

Council Regulation (EC) No 2100/94 of 27  
July 1994 on Community plant variety rights

PART FOUR

**PROCEEDINGS BEFORE THE OFFICE**

CHAPTER I

**APPLICATIONS**

*Article 49*

**Filing of applications**

1 An application for a Community plant variety right shall be filed at the choice of the applicant:

- a at the Office directly; or
- b at one of the sub-offices or national agencies, established or entrusted, pursuant to Article 30 (4), subject to the applicant forwarding an information on this filing to the Office directly within two weeks after filing.

Details on the manner in which the information referred to in (b) above must be forwarded, may be laid down in the implementing rules pursuant to Article 114. The omission of forwarding information on an application to the Office pursuant to (b) above, does not affect the validity of the application if the application has reached the Office within one month after filing at the sub-office or national agency.

2 Where the application is filed at one of the national agencies referred to in paragraph 1 (b), the national agency shall take all steps to forward the application to the Office within two weeks after filing. National agencies may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application.

*Article 50*

**Conditions governing applications**

1 The application for a Community plant variety right must contain at least the following:

- a a request for the grant of a Community plant variety right;
- b identification of the botanical taxon;
- c information identifying the applicant or, where appropriate, the joint applicants;
- d the name of the breeder and an assurance that, to the best of the applicants knowledge, no further persons have been involved in the breeding, or discovery and development, of the variety; if the applicant is not the breeder, or not the only breeder, he shall provide the relevant documentary evidence as to how the entitlement to the Community plant variety right came into his possession;
- e a provisional designation for the variety;

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- f a technical description of the variety;
  - g the geographic origin of the variety;
  - h the credentials of any procedural representative;
  - i details of any previous commercialization of the variety;
  - j details of any other application made in respect of the variety.
- 2 Details of the conditions referred to in paragraph 1, including the provision of further information, may be laid down in the implementing rules pursuant to Article 114.
- 3 An application shall propose a variety denomination which may accompany the application.

#### *Article 51*

#### **Date of application**

The date of application for a Community plant variety right shall be the date on which a valid application was received by the Office pursuant to Article 49 (1) (a) or by a sub-office or national agency pursuant to Article 49 (1) (b), provided it complies with Article 50 (1) and subject to payment of the fees due pursuant to Article 83 within a time limit specified by the Office.

#### *Article 52*

#### **The right of priority**

1 The right of priority of an application shall be determined by the date of receipt of the application. Where applications have the same date of application, the priorities thereof shall be determined according to the order in which they were received, if this can be established. Otherwise they shall have the same priority.

2 If the applicant or his predecessor in title has already applied for a property right for the variety in a Member State or in a Member of the International Union for the Protection of New Varieties of Plants, and the date of application is within 12 months of the filing of the earlier application, the applicant shall enjoy a right of priority for the earlier application as regards the application for the Community plant variety right, provided the earlier application still exists on the date of application.

3 The right of priority shall have the effect that the date on which the earlier application was filed shall count as the date of application for the Community plant variety right for the purposes of Articles 7, 10 and 11.

[<sup>F14</sup> Paragraphs 2 and 3 shall also apply in respect of earlier applications that were filed in another State.]

5 Any claim for a right of priority earlier than that provided for in paragraph 2 shall lapse if the applicant does not submit to the Office within three months of the date of application copies of the earlier application that have been certified by the authorities responsible for such application. If the earlier application has not been made in one of the official languages of the European Communities, the Office may require, in addition, a translation of the earlier application in one of these languages.

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### **Textual Amendments**

- F1** Substituted by [Council Regulation \(EC\) No 15/2008 of 20 December 2007 amending Regulation \(EC\) No 2100/94 as regards the entitlement to file an application for a Community plant variety right.](#)

## **CHAPTER II**

### **EXAMINATION**

#### *Article 53*

#### **Formal examination of application**

- 1 The Office shall examine whether:
  - a the application has effectively been filed pursuant to Article 49;
  - b the application complies with the conditions laid down in Article 50 and the conditions laid down in the implementing rules pursuant to that Article;
  - c where appropriate, a claim for priority complies with the provision laid down in Article 52 (2), (4) and (5); and
  - d the fees due pursuant to Article 83 have been paid within a time limit specified by the Office.
- 2 If the application, although complying with the conditions referred to in Article 51, does not comply with other conditions laid down in Article 50, the Office shall give the applicant an opportunity to correct any deficiencies that may have been identified.
- 3 If the application does not comply with the conditions referred to in Article 51, the Office shall inform the applicant thereof, or, where this is not possible, publish the information pursuant to Article 89.

