

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2016/1448

of 1 September 2016

**amending Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights <sup>(1)</sup> ('the basic Regulation'), and in particular Article 114 thereof,

Whereas:

- (1) For the purposes of the basic Regulation, Commission Regulation (EC) No 874/2009 <sup>(2)</sup> lays down rules on the proceedings before the Community Plant Variety Office ('the Office').
- (2) The efficient administration of the proceedings before the Office requires that parties to such proceedings should be designated by their email address, apart from their name and address, where an email address is used by the party concerned.
- (3) It should be specified that the official designations of legal persons, companies, and firms as referred to in Article 2(2) of Regulation (EC) No 874/2009 should be the designations as recorded in the respective Member State or third country.
- (4) The successor in title of a Community plant variety right should be given the possibility to use another official language of the European Union than the one that has been chosen by the initial party to the proceedings before the Office or the Board of Appeal.
- (5) In order to reduce translation costs and to speed up the proceedings, the Office or the Board of Appeal, with the agreement of all parties to the proceedings, should be able to use only one of the official languages of the European Union during those proceedings. The same should apply to the hearing of witnesses and experts and to the translation of documents of parties to the proceedings. For the same reason, it should be possible to limit the translation of lengthy documents to their extracts or summaries.
- (6) The increasing complexity of the law governing Community plant variety rights requires that the legally qualified members, referred to in Article 6 of Regulation (EC) No 874/2009, are graduates in law with recognised experience in the field of intellectual property, plant variety rights or plant variety registration.

<sup>(1)</sup> OJ L 227, 1.9.1994, p. 1.

<sup>(2)</sup> Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (OJ L 251, 24.9.2009, p. 3).

- (7) It is appropriate that the members of the Board of Appeal receive remuneration for the performance of their assignments, the level of which should be determined by the Administrative Council, based on a proposal by the President of the Office.
- (8) For the purpose of clarity, it should be made explicit that the Examination Office is entrusted with responsibility for a specific scope of the technical examination. It should further be made explicit that the Administrative Council may amend or cancel such designation at the request of the Examination Office.
- (9) For the purpose of transparency, the Administrative Council should be able to make such designation subject to certain requirements and to establish the procedures to be followed by the Office for such designation.
- (10) Experience has shown that it is important to develop guiding principles concerning plant material to be submitted for testing the distinctiveness, uniformity and stability in the framework of applications for Community plant variety rights and the transfer of such plant material between Examination Offices. It is therefore appropriate that the Administrative Council adopts such principles.
- (11) It should be set out in a clearer manner in Article 14 of Regulation (EC) No 874/2009 that that provision deals with agencies and sub-offices acting as Examination Offices. Furthermore, that provision should clearly set out that the designation of such agency or the establishment of such sub-offices should follow the same rules as the designation of an Examination Office.
- (12) Article 15 of Regulation (EC) No 874/2009 should be aligned with the wording of the other provisions of that Regulation. It should further be specified that only acts performed after the signature of the written agreement are to be considered, as far as third parties are concerned, to be acts of the Office.
- (13) The comparability of the auditing reports referred to in Article 15(5) of Regulation (EC) No 874/2009 requires that those reports are submitted in a harmonised form, which should be determined by the Office. Furthermore, the Office should be able to reduce the fee to be paid to the Examination Office where the auditing report is not delivered in time.
- (14) Article 15(6) of Regulation (EC) No 874/2009 should be reworded to allow for an amendment of the designation of an Examination Office.
- (15) An effective, efficient, and expeditious examination of applications for a Community plant variety right requires that those applications are filed at the Office only, and not at designated agencies or sub-offices established pursuant to Article 30(4) of the basic Regulation.
- (16) Article 17 of Regulation (EC) No 874/2009 contains the rules on the receipt of applications. The confirmation of receipt should also refer to the nature of the documents received. It should further be specified that the confirmation of receipt is to be transmitted to the Office by electronic means.
- (17) Article 18(3) of Regulation (EC) No 874/2009 specifies the information to be provided by the applicant for an application for a property right in respect of the variety and for an application for official acceptance of the variety for certification and marketing where official acceptance includes an official description of the variety. Since the latter application can be submitted in a country or to a regional organisation that is not a member of the International Union for the Protection of new Varieties of Plants ('UPOV'), it is appropriate to delete the reference to a Member State and the UPOV in that Article with respect to the application for official acceptance of the variety for certification.
- (18) It should be specified in Article 19 of Regulation (EC) No 874/2009 that no application can be submitted by a person other than the breeder, unless the breeder has duly mandated that person to do so, and that the application should contain the name and the address of the procedural representative. The wording of that provision should further be aligned with the wording of the technical questionnaire established in line with the international standards of the UPOV.

