

## COMMISSION REGULATION (EC) No 1238/95

of 31 May 1995

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (the Basic Regulation)<sup>(1)</sup>, and in particular Article 113 thereof,

Whereas Regulation (EC) No 2100/94 is to be implemented by the Community Plant Variety Office (the Office); whereas the revenue of the Office should in principle be sufficient to balance the budget of the Office; whereas such revenues should be afforded by the fees to be paid for the official acts set out in the Basic Regulation and in Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office<sup>(2)</sup> (the Proceedings Regulation) as well as by annual fees payable for the duration of a Community plant variety right;

Whereas a subsidy from the general budget of the European Communities may cover the expenditure on the initial running phase of the Office for the transitional period defined in Article 113 (3) (b) of the Regulation; whereas an extension of that period by one year is possible by virtue of the same provision;

Whereas such extension of the transitional period should be considered if sufficient experience has not been gained for setting reasonable levels of fees ensuring the principle of self-financing whilst safeguarding the attractiveness of the Community system of plant variety protection; whereas such experience could only be gained by observing the number of applications for a Community plant variety right, the costs paid to the Examination Offices and the actual duration of Community plant variety rights granted;

Whereas the level of the fees should be based on the principles of sound financial management within the Office, and in particular economy and cost-effectiveness;

Whereas, in the interests of a simplified handling by the staff of the Office, the fees should be not only laid down, but also charged and paid in the same currency unit as is used for the budget of the Office;

Whereas the application fee should be a uniform fee covering only the processing of an application for a Community plant variety right made in respect of any given plant species;

Whereas the time limit for the payment of the application fee under Article 51 of the Basic Regulation should be considered as the period between the acts necessary for making the payment and the actual receipt of such payment by the Office, in particular in the need for a rapid recovery of costs already incurred by the Office on the one hand and for the facilitating of an effective filing of applications in the light of possibly long distances between applicant and Office, on the other;

Whereas the total of the examination fees which are charged for a technical examination should, in principle, balance the total fees to be paid by the Office to all Examination Offices; whereas costs for the maintenance of the reference collection should not necessarily be covered entirely by the examination fees charged; whereas the level of examination fee should vary between three groups of plant species in the light of experience available from existing national arrangements for plant variety protection;

Whereas the annual fees for the duration of a Community plant variety right should constitute an extra source of revenue for the Office, but should, *inter alia*, cover costs relating to the technical verification of varieties after the grant of a Community plant variety right and, in consequence, should follow the grouping established for the examination fees;

Whereas the appeal fee should be uniform in order to cover the main cost components relating to appeal proceedings, with the exception of costs relating to a technical examination pursuant to Articles 55 and 56 of the Basic Regulation or to any taking of evidence; whereas two different dates for payment of the application fee should serve as an incentive to appellants to reconsider their appeal in the light of the decisions taken by the Office pursuant to Article 70 (2) of the Basic Regulation;

<sup>(1)</sup> OJ No L 227, 1. 9. 1994, p. 1.

<sup>(2)</sup> See page 37 of this Official Journal.

Whereas other fees in respect of specific requests shall in principle cover costs incurred in their processing by the Office, including the taking of decisions on such requests ;

Whereas to ensure flexibility in the management of costs, the President of the Office should be empowered to lay down the fees payable for examination reports which already exist at the date of application and are not available to the Office, and for specific services rendered ;

Whereas surcharges may be levied in order to reduce unnecessary costs to the Office arising from a lack of cooperation on the part of particular applicants for, or holders of, Community plant variety rights ;

Whereas in the light of Article 117 of the Basic Regulation, this Regulation should enter into force as soon as possible ;

Whereas the Administrative Council of the Office has been consulted ;

Whereas the provisions 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

##### Scope

1. Fees due to the Office, as provided for in the Basic Regulation and the Proceedings Regulation, shall be charged in accordance with this Regulation.
2. The fees due to the Office shall be laid down, charged and paid in ecus.
3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to any surcharge, due to the Office.
4. Details of the fees which may be charged by authorities of Member States by virtue of provisions of the Basic Regulation or this Regulation shall be governed by the relevant national rules of the Member States concerned.
5. Where the President of the Office is empowered to take a decision as to the amount of fees and the way in which they are to be paid, such decisions shall be published in the Official Gazette of the Office.