#### *Article 54*

#### **Substantive examination**

- 1 The Office shall examine whether the variety may be the object of a Community plant variety right pursuant to Article 5, whether the variety is new pursuant to Article 10, whether the applicant is entitled to file an application pursuant to Article 12 and whether the conditions laid down in Article 82 are complied with. The Office shall also examine whether the proposed variety denomination is suitable pursuant to Article 63. For such purposes, it may avail itself of the services of other bodies.
- 2 The first applicant shall be deemed to be entitled to the Community plant variety right pursuant to Article 11. This shall not apply if, before a decision on the application is taken, the Office is aware, or it is shown by a final judgment delivered with regard to a claim for entitlement pursuant to Article 98 (4), that entitlement is not or is not solely vested in the first applicant. Where the identity of the sole or other person entitled has been determined, the person or persons may enter the proceedings as applicant or applicants.

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## *Article 55*

### **Technical examination**

1 Where the Office has not discovered any impediment to the grant of a Community plant variety right on the basis of the examination pursuant to Articles 53 and 54, it shall arrange for the technical examination relating to compliance with the conditions laid down in Articles 7, 8 and 9 to be carried out by the competent office or offices in at least one of the Member States entrusted with responsibility for the technical examination of varieties of the species concerned by the Administrative Council, hereafter referred to as the ‘Examination Office or Offices’.

2 Where no Examination Office is available, the Office may, with the consent of the Administrative Council, entrust other appropriate agencies with responsibility therefore or establish its own sub-offices for the same purposes. For the purpose of the provisions of this Chapter, such agencies or sub-offices shall be considered as Examination Offices. They may avail themselves of facilities made available by the applicant.

3 The Office shall forward to the Examination Offices copies of the application as required under the implementing rules pursuant to Article 114.

4 The Office shall determine, through general rules or through requests in individual cases, when, where and in what quantities and qualities the material for the technical examination and reference samples are to be submitted.

5 Where the applicant makes a claim for priority pursuant to Article 52 (2) or (4), he shall submit the necessary material and any further documents required within two years of the date of application pursuant to Article 51. If the earlier application is withdrawn or refused before the expiry of two years, the Office may require the applicant to submit the material or any further documents within a specified time limit.

## *Article 56*

### **The conduct of technical examinations**

1 Unless a different manner of technical examination relating to compliance with the conditions laid down in Articles 7 to 9 has been arranged, the Examination Offices shall, for the purposes of the technical examination, grow the variety or undertake any other investigations required.

2 The conduct of any technical examinations shall be in accordance with test guidelines issued by the Administrative Council and any instructions given by the Office.

3 For the purposes of the technical examination, the Examination Offices may, with the approval of the Office, avail themselves of the services of other technically qualified bodies and take into account the available findings of such bodies.

4 Each Examination Office shall begin the technical examination, unless the Office has otherwise provided, no later than on the date on which a technical examination would have begun on the basis of an application for a national property right filed on the date on which the application sent by the Office was received by the Examination Office.

5 In the case of Article 55 (5), each Examination Office shall begin the technical examination, unless the Office has otherwise provided, no later than on the date on which an

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examination would have begun on the basis of an application for a national property right, provided the necessary material and any further documents required were submitted at that date.

6 The Administrative Council may determine that the technical examination for varieties of vine and tree species may begin at a later date.

#### *Article 57*

### **Examination reports**

1 The Examination Office shall, at the request of the Office or if it deems the results of the technical examination to be adequate to evaluate the variety, send the Office an examination report, and, where it considers that the conditions laid down in Articles 7 to 9 are complied with, a description of the variety.

2 The Office shall communicate the results of the technical examinations and the variety description to the applicant and shall give him an opportunity to comment thereon.