- (19) For the purpose of clarity and to avoid any gaps or overlaps, it is appropriate to specify in Article 22 of Regulation (EC) No 874/2009 that, as to test guidelines, the UPOV guidelines per genera and species apply where there is no decision of the Administrative Council or no provisional decision of the President of the Office. Where the former guidelines are not available, the national guidelines that have been developed by the competent authority that is in charge of the technical examination of the plant variety should apply, provided that the President of the Office agrees.
- (20) Decisions on test guidelines should have a permanent nature due to their significance for their users. Article 23(2) of Regulation (EC) No 874/2009 should therefore be deleted to reflect that the decision of the President of the Office, when exercising the power referred to in paragraph 1 of that Article, is not a provisional one.
- (21) It is appropriate to update Article 24 of Regulation (EC) No 874/2009 to reflect that the exchanges between the Office and the Examination Offices are now done by electronic means.
- (22) Regarding the acceptance of an examination report of an examination that has been carried out or is in the process of being carried out by a competent authority outside the territory of the European Union, it is necessary to request that a written agreement is concluded on the basis of the consent of the Administrative Council of the Office. In addition, it may be possible for the Office to consider a report produced by a competent authority of a third country or of a regional organisation that is a member of the UPOV as well as of a party to the Agreement on Trade Related Aspects of Intellectual Protection ("TRIPS"). Finally, it is appropriate to add a requirement to have information on the experience of the third country concerning the testing of the genera or species concerned.
- (23) Taking into account that the Office is to grant a plant variety protection right for all genera and species, it is appropriate to allow the Office to request a competent authority of a third country or of a regional organisation that is a member of UPOV, as well as of a third country that is a party to TRIPS, to perform a technical examination, where there is no possibility to perform the technical examination for the specific genera and species in an Examination Office in the European Union, and where an examination report on the results of a technical examination is not available or is not expected to become available. A written agreement should be concluded on the basis of the consent of the Administrative Council of the Office, based on certain conditions.
- (24) Taking into account that the applications for Community plant variety rights are no longer dealt with by national agencies, it is appropriate to adapt the wording of Article 28 of Regulation (EC) No 874/2009 accordingly.
- (25) In order to limit the administrative burden, it should not be necessary to request a certified copy of the patent certificate(s).
- (26) The appellants sometimes need to use procedural representatives. It is therefore appropriate to specify in Article 45 of Regulation (EC) No 874/2009 that the notice is to contain elements regarding a possible procedural representative appointed by the appellant.
- (27) For reasons of efficiency, the Board of Appeal should have the possibility to deal with several appeals in the same proceedings or joint proceedings.
- (28) Article 53(4) of Regulation (EC) No 874/2009 should be supplemented with several specifications, in order to adapt that provision to the needs identified and the experience gained in the application of that Regulation and other Union legislation.
- (29) For reasons of legal certainty, it is appropriate to add rules with regard to a decision of the Office in proceedings for nullity and cancellation as referred to in Article 20 and Article 21, respectively, of the basic Regulation.
- (30) Taking into account that the Office has developed electronic tools, the certificate for a Community plant variety right should be delivered by electronic means.