#### Article 2

##### General provisions

1. For each individual matter, a party to proceedings as specified in the Proceedings Regulation shall be liable to pay fees or surcharges. In the case of several parties to proceedings acting in common or on whose behalf a

common course of action is pursued, each shall be liable to such payment as joint debtor.

2. Unless otherwise provided in this Regulation, the provisions relating to proceedings before the Office, including provisions as to languages, as laid down in the Basic Regulation and the Proceedings Regulation, shall apply.

#### Article 3

##### Manner of payment

1. Fees and surcharges due to the Office shall be paid by transfer to a bank account held by the Office.
2. The President of the Office may allow the following alternative forms of payment in accordance with rules on working methods which shall be established pursuant to Article 36 (1) (d) of the Basic Regulation :
  - (a) delivery or remittance of certified cheques which are made payable in ecus to the Office ;
  - (b) transfer in ecus to a giro account held by the Office ;  
or
  - (c) payment into a charge account held in ecus with the Office.

#### Article 4

##### Date to be regarded as the date on which payment is received

1. The date on which a payment of fees and surcharges shall be considered to have been received by the Office shall be the date on which the amount of the transfer referred to in Article 3 (1) is entered in a bank account held by the Office.
2. Where the President of the Office allows other forms of payment in accordance with Article 3 (2), he shall simultaneously include in the conditions the date to be regarded as the date on which the payment is received.
3. Where the payment is considered not to have been received by the Office within the requisite time limit, such time limit shall be considered to have been observed *vis-à-vis* the Office if sufficient documentary evidence is produced within that time-limit to show that the person who made the payment took necessary steps.
4. It shall be considered to be 'necessary' within the meaning of paragraph 3 if the person making the payment duly gave an order to a banking establishment or a post office to transfer the amount of the payment in ecus to a bank account held by the Office.
5. Documentary evidence shall be regarded as 'sufficient' within the meaning of paragraph 3 if an acknowledgement of provision of the transfer order, issued by a banking establishment or a post office, is produced.

### Article 5

#### Name of the person making the payment and the purpose of payment

1. A person making a payment of fees or surcharges shall indicate in writing his name and the purpose of such payment.
2. If the Office cannot establish the purpose of a payment, it shall require the person having made the payment to inform it thereof in writing within two months. If the purpose is not indicated within that period, the payment shall be deemed not to have been made and shall be refunded to the person having made it.

### Article 6

#### Underpayment

A time-limit for payment of fees or surcharges shall, in principle, be deemed to have been observed only if the full amount of the fee or surcharge has been paid in due time. If the fees or surcharges are not paid in full, the amount which has been paid shall be refunded after any time-limit for payment has expired. The Office may, however, where this is considered justified, overlook any small deficiencies, without prejudicing the rights of the person making the payment.

### Article 7

#### Application fee

1. The applicant for a Community plant variety right (the applicant) shall pay an application fee of ECU 1 000 for the processing of the application under Article 113 (2) (a) of the Basic Regulation.
2. The applicant shall take the necessary steps for payment of the application fee, in accordance with Article 3, prior to or on the date on which the application is filed at the Office direct or at one of the sub-offices established or national agencies designated, pursuant to Article 30 (4) of the Basic Regulation; Article 4 (4) shall apply *mutatis mutandis*.
3. If the payment of the application fee is considered not to have been received at the same time as the application is received by the Office, the Office shall specify, in accordance with Article 51 of the Basic Regulation, a period of two weeks during which the formal date of application, assigned in accordance with the aforesaid Article 51, shall not be affected; a new request for payment as provided for in Article 83 (2) of the Basic Regulation shall not be issued to the applicant prior to the expiry of that period.
4. If the payment of the application fee is considered not to have been received within the time limit specified pursuant to paragraph 3, the date of receipt of payment

shall be treated as the date of application for the purposes of Article 51 of the Basic Regulation.

5. Paragraph 4 shall not apply if the application is accompanied by sufficient documentary evidence that the steps necessary to effect payment have been taken; Article 4 (5) shall apply *mutatis mutandis*.

6. As long as payment of the application fee is considered not to have been received by the Office, it shall not publish the application concerned and shall defer the technical examination.