3 Where the Office does not consider the examination report to constitute a sufficient basis for decision, it may provide of its own motion, after consultation of the applicant, or on request of the applicant for complementary examination. For the purposes of assessment of the results, any complementary examination carried out until a decision taken pursuant to Articles 61 and 62 becomes final shall be considered to be part of the examination referred to in Article 56 (1).

4 The results of the technical examination shall be subject to the exclusive rights of disposal of the Office and may only otherwise be used by the Examination Offices in so far as this is approved by the Office.

#### *Article 58*

### **Costs of technical examinations**

The Office shall pay the Examination Offices a fee in accordance with the implementing rules pursuant to Article 114.

#### *Article 59*

### **Objections to grant of right**

1 Any person may lodge with the Office a written objection to the grant of a Community plant variety right.

2 Objectors shall be party to the proceedings for grant of the Community plant variety right in addition to the applicant. Without prejudice to Article 88, objectors shall have access to the documents, including the results of the technical examination and the variety description as referred to in Article 57 (2).

3 Objections may be based only on the contention that:

- a the conditions laid down in Articles 7 to 11 are not complied with;
- b there is an impediment under Article 63 (3) or (4) to a proposed variety denomination.

4 Objections may be lodged:

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- a at any time after the application and prior to a decision pursuant to Articles 61 or 62, in the case of paragraph 3 (a) hereof;
- b within three months of the publication of the proposed variety denomination pursuant to Article 89, in the case of objections under paragraph 3 (b) hereof.

5 The decisions on objections may be taken together with the decisions pursuant to Articles 61, 62 or 63.

### *Article 60*

#### **Priority of a new application in the case of objections**

Where an objection on the grounds that the conditions laid down in Article 11 are not met leads to the withdrawal or refusal of the application for a Community plant variety right and if the objector files an application for a Community plant variety right within one month following the withdrawal or within one month of the date on which the refusal becomes final in respect of the same variety, he may require that the date of the withdrawn or refused application be deemed to be the date of his application.

## CHAPTER III

### **DECISIONS**

#### *Article 61*

##### **Refusal**

- 1 The Office shall refuse applications for a Community plant variety right if and as soon as it establishes that the applicant:
- a has not remedied any deficiencies within the meaning of Article 53 which he was given an opportunity to correct within the time limit notified to him;
  - b has not complied with a rule or request pursuant to Article 55 (4) or (5) within the time limit laid down, unless the Office has consented to non-submission; or
  - c has not proposed a variety denomination which is suitable pursuant to Article 63.
- 2 The Office shall also refuse applications for a Community plant variety right if:
- a it establishes that the conditions it is required to verify pursuant to Article 54 have not been fulfilled; or
  - b it reaches the opinion on the basis of the examination reports pursuant to Article 57, that the conditions laid down in Articles 7, 8 and 9 have not been fulfilled.

#### *Article 62*

##### **Grant**

If the Office is of the opinion that the findings of the examination are sufficient to decide on the application and there are no impediments pursuant to Articles 59 and 61, it shall grant the Community plant variety right. The decision shall include an official description of the variety.

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## Article 63

### Variety denomination

1 Where a Community plant variety right is granted, the Office shall approve, for the variety in question, the variety denomination proposed by the applicant pursuant to Article 50 (3), if it considers, on the basis of the examination made pursuant to the second sentence of Article 54 (1), that this denomination is suitable.

2 A variety denomination is suitable, if there is no impediment pursuant to paragraphs 3 or 4 of this Article.

3 There is an impediment for the designation of a variety denomination where:

- a its use in the territory of the Community is precluded by the prior right of a third party;
- b it may commonly cause its users difficulties as regards recognition or reproduction;
- c it is identical or may be confused with a variety denomination under which another variety of the same or of a closely related species is entered in an official register of plant varieties or under which material of another variety has been marketed in a Member State or in a Member of the International Unit for the Protection of New Varieties of Plants, unless the other variety no longer remains in existence and its denomination has acquired no special significance;
- d it is identical or may be confused with other designations which are commonly used for the marketing of goods or which have to be kept free under other legislation;
- e it is liable to give offence in one of the Member States or is contrary to public policy;
- f it is liable to mislead or to cause confusion concerning the characteristics, the value or the identity of the variety, or the identity of the breeder or any other party to proceedings.