- (31) Taking into account that there is no procedure for the use of an electronic signature, it is appropriate to change the reference in Article 57 of Regulation (EC) No 874/2009 and to refer to electronic authentication only.
- (32) In the interest of clarity, it is appropriate to specify in Article 62 of Regulation (EC) No 874/2009 that the Office may grant an advance to witnesses and experts. In addition, it is necessary to clarify the rules on the final liability for the payment with regard to the Office or the party concerned.
- (33) There is a need for more precise rules with regard to the content of the minutes referred to in Article 63 of Regulation (EC) No 874/2009. In addition, taking into account that in appeal proceedings the person conducting the oral procedure is not an employee of the Office, it is appropriate to amend that provision to ensure that an external person to the Office can conduct that procedure.
- (34) It is appropriate to introduce further detailed rules concerning the service of documents by electronic or other technical means. It is also necessary to clarify to whom the Office shall address the notification in case of one or several procedural representatives appointed by one or several parties.
- (35) In Article 67 of Regulation (EC) No 874/2009 it should be specified that the President of the Office also has to determine the period within which a document will be deemed to have been notified in case of public notice.
- (36) For reasons of transparency, it is appropriate to publish in the Official Gazette the extension of time limits adopted by the President of the Office at the commencement of each calendar year. Furthermore, it is reasonable to allow for the extension of the time limit if one party to the proceedings has faced an interruption of the electronic connection and is able to demonstrate the interruption from the service provider.
- (37) For the purpose of simplifying the procedures and optimising resources, it is appropriate to request the parties to proceedings acting in common to notify the name of one procedural representative and to determine the rules for situations where they failed to do so. It is also appropriate to add rules on the transfer of a Community plant variety right by a party to the proceedings to more than one person, where more than one procedural representative has been appointed.
- (38) Taking into account that the Office intends to reduce the use of paper documents, it is no longer necessary to provide several copies in case the credentials cover more than one proceeding.
- (39) In order to ensure that the other parties to the proceedings are accurately informed, the conditions under which the entry of a procedural representative in the register of the Office will be deleted should be specified.
- (40) Article 81 of Regulation (EC) No 874/2009 specifies the conditions for specific entries in the Registers of the Office. For the purpose of clarity about the nature of the final decision, it should be specified that a final decision may not be entered in the Registers as long as it is subject to any appeal.
- (41) Given the increased complexity of the proceedings provided for in Regulation (EC) No 874/2009, the remuneration of experts involved in those proceedings should be adjusted. In addition, because the technical examination may take place in an Examination Office or in a technical qualified body, a reference to a technical qualified body should be added.
- (42) At the occasion of the amendment of Regulation (EC) No 874/2009, the wording of that Regulation should be aligned with the wording of the basic Regulation.
- (43) Regulation (EC) No 874/2009 should therefore be amended accordingly.
- (44) The Administrative Council of the Community Plant Variety Office has been consulted.
- (45) 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*

**Amendment of Regulation (EC) No 874/2009**

Regulation (EC) No 874/2009 is amended as follows:

(1) In Article 2, paragraphs 1 and 2 are replaced by the following:

‘1. Parties to proceedings shall be designated by their name, address and email address, where an email address is used by the party concerned.

2. Natural persons shall be indicated by their family name and given names. Legal persons as well as companies or firms shall be indicated by their official designations, as recorded in the respective Member State or third country.’

(2) In Article 3(1), the following subparagraph is added:

‘A successor in title as referred to in Article 23(1) of the basic Regulation may however request that another official language of the European Union be used during future proceedings, provided that such request is submitted upon the entry of the transfer of a Community plant variety right into the Register of Community Plant Variety Rights.’

(3) In Article 4, paragraph 2 is replaced by the following:

‘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 Union, he may be heard only if the party who made the request makes provision for interpretation into the official language of the European Union used by all parties to proceedings or by the members of the staff of the Office.

Parties to the proceedings, a witness or expert, and the members of the staff of the Office or the Board of Appeal may agree that during the oral proceedings only one of the official languages of the European Union shall be used.

The Office may allow derogations from the first subparagraph.’

(4) In Article 5, paragraphs 1 and 2 are replaced by the following:

‘1. Where a party to proceedings files a document in a language other than any official language of the European Union, the Office may require from that party a translation of that document into one of the official languages of the European Union used by that party or by the members of the staff of the Office or of the Board of Appeal.

2. Where a translation of a document 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. The translations of lengthy documents may be confined to extracts or summaries. The Office or the Board of Appeal may however, either at their own motion or at the request of a party to the proceeding, at any time require a more extensive or complete translation of such documents.

Parties to proceedings and the members of the staff of the Office or of the Board of Appeal may agree to have a translation of a document in only one of the official languages of the European Union.’

(5) In Article 6, paragraph 3 is replaced by the following:

‘3. A legally qualified member shall be a graduate in law with recognised experience in the field of intellectual property, plant variety rights or plant variety registration.’

- (6) Article 10 is replaced by the following:

‘Article 10

**Consultations**

Members of the staff of the Office may use, free of charge, the premises of national agencies referred to in Article 30(4) of the basic Regulation and those of Examination Offices and agencies referred to in Article 13 and Article 14, respectively, of this Regulation, for holding periodical consultation days with parties to proceedings and third persons.’

