



CPVO

Community Plant Variety Office

Annual report 2009





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1. INTRODUCTION BY BART KIEWIET, PRESIDENT OF THE CPVO

1.1. The state of the Community plant variety protection (PVP) system



Bart Kiewiet

As far as the number of applications is concerned, 2009 was not an outstanding year for the Community plant variety protection system. Around 2 700 applications for Community plant variety rights were registered, in the order of 8 % less than the year before. It is unclear whether the decrease of applications is of a structural nature or due to the financial crisis, the effects of which for the European economies became very tangible in the report year.

Another parameter of the performance of the CPVO is the number of protected varieties. This parameter gives a positive image of the Community system. In 2009, the total number of valid Community plant variety rights has grown by more than 1 000 titles compared to last year and reached the level of more than 16 700 titles.

Apart from the execution of these core tasks, the CPVO has developed other activities which are of relevance for the proper functioning of the Community plant variety protection system. Some examples are given below.

1.2. Strategic plan

All tasks of the CPVO should be exercised in a transparent and accountable way. In November of the report year the CPVO adopted a strategic plan intended to serve that purpose by defining the mission, the stakeholders, the guiding principles and the strategic and management goals of the CPVO.

An important element of the plan is the mission statement of the CPVO:

'To foster innovation in plant varieties by high quality processing of applications for Community plant variety rights at affordable costs while providing policy guidance and assistance in the exercise of these rights for the benefit of stakeholders.'

1.3. Enforcement

Enforcement of Community plant variety rights is foremost the responsibility of the right-holders. This does not mean that the CPVO has no role to play in this respect. It is indeed of direct interest for the CPVO that rights granted under the Community PVP system are enforceable and respected. The CPVO contributes to the enforceability of Community PVPs in different ways. In the first place, it is by granting rights based on a comprehensive technical assessment of candidate varieties. New quality requirements for DUS testing in the European Community to be adopted by the Administrative Council should, where possible, further improve the quality of variety testing. Furthermore the CPVO has

developed, and will continue to do so, various activities which aim to increase awareness of the implications of the Community PVP system among the relevant target groups.

1.4. Farm-saved seed

On request and with the financial support of the CPVO, a member of staff of the Bundessortenamt, Dr Hans-Walter Rutz, has performed a study of the farm-saved seed situation in the European Community. The study was finalised in December 2008. The follow-up of the study was discussed in the first meeting of the Administrative Council of 2009. An initiative from the President of the CPVO to organise a seminar on the subject was supported by the Administrative Council. This successful seminar took place on 17 June 2009. As a follow-up, a working group has been created to analyse the difficulties breeders encounter when trying to collect remuneration for the use of farm-saved seed, and possible solutions will be discussed.

1.5. International cooperation

The CPVO is in itself the embodiment of international cooperation at the Community level. The representation of the Member States in the Administrative Council ensures that the CPVO has direct contact with the relevant national authorities on policy level. The network of technical liaison officers is the basis for the technical cooperation between the CPVO and the Member States.

Participation in the activities of UPOV enables the CPVO staff to share knowledge and experience with colleagues from all over the world. The test guidelines developed in the framework of the UPOV organisation are the basis for the test protocols issued by the Administrative Council of the CPVO.

Agreements for the takeover of technical reports have been concluded with Australia, Mexico and Japan.

The cooperation with Japan on technical matters has proved to be very fruitful for both parties. On the one hand, Japan has purchased, and will continue to purchase, test reports of the CPVO, while, on the other hand, the CPVO can take over DUS reports for varieties of Petunia and Calibrachoa; these varieties were previously tested in Japan, and are the object of Community plant variety applications.

Taiwan has expressed a wish to have a similar cooperation with the CPVO especially as regards the DUS testing of orchids (*Phalaenopsis*). This request is under review by the technical unit of the Office.

As the organisation responsible for a successful regional PVP system, the CPVO is regularly asked to share the experience of the Community system with representatives of countries that consider similar regional cooperation.