4 There is another impediment where, in the case of a variety which has already been entered:

- a in one of the Member States; or
- b in a Member of the International Union for the Protection of New Varieties of Plants; or
- c in another State for which it has been established in a Community act that varieties are evaluated there under rules which are equivalent to those laid down in the Directives on common catalogues;

in an official register of plant varieties or material thereof and has been marketed there for commercial purposes, and the proposed variety denomination differs from that which has been registered or used there, unless the latter one is the object of an impediment pursuant to paragraph 3.

5 The Office shall publish the species which it considers 'closely related' within the meaning of paragraph 3 (c).

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## CHAPTER IV

### THE MAINTENANCE OF COMMUNITY PLANT VARIETY RIGHTS

#### *Article 64*

##### **Technical verification**

- 1 The Office shall verify the continuing existence unaltered of the protected varieties.
- 2 For this purpose, a technical verification shall be carried out pursuant to Articles 55 and 56.
- 3 The holder shall be required to provide all the information necessary to assess the continuing existence unaltered of the variety to the Office and to the Examination Offices to which technical verification of the variety has been entrusted. He shall be required, in accordance with the instructions given by the Office, to submit material of the variety and to permit to verify whether appropriate measures have been taken to ensure the continuing existence unaltered of the variety.

#### *Article 65*

##### **Report on the technical verification**

- 1 At the request of the Office, or if it establishes that the variety is not uniform or stable, the Examination Office entrusted with the technical verification shall send the Office a report on its findings.
- 2 If any deficiencies pursuant to paragraph 1 have been found during the technical verification, the Office shall inform the holder of the results of the technical verification and shall give him an opportunity to comment thereon.

#### *Article 66*

##### **Amendment of the variety denomination**

- 1 The Office shall amend a variety denomination designated pursuant to Article 63 if it establishes that the denomination does not satisfy, or no longer satisfies, the conditions laid down in Article 63 and in the event of a prior conflicting right of a third party, if the holder agrees to the amendment or the holder or any other person required to use the variety denomination has been prohibited, by a final judgment, for this reason from using the variety denomination.
- 2 The Office shall give the holder an opportunity to propose an amended variety denomination and shall proceed in accordance with Article 63.
- 3 Objections may be lodged against the proposed amended variety denomination in accordance with Article 59 (3) (b).



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## CHAPTER V

### APPEALS

#### *Article 67*

#### **Decisions subject to appeal**

1 An appeal shall lie from decisions of the Office which have been taken pursuant to Articles 20, 21, 59, 61, 62, 63 and 66, as well as on decisions related to fees pursuant to Article 83, to costs pursuant to Article 85, to the entering or deletion of information in the Register pursuant to Article 87 and to the public inspection pursuant to Article 88.

2 An appeal lodged pursuant to paragraph 1 shall have suspensory effect. The Office may, however, if it considers that circumstances so require, order that the contested decision not be suspended.

3 An appeal may lie from decisions of the Office pursuant to Articles 29 and 100 (2), unless a [<sup>F2</sup>direct action] is [<sup>F2</sup>brought] pursuant to Article 74. The appeal shall not have suspensory effect.

4 An appeal against a decision which does not terminate proceedings as regards one of the parties may only be made in conjunction with an appeal against the final decision, unless the decision provides for separate appeal.

#### **Textual Amendments**

- F2** Substituted by [Council Regulation \(EC\) No 2506/95 of 25 October 1995 amending Regulation \(EC\) No 2100/94 on Community plant variety rights.](#)

#### *Article 68*

#### **Persons entitled to appeal and to be parties to appeal proceedings**

Any natural or legal person may appeal, subject to Article 82, against a decision, addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former. The parties to proceedings may, and the Office shall, be party to the appeal proceedings.

#### *Article 69*

#### **Time limit and form**

Notice of appeal shall be filed in writing at the Office within two months of the service of the decision where addressed to the appealing person, or, in the absence thereof, within two months of the publication of the decision, and a written statement setting out the grounds of appeal shall be filed within four months after the aforesaid service or publication.