### Article 8

#### Fees relating to technical examination

1. Fees for arranging and carrying out the technical examination of a variety being the subject of an application for a Community plant variety right 'examination fee' shall be paid in accordance with Annex I for each growing period started. In the case of varieties for which material with specific components has to be used repeatedly for the production of material, the examination fee laid down in Annex 1 shall be due in respect of such variety and in respect of each of the components for which an official description is not available and which must also be examined; however, it shall not in any circumstances exceed ECU 3 000.
2. The examination fee for the first growing period shall be due and payable no later than one month after the closing date for receipt of the material for the technical examination.
3. The examination fee for each subsequent growing period shall be due and payable no later than one month prior to the beginning of such period unless the Office decides otherwise.
4. The President of the Office shall publish the dates for payment of the examination fees in the Official Gazette of the Office.
5. In the case of an examination report on the results of a technical examination which has already been carried out, in accordance with Article 27 of the Implementing Rules, prior to the date of application under Article 51 of the Basic Regulation, an administrative fee shall be due within such time limit as the Office shall specify.

### Article 9

#### Annual fee

1. The Office shall charge a holder of a Community plant variety right (hereinafter referred to as the holder) a fee for each year of the duration of a Community plant variety right (annual fee) as laid down in Annex II.
2. The date for payment of the annual fee shall be the last day of the calendar month following the calendar month in which the Community plant variety right was granted, and in each subsequent year on the corresponding day.

3. The Office shall issue to the holder a request containing the subject of payment, the amount due, the date for payment, and information on the possibility of a surcharge pursuant to Article 13 (2) (a).

4. The Office shall not refund any payments which have been effected in order to keep the Community plant variety right in force.

#### Article 10

##### Fees for processing specific requests

1. Fees for the processing of a request, payable by the person making such request, shall be as follows:

- (a) for an application for a compulsory exploitation right, including any entries in the Registers, an application for an exploitation right to be granted by the Office pursuant to Article 100 (2) of the Basic Regulation, or a request to amend such exploitation rights, once granted, (compulsory licence fee), save for the Commission or a Member State in the circumstances referred to in Article 29 (2) thereof: ECU 1 500;
- (b) for a request for the following entries into the Register of Community plant variety rights (register fee):
  - transfer of a Community plant variety right, contractual exploitation right,
  - identification of varieties as initial or essentially derived,
  - institution of actions in respect of claims referred to in Articles 98 (1), (2) and 99 of the Basic Regulation,
  - a Community plant variety right given as a security or as the subject of rights *in rem*, or
  - any levy of execution as referred to in Article 24 of the Basic Regulation: ECU 300;
- (c) for a request for any entry in the Register of Applications for Community plant variety rights or the Register of Community plant variety rights, other than those referred to in (a) and (b) above: ECU 100;
- (d) for a request for determining amount of costs pursuant to Article 85 (5) of the Regulation: ECU 100.

2. The fees referred to in paragraph 1 shall be due and payable on the date of receipt of the request to which they relate. Where the payment is not received in good time, Article 83 (2) of the Basic Regulation shall apply.

#### Article 11

##### Appeal fee

1. The appellant shall pay an appeal fee of ECU 1 500 for the processing of an appeal, as provided for in Article 113 (2) (c) of the Basic Regulation.

2. A third of the appeal fee shall be due on the date of receipt of the appeal at the Office; Article 83 (2) of the Basic Regulation shall apply to that third. The remaining two-thirds of the appeal fee shall be due, upon request of the Office, within one month after remittal of the case by the relevant body of the Office of the Board of Appeal.

3. A refund of the appeal fee already paid shall be ordered, in the event of an interlocutory revision, under the authority of the President of the Office and in other cases by the Board of Appeal, provided that the conditions laid down in Article 83 (4) of the Basic Regulation are met.

4. Paragraph 1 shall not apply to the Commission or a Member State, being the appellant against a decision taken under Article 29 (2) of the Basic Regulation.

#### Article 12

##### Fees laid down by the President of the Office

1. The President of the Office shall fix the fees for the following matters:

- (a) the administrative fee referred to in Article 8 (5);
- (b) fees for issuing copies, certified or not, as in particular referred to in Article 84 (3) of the Proceedings Regulation; and
- (c) fees in respect of the Official Gazette of the Office (Article 89 of the Basic Regulation, Article 87 of the Proceedings Regulation) and any other publication issued by the Office.