- (7) In Article 11, the following paragraph 5 is added:

‘5. The Chairman and the members of the Board of Appeal shall receive remuneration for the performance of their assignments. That remuneration shall be determined by the Administrative Council of the Office and be based on a proposal by the President of the Office.’

- (8) Article 13 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Where the Administrative Council entrusts the competent office in a Member State with responsibility for the technical examination for certain genera or species, the President of the Office shall notify such office, hereinafter referred to as “the Examination Office”, of that fact, hereinafter referred to as “the designation of an Examination Office”. That designation shall take effect on the day of that notification. This provision shall apply *mutatis mutandis* to the amendment or cancellation of the designation of an Examination Office, subject to Article 15(6) of this Regulation.’;

- (b) the following paragraphs 1a, 1b and 1c are inserted:

‘1a. The Administrative Council may make the designation of an Examination Office, or an extension of the scope of an existing designation of an Examination Office subject to compliance with the relevant requirements, guidelines and procedures of the Office.

Should an Examination Office make use of technically qualified bodies referred to in Article 56(3) of the basic Regulation, the Examination Office shall ensure compliance with the relevant requirements, guidelines and procedures of the Office.

The Office shall conduct an audit to check whether the Examination Office complies with the relevant requirements, guidelines and procedures of the Office. Following an audit, the Office shall draw up an audit report.

The Administrative Council shall base its decision on the designation of an Examination Office on the audit report drawn up by the Office.

1b. For the extension of the scope of an existing designation of an Examination Office initiated by the Office, the Administrative Council may, in the absence of an audit report, base its decision on a report drawn up by the Office in which compliance with the relevant requirements, guidelines and procedures of the Office is assessed.

For the extension of the scope of an existing designation of an Examination Office initiated by an Examination Office, the Administrative Council shall base its decision on an audit report drawn up by the Office.

1c. Based on an audit report, the Administrative Council may decide to cancel, or reduce the scope of, an existing designation of an Examination Office.

Based on a request by an Examination Office, to which the Office agrees, the scope of an existing designation of an Examination Office may be reduced. The Office shall implement the reduction in the agreement referred to in Article 15(1).’;

(c) in paragraph 3, the following sentence is added:

'The Office may develop guiding principles concerning the use by Examination Offices of plant material that has been submitted for distinctiveness, uniformity and stability testing in the framework of applications for a Community plant variety right. Such guiding principles may include conditions under which such plant material may be transferred between Examination Offices.'

(9) Article 14 is amended as follows:

(a) the title is replaced by the following:

'Article 14

**Designation of an agency or establishment of a sub-office referred to in Article 55(2) of the basic Regulation';**

(b) paragraph 1 is replaced by the following:

'1. Where the Office intends to entrust an agency with responsibility for the technical examination of varieties in accordance with Article 55(2) of the basic Regulation, hereinafter referred to as "the designation of an agency", it shall transmit an explanatory statement on the technical suitability of that agency as an Examination Office to the Administrative Council for consent. Article 13(1a), (1b) and (1c) shall apply *mutatis mutandis*.'

(c) paragraph 3 is replaced by the following:

'3. Where the Administrative Council gives its consent to the explanatory statements referred to in paragraphs 1 and 2, the President of the Office shall notify the designation of an agency to the agency concerned, or shall publish the establishment of a sub-office in the *Official Journal of the European Union*. Such designation or establishment 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 of this Article.'

(10) Article 15 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. The designation of an Examination Office or agency shall take effect by a written agreement between the Office and the Examination Office or agency, providing for the performance by the Examination Office or agency of the technical examination of plant varieties for certain genera and species and for the payment by the Office 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 establishment shall be by internal rules on working methods issued by the Office.

2. The effect of the written agreement referred to in paragraph 1 shall be such that acts performed after the signing of that agreement 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.'

(b) paragraphs 5 and 6 are replaced by the following:

'5. An Examination Office shall periodically submit to the Office on request a breakdown of the costs of the technical examinations 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.

In the circumstances set out in paragraph 3, the Examination Office shall take into account costs incurred by such a body. The Office shall lay down the format of breakdown of the costs. If, after two requests from the Office, the Examination Office fails to provide the Office with the breakdown of the costs within the deadline established by the Office, the fee referred to in paragraph 4 may be reduced by 20 %.