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## Article 70

### Interlocutory revision

1 If the body of the Office which has prepared the decision considers the appeal to be admissible and well founded, the Office shall rectify the decision. This shall not apply where the appellant is opposed by another party to the appeal proceedings.

2 If the decision is not rectified within one month after receipt of the statement of grounds, for the appeal, the Office shall forthwith:

- decide whether it will take an action pursuant to Article 67 (2), second sentence, and
- remit the appeal to the Board of Appeal.

## Article 71

### Examination of appeals

1 If the appeal is admissible, the Board of Appeal shall examine whether the appeal is well-founded.

2 When examining the appeal, the Board of Appeal shall as often as necessary invite the parties to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.

## Article 72

### Decision on appeal

The Board of Appeal shall decide on the appeal on the basis of the examination carried out pursuant to Article 71. The Board of Appeal may exercise any power which lies within the competence of the Office, or it may remit the case to the competent body of the Office for further action. The latter one shall, in so far as the facts are the same, be bound by the *ratio decidendi* of the Board of Appeal.

## [<sup>F2</sup>Article 73

### Actions against decisions of the Boards of Appeal

1 Actions may be brought before the Court of Justice against decisions of the Boards of Appeal on appeals.

2 The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application, or misuse of power.

3 The Court of Justice shall have jurisdiction to annul or to alter the contested decision.

4 The action shall be open to any party to appeal proceedings which has been unsuccessful, in whole or in part, in its submissions.

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5 The action shall be brought before the Court of Justice within two months of the date of service of the decision of the Board of Appeal.

6 The Office shall be required to take the necessary measures to comply with the judgment of the Court of Justice.]

**Textual Amendments**

**F2** Substituted by [Council Regulation \(EC\) No 2506/95 of 25 October 1995 amending Regulation \(EC\) No 2100/94 on Community plant variety rights.](#)

*Article 74*

**[<sup>F2</sup>Direct action]**

1 [<sup>F2</sup>A direct action may be brought before the Court of Justice against] decisions of the Office pursuant to Articles 29 and 100 (2).

2 The provisions laid down in Article 73 shall apply *mutatis mutandis*.

**Textual Amendments**

**F2** Substituted by [Council Regulation \(EC\) No 2506/95 of 25 October 1995 amending Regulation \(EC\) No 2100/94 on Community plant variety rights.](#)

CHAPTER VI

**MISCELLANEOUS CONDITIONS GOVERNING PROCEEDINGS**

*Article 75*

**Statement of grounds on which decisions are based, right of audience**

Decisions of the Office shall be accompanied by statements of the grounds on which they are based. They shall be based only on grounds or evidence on which the parties to proceedings have had an opportunity to present their comments orally or in writing.

*Article 76*

**Examination of the facts by the Office of its own motion**

In proceedings before it the Office shall make investigations on the facts of its own motion, to the extent that they come under the examination pursuant to Articles 54 and 55. It shall disregard facts or items of evidence which have not been submitted within the time limit set by the Office.

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## Article 77

### Oral proceedings

1 Oral proceedings shall be held either on the initiative of the Office itself or at the request of any of the parties to proceedings.

2 Without prejudice to paragraph 3, oral proceedings before the Office shall not be public.

3 Oral proceedings before the Board of Appeal including delivery of the decision, shall be public in so far as the Board of Appeal before which the proceedings are taking place does not decide otherwise in circumstances where serious and unwarranted disadvantages could arise from admitting the public, particularly for any of the parties to the appeal proceedings.

## Article 78

### Taking of evidence

1 In any proceedings before the Office, the means of giving or obtaining evidence may include the following:

- a hearing the parties to proceedings;
- b requests for information;
- c the production of documents or other evidence;
- d hearing the witnesses;
- e opinions by experts;
- f inspection;
- g sworn affidavits.

2 Where the Office decides through a collective body, that body may commission one of its members to examine the evidence adduced.

3 If the Office considers it necessary that a party to proceedings, witness or expert give evidence orally, it shall either:

- a issue a summons requiring the relevant person to appear before it; or
- b request the competent judicial or other authority in the country of domicile of the relevant person to take the evidence as provided for in Article 91 (2).