1.6. Multi-beneficiary programme

At the beginning of March 2009 the Office signed a contract with the Enlargement DG, which has given continuity to the activities of the Office with EU candidate countries in the framework of its competences.

This programme was initially set up for Turkey and Croatia. In 2008 it was extended to the former Yugoslav Republic of Macedonia and, since 2009, it is open to all countries of the western Balkan region. Albania and Serbia expressed an interest in participating in its activities.

The duration of this programme is scheduled until the end of the year 2010.

1.7. Quality Audit Service

The Quality Audit Service, created in September 2008, coordinated the drafting of the entrustment requirements and proposed a framework for operating an audit programme. After the approval by the CPVO Administrative Council of the entrustment criteria and of the assessment approach, technical experts were identified for participating in audit visits. Three examination offices participated in a test assessment. At the same time, the launch of the audit visits was prepared by establishing the sequence of assessments and by arranging the first series of audits. An advisory panel was created with the aim of reviewing the audit process whenever this is needed. Nine audits are foreseen for 2010.

1.8. Social report 2009

The social report for 2009 was presented to the Administrative Council (AC) in its meeting on 10 and 11 March 2010. The AC confirmed the conclusion of the report:

'The CPVO has a good working climate with very low absenteeism. Part-time possibilities are well taken up and allow a more flexible work organisation and better reconciliation of work and family life. The investment into training has been rather limited until now, which is in line with the limited needs identified in the career development reports.'

Angers, March 2010

Bart Kiewiet

President of the CPVO

2. FOREWORD BY UDO VON KRÖCHER, CHAIRMAN OF THE ADMINISTRATIVE COUNCIL

2.1. Introduction



Udo von Kröcher

As from the beginning of November of the report year, I have taken over the chair of the Administrative Council from Jože Ileršič. I would like to use this opportunity to thank him for the excellent way in which, during his chairmanship, he gave guidance to the work of the Administrative Council. He was an effective chairman of the AC meetings, he never tried to impose his opinion on the participants but, with a firm hand, he took care that interventions did not exceed the limits of the agenda item concerned. I am glad that he will continue to participate in the work of the AC as the representative of Slovenia.

The fact that the annual number of applications for Community plant variety rights has decreased compared with the number achieved in 2008 is, of course, a point of concern. I share the analysis of the President of the CPVO that this phenomenon is mainly a reflection of the impact of the current economic crisis on the breeding industry. Fortunately the financial situation of the CPVO has remained sound. With a free reserve of around EUR 5 million, the CPVO is able to survive a possible stabilisation of the number of applications at the level of 2009 without the need for drastic organisational measures.

The Administrative Council said farewell to a number of its (alternate) members. I would like to thank them for the contributions they made to the activities of the CPVO.

The Administrative Council is not only the governing board of the CPVO, it is also an important informal meeting place for those who have responsibilities for their national plant variety protection and listing systems. The way in which its meetings are prepared by the CPVO is very much appreciated by the members of the Administrative Council. In general, I would like to thank all the CPVO staff members for their dedication to the mission of this agency.

2.2. Analysis and assessment of the authorising officer's report

The President of the Community Plant Variety Office presented the authorising officer's report for the year 2009 to the Administrative Council at its meeting in Brussels on 10 and 11 March 2010.

The Administrative Council analysed and assessed the report and came to the following conclusions.

In 2009, the system encountered an 8% decrease in applications but, thanks to the growing number of titles in force, the financial result is nevertheless satisfactory. The reserve remained almost stable, amounting to EUR 5.6 million.

The Administrative Council is satisfied with the results of the internal audit. It takes note of the identified risks and of the recommendations made by the internal auditor and looks forward to the follow-up of these recommendations within the best term. The Administrative Council takes note of the information on *ex post* verifications, negotiated procedures and the confirmation of instructions.

The Administrative Council is satisfied with the declaration of the authorising officer that his report gives a true view and he has reasonable assurance that the resources assigned to the activities described in his report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions. The Administrative Council is satisfied that the President of the CPVO is unaware of any matter not reported which could harm the interests of the CPVO.