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

(11) In Article 17, paragraphs 1 and 2 are replaced by the following:

'1. Where a national agency or sub-office exercising the specific administrative functions referred to in Article 30(4) of the basic Regulation receives an application, it shall, by electronic means, send to the Office a confirmation of receipt and forward the application in accordance with Article 49(2) of the basic Regulation. The confirmation of receipt shall include the file number of the national agency or sub-office, the nature and the number of forwarded documents and the date of receipt at the national agency or sub-office. The national agency or sub-office shall transmit to the applicant a copy of the confirmation of receipt sent to the Office, by electronic or other means.

2. Where the Office receives an application from the applicant directly or via a national agency or sub-office, 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 issue a confirmation of receipt to the applicant. That confirmation shall include the file number of the Office, the nature and 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 confirmation of receipt shall be transmitted to the national agency or sub-office via which the Office has received the application.'

(12) In Article 18, paragraph 3 is replaced by the following:

'3. An application complies with the condition laid down in Article 50(1)(j) 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:

- (a) an application for a property right in respect of the variety, in a Member State or a member of the International Union for the Protection of New Varieties of Plants ("UPOV"); and
- (b) an application for official acceptance of the variety for certification and marketing where official acceptance includes an official description of the variety.'

(13) In Article 19, paragraph 2 is replaced by the following:

'2. The applicant shall provide the following information in the application form or in the technical questionnaire referred to in Article 16(3)(a), where relevant:

- (a) the identity and the contact details of the applicant, his designation as a party to proceedings referred to in Article 2 and, where appropriate, the name and address of the procedural representative;
- (b) where the applicant is not the breeder, the name and address of the breeder and his entitlement to apply for the Community plant variety right;
- (c) the scientific name of the genus, species or subspecies to which the variety belongs, and the common name;
- (d) the variety denomination or, in the absence thereof, the provisional designation;
- (e) the location in which the variety was bred or discovered and developed, and the maintenance and the propagation of the variety, including information on the characteristics, the cultivation of any other variety or varieties the material of which has to be used repeatedly for the production of the variety. For material to be used repeatedly for the production of the variety, the applicant may provide the information concerning such material, if he requests so, in the form provided by the Office pursuant to Article 86;
- (f) the characteristics of the variety, including the state of expression for certain characteristics based on the technical questionnaire referred to in Article 16(3)(a);
- (g) where appropriate, similar varieties and differences from those varieties, which, in the applicant's opinion, are relevant for the technical examination;

- (h) additional information that may help distinguishing the variety, including representative colour photos of the variety and other information on the plant material to be examined during the technical examination;
- (i) where appropriate, characteristics that have been genetically modified, where the variety concerned represents a genetically modified organism within the meaning of Article 2(2) of Directive 2001/18/EC of the European Parliament and of the Council (\*);
- (j) the date of any sale or first disposal to others, of varietal constituents or harvested material of the variety, to exploit the variety within the territory of the European Union or in one or more third countries, or to assess whether a variety is new as referred to in Article 10 of the basic Regulation, or a declaration that such sale or first disposal has not yet occurred;
- (k) the designation of the authority applied to and the file number of the applications referred to in Article 18(3) of this Regulation;
- (l) existing national or regional plant variety rights that have been granted to the variety;
- (m) whether an application for the variety concerned has been submitted for listing or registration or a decision has been taken pursuant to Article 5 of Council Directive 68/193/EEC (\*\*), Article 10 of Council Directive 2002/53/EC (\*\*\*), Article 10 of Council Directive 2002/55/EC (\*\*\*\*) and Article 5 of Commission Implementing Directive 2014/97/EU (\*\*\*\*\*).

(\*) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ L 106, 17.4.2001, p. 1).

(\*\*) Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine (OJ L 93, 17.4.1968, p. 15).

(\*\*\*) Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ L 193, 20.7.2002, p. 1).

(\*\*\*\*) Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed (OJ L 193, 20.7.2002, p. 33).

(\*\*\*\*\*) Commission Implementing Directive 2014/97/EU of 15 October 2014 implementing Council Directive 2008/90/EC as regards the registration of suppliers and of varieties and the common list of varieties (OJ L 298, 16.10.2014, p. 16).'

(14) In Article 22, the following paragraph 3 is added:

‘3. In the absence of a decision of the Administrative Council, or a provisional decision of the President of the Office as referred to in paragraph 2, as to test guidelines established by the Office, the guidelines per genera and species of the UPOV shall apply. In the absence of such guidelines, national guidelines developed by a competent authority in charge of the technical examination of a plant variety may be used, provided that the President of the Office agrees to such use. The competent authority shall submit those guidelines to the Office, and the Office shall publish them on its website.’