4 A party to proceedings, witness or expert who is summoned before the Office may request it to allow his evidence to be heard by the competent judicial or other authority in his country of domicile. On receipt of such a request or in the case that no reaction was given to the summons, the Office may, in accordance with Article 91 (2), request the competent judicial or other authority to hear the evidence of that person.

5 If a party to proceedings, witness or expert gives evidence before the Office, the Office may, if it considers it advisable that the evidence be given under oath or otherwise in binding form, request the competent judicial or other authority in the country of domicile of the relevant person to hear his evidence under the requisite conditions.

6 When the Office requests a competent judicial or other authority to take evidence, it may request it to take the evidence in binding form and to permit a member of the Office to

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attend the hearing and question the party to proceedings, witness or expert either through that judicial or other authority or directly.

#### *Article 79*

##### **Service**

The Office shall of its own motion effect service of all decisions and summonses, and of notifications and communications, from which a time limit is reckoned, or which are required to be served either in pursuance of other provisions of this Regulation or by provisions adopted pursuant to this Regulation or by order of the President of the Office. Service may be effected through the competent variety offices of the Member States.

#### *Article 80*

##### **Restitutio in integrum**

1 Where, in spite of having taken all due care in the particular circumstances, the applicant for a Community plant variety right or the holder or any other party to proceedings before the Office has been unable to observe a time limit *vis-à-vis* the Office, his rights shall, upon application, be restored if his failure to respect the time limit has resulted directly, by virtue of this Regulation, in the loss of any right or means of redress.

2 Applications shall be filed in writing within two months after the cause of non-compliance when the time limit has ceased to operate. The act omitted shall be completed within this period. Applications shall be admissible only within the period of one year following the expiry of the time limit which has not been observed.

3 An application shall be accompanied by a statement of the grounds on which it is based and the facts on which it relies.

4 The provisions of this Article shall not apply to the time limits referred to in paragraph 2 nor to the time limits specified in Article 52 (2), (4) and (5).

5 Any person who, in a Member State, has in good faith used or made effective and genuine arrangements to use a variety which is the subject of a published application for grant of a Community plant variety right, or of a Community plant variety right that has been granted, in the course of a period between the loss of rights pursuant to paragraph 1 in respect of the application or of a Community plant variety right that has been granted and the restoration of those rights, may without payment continue such use in the course of his business or for the needs thereof.

#### *Article 81*

##### **General principles**

1 In the absence of procedural provisions in this Regulation or in provisions adopted pursuant to this Regulation, the Office shall apply the principles of procedural law which are generally recognized in the Member States.

2 Article 48 shall apply *mutatis mutandis* to the staff of the Office in so far as it is involved in decisions of the kind referred to in Article 67, and to the staff of the Examination Offices, in so far as it participates in measures for the preparation of such decisions.

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## Article 82

### **Procedural representative**

Persons who are not domiciled or do not have a seat or an establishment within the territory of the Community may participate as party to proceedings before the Office only if they have designated a procedural representative who is domiciled or has his seat or an establishment within the territory of the Community.

## CHAPTER VII

### **FEES, SETTLEMENT OF COSTS**

## Article 83

### **Fees**

1 The Office shall charge fees for its official acts provided for under this Regulation as well as for each year of the duration of a Community plant variety right, pursuant to the fees regulations adopted in accordance with Article 113.

2 If fees due in respect of the official acts set out in Article 113 (2) or of other official acts referred to in the fees regulations, which are only to be carried out on application, are not paid, the application shall be deemed not to have been filed or the appeal not to have been lodged if the acts necessary for the payment of the fees have not been effected within one month of the date on which the Office served a new request for payment of fees and indicated in so doing these consequences of failure to pay.

3 If certain information provided by the applicant for grant of a Community plant variety right can only be verified by a technical examination which goes beyond the framework established for the technical examination of varieties of the taxon concerned, the fees for the technical examination may be increased, after having heard the person liable to pay the fees, up to the amount of the expenditure actually incurred.