2. The President of the Office may decide to make the services mentioned under paragraph 1 (b) and (c) dependent on an advance payment.

#### Article 13

##### Surcharges

1. The Office may levy a surcharge to the application fee if it establishes that:

- (a) a proposed denomination cannot be approved, in accordance with Article 63 of the Basic Regulation, by reason of its being identical to a denomination of another variety or by reason of its differing from a denomination of the same variety; or
- (b) an applicant for a Community plant variety right makes a new proposal for a variety denomination unless he was required by the Office to do so or unless he pursued an application for a Community plant variety right in accordance with Article 21 (3) of the Proceedings Regulation.

The Office shall not publish a proposal for variety denomination prior to the payment of a surcharge levied in accordance with the provisions of the first subparagraph.

2. The Office may levy a surcharge to the annual fee if it establishes that :

- (a) the holder has failed to pay the annual fee in accordance with Article 9 (2) and (3); or
- (b) the variety denomination must be amended in the event of a prior conflicting right of a third party, as laid down in Article 66 (1) of the Basic Regulation.

3. The surcharges referred to in paragraphs 1 and 2 shall be levied in accordance with the rules on working methods to be established pursuant to Article 36 (1) (d) of the Basic Regulation, shall amount to 20 % of the fee concerned, subject to a minimum of ECU 100, and shall be due and payable within one month of the date on which the Office issues a request.

#### *Article 14*

#### **Derogations**

1. Notwithstanding Article 7, the formal date of application assigned under Article 51 of the Basic Regulation shall remain valid in respect of all applications filed in accordance with Article 116 (1) or (2) thereof if sufficient evidence is produced on 30 September 1995 at the latest that the applicant for the Community plant variety right carried out the acts necessary for payment of the application fee.

2. Notwithstanding Article 8 (5), an administrative fee of ECU 100 shall be paid where a technical examination of the variety is carried out on the basis of the available findings from any proceedings for the grant of a national plant variety right in accordance with Article 116 (3) of the Basic Regulation. Such administrative fee shall be due on 30 November 1995 at the latest.

3. Notwithstanding Article 8 (5), authorities before which proceedings for the grant of a national plant variety right have been held may charge the applicant for a Community plant variety right a fee for marking available the relevant documents under the conditions laid down in Article 93 (3) of the Proceedings Regulation. Such fee shall not exceed the fee charged in the Member State concerned for the transmission of an examination report from a testing authority in another country; its payment shall be without prejudice to the payments to be made pursuant to paragraphs 1 and 2.

4. Notwithstanding Article 8, a report fee of ECU 300 shall be due in the case of an examination report referred to in Article 94 of the Proceedings Regulation within such time limit as the Office shall specify.

#### *Article 15*

#### **Entry into force**

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

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

Done at Brussels, 31 May 1995.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

## ANNEX I

The examination fee due to be paid pursuant to Article 8 shall be as follows:

**Group A** ECU 1 000

Group A is related to the following agricultural crops:

beet, cereals, cotton, potatoes, rapeseed, soyabean, sunflower

**Group B** ECU 800

Group B is related to:

1. agricultural crops (including grasses), other than those referred to in Group A;

2. the following vegetables:

aubergine (egg plants), courgette, cucumber, endive, french bean, lettuce, marrow, melon, onion, pepper, tomato, vegetable pea, water melon;

3. the following ornamentals:

alstroemeria, anthurium, azalea, begonia (elator), chrysanthemum, dianthus, euphorbia pulcherrima, fuchsia, gerbera, impatiens, kalanchoe, lily, orchidaceae, pelargonium, pentas, petunia, rose, saint-paulia, spathiphyllum.

**Group C** ECU 700

Group C is related to all genera or species, other than those referred to in Groups A and B.

## ANNEX II

The annual fee due to be paid pursuant to Article 9 for each year of duration shall be, on the basis of the groups established in Annex I, as follows:

(in ecu)

Year	Group		
	A	B	C
1	400	400	400
2	600	500	500
3	800	600	600
4	1 000	700	700
5	1 100	800	800
6	1 200	1 000	900
7 and subsequent years	1 300	1 100	1 000