the staff of the Office who ordered the evidence to be taken or, in the case of the appeal proceedings, the chairman of the responsible Boards of Appeal.

5. The remuneration of an agent, adviser or advocate acting as a representative of a party to proceedings as provided for in Article 76 (3) and (4) (c) shall be borne by the other party to proceedings on the basis of the following maximum rates:

(a) in the case of appeal proceedings except for the taking of evidence which involves the examination of witnesses, opinions by experts or inspection: ECU 500;

(b) in the case of taking of evidence in appeal proceedings which involves the examination of witnesses, opinions by experts or inspection: ECU 250;

(c) in the case of proceedings for revocation or cancellation of a Community plant variety right: ECU 250.