(15) In Article 23, paragraph 2 is deleted.

(16) In Article 24, the introductory wording is replaced by the following:

‘In accordance with Article 55(3) of the basic Regulation, the Office shall transmit to the Examination Office the following documents relating to the variety in electronic format.’

(17) Article 27 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

‘(b) the technical examination has been carried out in a manner consistent with the designation by the Administrative Council pursuant to Article 55(1) of the basic Regulation and with the requirements referred to in Article 13(1a) of this Regulation and has been conducted in accordance with the test guidelines issued and any general instructions given, pursuant to Article 56(2) of the basic Regulation and Articles 22 and 23 of this Regulation;’

(b) paragraph 4 is replaced by the following:

'4. An examination report on the results of a technical examination that has been carried out or is in the process of being carried out for official purposes in a third country or in the territory of a regional organisation that is a member of the UPOV or that is a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), may be considered by the Office to constitute a sufficient basis for decision, provided that the technical examination complies with the conditions laid down in a written agreement between the Office and the competent authority of such third country or regional organisation. Such conditions shall at least include:

- (a) conditions relating to the material, as referred to in point (a) of paragraph 1;
- (b) the condition 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 and Article 22 of this Regulation;
- (c) the condition 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 or in the territory of that regional organisation;
- (d) conditions relating to the availability of reports, as laid down in point (d) of paragraph 1;
- (e) the condition that the third country has adequate experience in testing the genera or species concerned; and
- (f) the condition that the written agreement is concluded with the consent of the Administrative Council.;

(c) the following paragraphs 5 and 6 are added:

'5. The Office may request a competent authority of a third country or of a regional organisation that is a member of the UPOV or is a party to TRIPS to perform the technical examination, provided that a written agreement has been signed between the Office and that competent authority and provided that one of the following conditions applies:

- (a) there is no possibility to realise the technical examination for the specific species in an Examination Office in the European Union, and an examination report on the results of a technical examination, referred to in paragraph 4, is not available or is not expected to become available;
- (b) an examination report on the results of a technical examination referred to in paragraph 4 is expected to be made available but the conditions established under paragraph 4 to conduct the technical examination are not fulfilled.

6. The written agreement referred to in paragraph 5 shall be concluded with the consent of the Administrative Council, based on the following conditions:

- (a) conditions relating to the material, as referred to in point (a) of paragraph 1;
- (b) the condition that the technical examination will be conducted in accordance with the test guidelines issued, or general instructions given, pursuant to Article 56(2) of the basic Regulation and Article 22 of this Regulation;
- (c) the condition 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 or in the territory of that regional organisation and to monitor the technical examination concerned;
- (d) conditions relating to the availability of reports, as laid down in point (d) of paragraph 1;
- (e) the condition that the third country has adequate experience in testing the genera or species concerned.'

(18) In the first paragraph of Article 28, the words ‘or, if the proposal accompanies the application for a Community plant variety right filed at the national agency designated or the sub-office established pursuant to Article 30(4) of the basic Regulation, in duplicate’ are deleted.

(19) Article 37 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

‘(c) an electronic copy of the patent certificate(s) showing the number and claims of the patent for a biotechnological invention and the granting authority or authorities of the patent;’

(b) in paragraph 3, point (c) is replaced by the following:

‘(c) an electronic copy of the patent certificate(s) showing the number and claims of the patent for a biotechnological invention and the granting authority or authorities of the patent;’

(20) In Article 45, point (a) is replaced by the following:

‘(a) the designation of the appellant as a party to appeal proceedings in accordance with Article 2, and, where the appellant has appointed a procedural representative, the name and address of the representative;’

(21) The following Article 51a is inserted:

*‘Article 51a*

#### **Several appeals**

1. If several appeals are filed against a decision, those appeals may be considered in the same proceedings.

2. If appeals filed against decisions are to be examined by the Board having the same composition, that Board may deal with those appeals in joint proceedings.’

(22) In Article 53, the following paragraph 5 is added:

‘5. The Office shall cancel the entry in the Register of Community Plant Variety Rights or revoke the decision that contains an obvious procedural error attributable to negligence.’

(23) The following Article 53a is inserted:

*‘Article 53a*

#### **Proceedings for nullity and cancellation**

1. Proceedings on nullity and cancellations as referred to in Articles 20 and 21, respectively, of the basic Regulation may be opened by the Office when there are serious doubts as regards the validity of the title. Such proceedings may be initiated by the Office on its own motion or upon request.