4 In the case of a successful appeal, the appeal fees or, in case of a partial success, the corresponding part of the appeal fees, shall be refunded. However, the refund can be fully or partly refused if the success of the appeal is based on facts which were not available at the time of the original decision.

## Article 84

### **Termination of financial obligations**

1 The Office's right to require payment of fees shall lapse after four years from the end of the calendar year in which the fees became due for payment.

2 Rights against the Office for the refunding of fees or of sums overcharged by the Office shall lapse after four years from the end of the calendar year in which the rights arose.

3 A request for payment of a fee shall have the effect of interrupting the time limit specified in paragraph 1, and a written and reasoned claim for refund shall have the effect of

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interrupting the time limit specified in paragraph 2. After interruption the time limit shall begin to run again immediately and shall terminate at the latest six years after the end of the calendar year in which it originally commenced, unless judicial proceedings to enforce the right have been instituted in the meantime; in that case the time limit shall end not earlier than one year after the judgment has acquired the authority of a final decision.

#### *Article 85*

### **Apportionment of costs**

1 The losing party to proceedings for revocation or cancellation of a Community plant variety right, or to appeal proceedings shall bear the costs incurred by the other party to proceedings as well as all costs incurred by him essential to the proceedings, including travel and subsistence and the remuneration of an agent, adviser or advocate, within the limits of the scales set for each category of costs under the conditions laid down in the implementing rules pursuant to Article 114.

2 However, where each party to proceedings succeeds on some and fails on other heads, or if reasons of equity so dictate, the Office or Board of Appeal shall decide a different apportionment of costs.

3 The party to proceedings who terminates the proceedings by withdrawing the application for a Community plant variety right, the application for revocation or cancellation of rights, or the appeal, or by surrendering the Community plant variety rights, shall bear the costs incurred by the other party to proceedings as stipulated in paragraphs 1 and 2.

4 Where the parties to proceedings conclude before the Office, or Board of Appeal a settlement of costs differing from that provided for in the preceding paragraphs, note shall be taken of that agreement.

5 On request, the Office or Board of Appeal shall determine the amount of the costs to be paid pursuant to the preceding paragraphs.

#### *Article 86*

### **Enforcement of decisions which determine the amount of costs**

1 Final decisions of the Office which determine the amount of costs shall be enforceable.

2 Enforcement shall be governed by the rules of civil procedure applicable in the Member State in which it takes place. Subject only to verification that the relevant document is authentic, the enforcement clause or endorsement shall be appended by the national authority appointed for that purpose by the Government of each Member State; the Governments shall inform the Office and the Court of Justice of the European Communities of the identity of each such national authority.

3 When, upon application by the party seeking enforcement, these formalities have been completed, it shall be entitled to proceed to endorsement under national law by bringing the matter directly before the competent body.

4 Enforcement shall not be suspended except by decision of the Court of Justice of the European Communities. Control as to the regularity of enforcement measures shall, however, reside with the national courts.

*Status: Point in time view as at 31/01/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 2100/94, PART FOUR. (See end of Document for details)*

## CHAPTER VIII

### REGISTERS

#### *Article 87*

#### **Establishment of the Registers**

1 The Office shall keep a Register of Applications for Community Plant Variety Rights which shall contain the following particulars:

- a applications for a Community plant variety right together with a statement of the taxon and the provisional designation of the variety, the date of application and the name and address of the applicant, of the breeder and of any procedural representative concerned;
- b any cases of termination of proceedings concerning applications for a Community plant variety right together with the information set out in subparagraph (a);
- c proposals for variety denominations;
- d changes in the identity of the applicant or his procedural representative;
- e on request, any levy of execution as referred to in Articles 24 and 26.

