COMMISSION REGULATION (EC) No 2181/2002

of 6 December 2002

amending Regulation (EC) No 1239/95 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], as last amended by Regulation (EC) No 2506/95 [2], and in particular Article 114 thereof,

Whereas:

(1) The Community Plant Variety Office (the Office) established by Regulation (EC) No 2100/94 implements and applies the scheme for the protection of plant variety rights.

(2) The rules concerning the proceedings before the Office are laid down in Commission Regulation (EC) No 1239/95 [3], as amended by Regulation (EC) No 448/96 [4]. Article 27 of that Regulation provided that examination reports made under the responsibility of authorities of a Member State or a third country which is member of the International Union on the Protection of New Varieties of Plants (UPOV) could be considered a sufficient basis for decision. Article 27 was however a temporary provision which lapsed on 30 June 1998.

(3) The intention of applying Article 27 of Regulation (EC) No 1239/95 on a temporary basis was to build up an independent Community system, with the Office arranging for technical examination of the varieties submitted with the application for plant variety protection. The experience of the Office has however shown the need to consider other examination reports as specified in Article 27.

(4) The majority of Community plant variety rights granted after 30 June 1998 have been based on decisions considering technical examinations made under the responsibility of authorities other than the Office, providing grants in a very competitive market.

(5) It is therefore necessary to regularise the practices of the Office since 1 July 1998. At the same time, the possibility to apply Article 27 in the future should be kept open. Regulation (EC) No 1239/95 should therefore be amended with effect from 1 July 1998.

(6) The Administrative Council of the Community Plant Variety Office has been consulted.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1239/95 is amended as follows:

1. Article 27 shall be replaced by the following:

'*Article 27*

Other examination reports

1. An examination report on the results of any technical examination which 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 paragraph 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.

[1] OJ L 227, 1.9.1994, p. 1.
[2] OJ L 258, 28.10.1995, p. 3.
[3] OJ L 121, 1.6.1995, p. 37.
[4] OJ L 62, 13.3.1996, p. 3.

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.

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.'

2. In Article 95 the second paragraph is deleted.

Article 2

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

It shall apply from 1 July 1998.

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

Done at Brussels, 6 December 2002.

For the Commission

David BYRNE

Member of the Commission