2. A request to the Office to open the proceedings on nullity or cancellation, as referred to in Articles 20 and 21, respectively, of the basic Regulation, shall be accompanied by evidence and facts raising serious doubts as to the validity of the title and shall contain:

(a) as regards the registration in respect of which nullity or cancellation is sought:

(i) the registration number of the Community plant variety right;

(ii) the name and address of the holder of the Community plant variety right;

- (b) as regards the grounds on which the request is based:
- (i) a statement of the grounds on which the request to open the proceedings on nullity or cancellation is based;
  - (ii) an indication of the facts, evidence and arguments presented in support of those grounds;
- (c) the name and address of the person making the request and, where he has appointed a procedural representative, the name and address of that representative.

3. Any decision of the Office to reject a request as referred to in paragraph 2 shall be communicated to the person who made the request and the holder of the Community plant variety right.

4. The Office shall not take into account written submissions or documents, or parts thereof, that have not been submitted within the time limit set by the Office.

5. Any decision of the Office to declare null and void or cancel a Community plant variety right shall be published in the Official Gazette referred to in Article 87.'

(24) In Article 54(1), the following sentence is added:

'That certificate shall be delivered by the Office, in the form of a digital document, to the holder of the right or his procedural representative.'

(25) Article 57 is amended as follows:

(a) in paragraph 3, the second subparagraph is replaced by the following:

'Where a document is submitted to the Office by electronic means, the indication of the name of the sender and the electronic authentication, consisting of a successful submission of login and password, shall be deemed to be equivalent to the signature.;

(b) paragraph 5 is replaced by the following:

'5. Such document submitted by a party to proceedings must be communicated by electronic means or on paper to the other parties and to the Examination Office concerned.

In case of paper submissions, documents relating to the proceedings, to two or more applications for a Community plant variety right or to an exploitation right, shall be filed in a sufficient number of copies. Missing copies shall be provided at the expense of the party concerned.'

(26) In Article 58, paragraph 1 is replaced by the following:

'1. Evidence of final judgments and decisions, other than those of the Office, or other documentary evidence to be submitted by a party to proceedings, may be furnished by submitting a digital document or uncertified copy.'

(27) Article 62 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

(b) in paragraph 4, the following subparagraph is added:

'The party that requested oral evidence by witnesses or experts shall reimburse the costs of that evidence to the Office, subject to the decision on apportionment and fixing costs pursuant to Article 52.'

(28) Article 63 is amended as follows:

(a) in paragraph 1, the following sentence is added: 'They shall also contain the names of the officials of the Office, the parties, their procedural representatives, and of the witnesses and experts who were present.';

(b) paragraph 3 is replaced by the following:

'3. The minutes shall be signed by the person who drew them up and by the person who conducted the oral proceedings or took the evidence.'

(29) Article 64 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In proceedings before the Office, any service of documents to be made by the Office on a party to proceedings shall take the form of a digital document, an uncertified copy, a print-out or the original document. Documents emanating from other parties to proceedings may be served in the form of uncertified copies.';

(b) paragraphs 3 and 4 are replaced by the following:

'3. Service shall be made by one or more of the following means:

(a) by electronic means or any other technical means in accordance with Article 64a;

(b) by post in accordance with Article 65;

(c) by delivery by hand in accordance with Article 66;

(d) by public notice in accordance with Article 67.

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

(30) The following Article 64a is inserted:

*Article 64a*

#### **Service by electronic means or other technical means**

1. Service by electronic means shall be made by transmitting a digital copy of the document to be notified. Service shall be deemed to have taken place on the date on which the communication was received by the recipient. The President of the Office shall determine the details of service by electronic means.

2. Where service is made by electronic means, a party to proceedings, including his procedural representative, shall provide an electronic address to the Office for all official communication.

3. The President of the Office shall determine the details of service by other technical means of communication.'

(31) The following Article 66a is inserted:

*Article 66a*

#### **Service to procedural representatives**

1. Where a procedural representative has been appointed, or where the applicant first named in a joint application pursuant to Article 73(5) is considered to be the procedural representative, notifications shall be addressed to the procedural representative.

2. Where several procedural representatives have been appointed for a single party, notification to any one of those representatives shall be sufficient, unless a specific address for service has been indicated.

3. Where several parties have appointed a common procedural representative, notification of the relevant documents to that representative shall be sufficient.'