2 The Office shall keep a Register of Community Plant Variety Rights wherein, after grant of a Community plant variety right, the following particulars shall be entered:

- a the species and variety denomination of the variety;
- b the official description of the variety or a reference to documents in the Office's possession in which the official description of the variety is contained as integrating part of the Register;
- c in the case of varieties for which material with specific components has to be used repeatedly for the production of material, a reference to such components;
- d the name and address of the holder, of the breeder and of any procedural representative concerned;
- e the date on which the Community plant variety right begins and ends, together with the reasons for the termination of right;
- f on request, any contractual exclusive exploitation right or compulsory exploitation right, including the name and address of the person enjoying the right of exploitation;
- g on request, any levy of execution as referred to in Article 24;
- h where the holder of an initial variety and the breeder of a variety essentially derived from the initial variety both so request, the identification of the varieties as initial and essentially derived including the variety denominations and the names of the parties concerned. A request from one of the parties concerned only shall suffice if he has obtained either a non-contentious acknowledgement by the other party pursuant to Article 99 or a final decision or a final judgment pursuant to the provisions of this Regulation which contain an identification of the varieties concerned as initial and essentially derived.

3 Any other particular or any condition for the entering in both Registers may be specified in the implementing rules pursuant to Article 114.

4 The Office may of its own motion and upon consultation with the holder adapt the official variety description in respect of the number and type of characteristics or of the specified expressions of those characteristics, when necessary, in the light of the current principles governing the description of varieties of the taxon concerned, in order to render the description of the variety comparable with the descriptions of other varieties of the taxon concerned.



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*Status: Point in time view as at 31/01/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 2100/94, PART FOUR. (See end of Document for details)*

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## Article 88

### Public inspection

- 1 The Registers mentioned in Article 87 shall be open to public inspection.
- 2 In case of a legitimate interest, the following shall be open to public inspection, in accordance with the conditions set up in the implementing rules pursuant to Article 114:
  - a documents relating to applications for grant of a Community plant variety right;
  - b documents relating to Community plant variety rights already granted;
  - c the growing of varieties for the purposes of their technical examination;
  - d the growing of varieties for the purpose of verifying their continuing existence.
- 3 In the case of varieties for which material with specific components has to be used repeatedly for the production of material, at the request of the applicant for a Community plant variety right, all data relating to components, including their cultivation, shall be withheld from inspection. Such a request for withholding from inspection may not be filed once the decision on the application for grant of a Community plant variety right has been taken.
- 4 Materials submitted or obtained in connection with examinations under Articles 55 (4), 56 and 64 may not be given to other parties by the competent authorities under this Regulation unless the person entitled gives his consent or such transfer is required in connection with the cooperation covered by this Regulation for the purposes of the examination or by virtue of legal provisions.

## Article 89

### Periodical publications

The Office shall at least every two months, issue a publication containing the information entered into the Registers pursuant to Article 87 (1) and (2) (a), (d), (e), (f), (g) and (h), and not yet published. The Office shall also publish an annual report, containing information which the Office regards as expedient, but at least a list of valid Community plant variety rights, their holders, the dates of grant and expiry and the approved variety denominations. Details of these publications shall be specified by the Administrative Council.

## Article 90

### Exchange of information and of publications

- 1 The Office and the competent variety offices of the Member States shall, on request and without prejudice to the conditions set up for the sending of results of technical examinations, dispatch to each other for their own use, free of charge, one or more copies of their respective publications and any other useful information relating to property rights applied for or granted.
- 2 The data referred to in Article 88 (3) shall be excluded from information, unless:
  - a the information is necessary for the conduct of the examinations pursuant to Articles 55 and 64; or
  - b the applicant for a Community plant variety right or the holder gives his consent.

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*Status: Point in time view as at 31/01/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 2100/94, PART FOUR. (See end of Document for details)*

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## Article 91

### **Administrative and legal cooperation**

1 Unless otherwise provided in this Regulation or in national law, the Office, Examination Offices referred to in Article 55 (1) and the courts or authorities of the Member States shall on request give assistance to each other by communicating information or opening files related to the variety, and samples or growing thereof for inspection. Where the Office and the Examination Offices lay files, samples or growing thereof open to inspection by courts or public prosecutors' offices, the inspection shall not be subject to the restrictions laid down in Article 88, and the inspection given by the Examination Offices shall not be subject to a decision of the Office pursuant to that Article.

2 Upon receipt of letters rogatory from the Office, the courts or other competent authorities of the Member States shall undertake on behalf of that Office and within the limits of their jurisdiction, any necessary enquiries or other related measures.

**Status:**

Point in time view as at 31/01/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the Council Regulation (EC) No 2100/94, PART FOUR.