

DECISION OF THE PRESIDENT OF THE OFFICE

Concerning Oral Proceedings and Taking of Evidence by Videoconference before the Office and its Board of Appeal

The President of the Community Plant Variety Office,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community Plant Variety Rights (hereinafter referred to as 'the Basic Regulation' or 'BR'), in particular Article 42 (2)(a) thereof whereby the President shall take all the necessary steps to ensure the functioning of the Office.

Having regard to 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 (recast) (hereinafter referred to as 'the Proceedings Regulation' or 'PR'), in particular Article 51 whereby it is established that the provisions relating to proceedings before the Office shall apply to appeal proceedings *mutatis mutandis*, unless otherwise provided.

Having regard to the Decision of the President on the CPVO Environmental Management Strategy of 15 December 2020, and its concrete actions that will be taken by the CPVO in order to meet the environmental policy, in particular on Greenhouse gas emissions, whereby virtual meetings and videoconferencing should be encouraged where applicable.

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC5 (hereinafter referred to as 'Regulation (EU) 2018/1725').

Whereas:

- (1) Pursuant to Article 71(2) of the Basic Regulation, parties to the appeal proceedings shall be entitled to make oral representations;
- (2) Pursuant to Article 77(1) of the Basic Regulation, oral proceedings shall be held either on the initiative of the Office itself or at the request of any of the parties to proceedings;
- (3) Pursuant to Article 77(2) and (3) of the Basic Regulation, oral proceedings before the Office shall not be public, and oral proceedings before the Board of Appeal shall be public in so far as the Board of Appeal 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;
- (4) Pursuant to Article 75 of the Basic Regulation, 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;
- (5) Pursuant to Article 78(1)(a), (d), (e) and (f) of the Basic Regulation, in any proceedings before the Office, the means of giving or obtaining evidence may include the hearing of the parties to proceedings, witnesses or experts, the carrying out of an inspection;
- (6) In the light of the persistent Covid-19 pandemic circumstances, it is needed to limit contamination risks, to ease interaction with parties to proceedings, to guarantee the exercise of the right of audience under point (4) above, and to limit greenhouse gas emissions, by allowing that oral proceedings and the giving or obtaining evidence by the means stated under point (5) (hereinafter referred to as only 'oral proceedings'), should be also conducted by videoconferencing or other technical means, instead of holding them in person.
- (7) Under this Decision the Office takes decisions relating to proceedings before the Office and the Board of Appeal takes decisions relating to proceedings before the Board of Appeal.

Hereby decides,

Article 1

Oral proceedings by videoconference before the CPVO and the Board of Appeal of the CPVO

(1) Oral proceedings before the Office or its Board of Appeal may be held either in person on the premises of the Office, by videoconference or other technical means, at the sole election of the Office or the Board of Appeal.

(2) Oral proceedings by videoconference before the Office or the Board of Appeal are equivalent to oral proceedings held at the Office or any rented premises for the occasion.

(3) Where deciding to hold oral proceedings by videoconference, the Board of Appeal shall indicate how the public may have access to those proceedings, unless a decision to the contrary is taken in accordance with Article 77(3) of the Basic Regulation.

Article 2

Remote participation of Office or Board of Appeal Members in oral proceedings by videoconference

(1) When oral proceedings are held by videoconference, the members of the Office or of the Board of Appeal may connect to the oral proceedings remotely from different locations. In such cases, deliberations and votes among themselves will be done by separate videoconferencing.

(2) The parties will be informed of the remote participation of members of the Office or of the Board of Appeal before the start of the oral proceedings.

(3) The venue of the oral proceedings will be deemed to be Angers. Oral proceedings by videoconference will take place on a working day within the Office working hours.

Article 3

Remote participation of parties to proceedings, their procedural representatives and accompanying persons

The Office and the Board of Appeal may allow the parties, their procedural representatives and any persons accompanying the parties or procedural representatives to connect to the videoconference from different locations, if so requested in due time, and on condition that the number of additional participants does not impair the efficient conduct of the proceedings.

Article 4

Submissions and their transmission during oral proceedings by videoconference

(1) Where oral proceedings are held by videoconference, documents and documentary evidence are to be filed electronically within specified time limits in advance of the oral proceedings by videoconference, respectively in accordance with Articles 57 and 58 of the Proceedings Regulation. If there are doubts as to the authenticity of the documentary evidence, the submission of the original or a certified copy thereof may be required. Pursuant to Article 76 of the Basic Regulation, the Office shall disregard facts or items of evidence, which have not been submitted within the time limit set by the Office.

(2) Where oral proceedings are held by videoconference, documents submitted by one of the parties in accordance with paragraph 1 shall be transmitted to the other parties by email to the email address specified by each of those parties in accordance with Article 56(2) of the Proceedings Regulation.

(3) Upon prior written request of a party to proceedings within specified time limits, the Office or the Board of Appeal may consent the use of technical means for the purposes of a presentation during the



videoconference. The sole object of the presentation shall be to illustrate the information contained in the case file.

Article 5 **Summons to oral proceedings**

(1) Rules on the summons to oral proceedings and the taking of evidence pursuant to Articles 50, 59 and 60 of the Proceedings Regulation shall apply mutatis mutandis to proceedings held by videoconference.

(2) Detailed information on the technology and tools used by the Office or the Board of Appeal and on the minimum technical requirements shall be communicated in writing to the parties in the summons to oral proceedings. All participants to oral proceedings shall ensure that their videoconferencing equipment meets the technical requirements specified by the Office or the Board of Appeal.

(3) In addition to the summons, participants will receive an email confirming the date, time and the videoconference contact details to be used to establish the connection (in the form of a link or by other suitable means) and containing any further appropriate information, including on the organisation of the videoconference.

Article 6 **Technical problems**

When, notwithstanding all efforts of the participants to the oral proceedings, technical problems prevent the oral proceedings by videoconference from being conducted that cannot be overcome during the videoconference so that the right of audience pursuant to Article 75 of the Basic Regulation cannot be safeguarded, the Office or the Board of Appeal will issue a new summons to oral proceedings by videoconference.

Article 7 **Non-attendance at oral proceedings by videoconference**

If a party who has been duly summoned fails to connect to the oral proceedings by videoconference for reasons other than technical ones, the proceedings may continue without that party pursuant to Article 59(2) of the Proceedings Regulation.

Article 8 **Applicability of the rules concerning oral proceedings held in person**

Without prejudice to the provisions of this decision, the rules concerning oral proceedings held in person shall apply mutatis mutandis.

Article 9 **Data Protection, Recordings, and Retention Rules**

(1) The Videoconference shall be recorded by the Office or the Board of Appeal. No image or sound recording, or retransmission, may be made of any part of the oral proceedings or consultations held by videoconference other than by the Office or the Board of Appeal.

(2) Retention of the recording shall be in compliance with the applicable Data Protection rules.

Article 10 **Publication**

This Decision shall be published in the Official Gazette of the Office.



Article 11
Entry into force

This decision enters into force on 19 February 2021 and applies to oral proceedings before the Office or the Board of Appeal the summons to which is notified on or after that date.



Martin Ekvad

President of the Community Plant Variety Office

Friday, 19 February 2021