(32) The second sentence of Article 67 is replaced by the following: 'The President of the Office shall determine details as to the issue of a public notice and shall determine the period within which the relevant document shall be deemed to have been notified.'

(33) Article 71 is amended as follows:

(a) in paragraph 1, the second sentence is replaced by the following: 'The days referred to in the first sentence shall be as stated by the President of the Office before the commencement of each calendar year and shall be published in the Official Gazette referred to in Article 87.;

(b) in paragraph 2, the second subparagraph is replaced by the following:

'As regards documents submitted by electronic means, the first subparagraph shall apply *mutatis mutandis* where there is an interruption of the connection of the Office or of one of the parties to the proceedings to the electronic means of communication. Parties to the proceedings shall demonstrate the interruption of the connection with the electronic provider.'

(34) Article 73 is amended as follows:

(a) paragraph 5 is replaced by the following:

'5. Two or more parties to proceedings acting in common shall appoint one procedural representative and notify the Office thereof. Where they have not notified a procedural representative to the Office, the party to the proceedings first named in an application for a Community plant variety right or for an exploitation right to be granted by the Office or in an objection shall be deemed to be appointed as the procedural representative of the other party or parties to the proceedings.;

(b) the following paragraph 6 is added:

'6. Paragraph 5 shall apply where, in the course of proceedings, a transfer of a Community plant variety right is made to more than one person and where such persons have appointed more than one procedural representative.'

(35) Article 74 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Credentials may cover one or more proceedings. 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.;

(b) the following paragraph 4 is added:

'4. The entry of a procedural representative in the Register of Applications for Community Plant Variety Rights shall be deleted:

(a) in the event of the death or legal incapacity of the procedural representative;

(b) where the procedural representative is no longer domiciled or no longer has his seat or establishment within the European Union;

(c) where the procedural representative is no longer appointed by the party to the proceedings and the party has informed the Office accordingly.'

(36) Article 78(1) is amended as follows:

(a) point (c) is replaced by the following:

‘(c) a particular claim regarding priority pursuant to Article 20 of this Regulation (date and place of the earlier application);’

(b) the following point (e) is added:

‘(e) the giving of the right deriving from an application for a Community plant variety right as a security or as the object of any other rights *in rem*.’

(37) In Article 81, paragraphs 2 and 3 are replaced by the following:

‘2. Paragraph 1 shall apply *mutatis mutandis* to the institution of actions in respect of claims referred to in Articles 98 and 99 of the basic Regulation, and the final decision not subject to any appeal in, or of any other termination of, any such action.

3. Where varieties are identified as initial or essentially derived, respectively, a request for entry by all the parties to the proceedings may be made jointly or separately. A request from only one party to the proceedings shall be accompanied by documentary evidence of the elements referred to in Article 87(2)(h) of the basic Regulation to replace the request of the other party. Such documentary evidence shall include the identification of the varieties concerned as initial and essentially derived, and the non-contentious acknowledgement by the other party or the final judgement.’

(38) In Article 82, paragraph 3 is replaced by the following:

‘3. The President of the Office may provide for public inspection of the Registers on the premises of national agencies or sub-offices involved in the exercise of specific administrative functions, pursuant to Article 30(4) of the basic Regulation.’

(39) In Article 83, paragraphs 1 and 2 are replaced by the following:

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

2. The Office shall keep an electronic copy of the file referred in paragraph 1 (“file copy”) which shall be considered the true and complete copy of the file. The Examination Office shall keep a copy of the additional documents relating to such proceedings (examination copy).’

(40) In Article 91, paragraph 3 is replaced by the following:

‘3. At the time of transmission of the files to the courts or public prosecutor’s offices of the Member States, the Office shall 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 Articles 33a and 88 of the basic Regulation.’

(41) Annex I is amended in accordance with the Annex to this Regulation.

## Article 2

### Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 1 September 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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ANNEX

Annex I to Regulation (EC) No 874/2009 is amended as follows:

(1) In point 3, the third sentence is replaced by the following:

‘Fees may be paid to an expert only if he produces evidence by supporting documents that he is not a member of the staff of an Examination Office or a technical qualified body.’

(2) Point 5 is amended as follows:

(a) in point (a), ‘500’ is replaced by ‘550’;

(b) in point (b), ‘250’ is replaced by ‘400’;

(c) point (c) is replaced by the following:

‘(c) in the case of proceedings for nullity or cancellation of a Community plant variety right: EUR 450.’

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