Udo von Kröcher

Chairman of the Administrative Council

3. THE COMMUNITY PLANT VARIETY RIGHTS SYSTEM



The introduction of a Community plant variety system in 1995 has proved to be a successful initiative that has been welcomed by the business community seeking intellectual property protection for new plant varieties.

The fact that protection, guaranteeing exclusive exploitation rights for a plant variety, is acquired in 27 countries through a single application to the Community Plant Variety Office (the Office), makes the Community system for protecting new varieties very attractive.

The Community plant variety system is not intended to replace or even harmonise national systems but rather to exist alongside them as an alternative; indeed, it is not possible for the owner of a variety simultaneously to exploit a Community plant variety right (CPVR) and a national right or patent in relation to that variety. Where a CPVR is granted in relation to a variety for which a national right or patent has already been granted, the national right or patent is rendered ineffective for the duration of the CPVR.

The legal basis for the Community plant variety system is found in Council Regulation (EC) No 2100/94 (hereafter 'the basic regulation'). On receipt of an application for a CPVR, the Office must establish that the variety is novel and that it satisfies the criteria of distinctness, uniformity and stability (DUS). The Office may arrange for a technical examination to determine DUS, to be carried out by the competent offices in Member States or by other appropriate agencies outside the Community. In order to avoid unnecessary duplication of work where such a technical examination is being, or has already been, carried out in relation to a variety for official purposes, the Office may, subject to certain conditions, accept the results of that examination.

Anyone may lodge an objection to the granting of a CPVR with the Office in writing and within specified time limits. The grounds for objection are restricted to allegations either that the conditions laid down in Articles 7 to 11 of the basic regulation are not met (distinctness, uniformity, stability, novelty or entitlement), or that the proposed variety denomination is unsuitable due to one of the impediments listed in Article 63. Objectors become parties to the application proceedings and are entitled access to relevant documents.

Except in two specific instances where a direct action against a decision of the Office may be brought before the Court of Justice, a right of appeal against such a decision lies with a Board of Appeal consisting of a chairman, appointed by the Administrative Council, and two other members selected by the chairman from a list compiled by the Administrative Council. The addressee of a decision, or another person who is directly and individually concerned by the decision, may appeal against it. After examining the appeal, the Board may exercise any power within the competence of the Office or refer the case to the Office, which is bound by the Board's decision. Actions may be brought before the Court of First Instance in Luxembourg against decisions of the Board. Decisions of the Board of Appeal and the Court are published on the Office's website.

The table in Chapter 17.4 shows the number of notices of appeal lodged with the CPVO and the decisions reached by the Board of Appeal.

Once granted, the duration of a CPVR is 25 years, or 30 years in the case of potato, vine and tree varieties. These periods may be extended by legislation for a further five years in relation to specific genera or species. The effect of a CPVR is that certain specified activities in relation to variety constituents or harvested material of the newly protected variety require the prior authorisation of the holder of the right, which authorisation may be made subject to conditions and limitations. Infringement of a CPVR entitles the holder of the right to commence civil proceedings against the perpetrator of the infringement.

Registers, which are open to public inspection, contain details of all applications received and all CPVRs granted by the Office. Every two months, the Office publishes its *Official Gazette of the CPVO*, which also provides this information as well as other material. Information on applications and titles in force are also found in a database accessible on the Office's website.

In 2009, the Commission announced that an evaluation of the CPVR system will be carried out in 2010 and 2011.

4. STRATEGIC PLAN

Following broad consultations of stakeholders, the President of the Office, Bart Kiewiet, and the Chairman of the Administrative Council, Jože Ileršič, jointly adopted, on 3 November 2009, a strategic plan for the years 2010–15. The plan defines the mission of the Office and stresses the guiding principles of quality, cost-effectiveness, timeliness and accountability. It formulates two strategic goals and four policy and management objectives.

4.1. Mission

The mission of the CPVO is to foster innovation in plant varieties by high-quality processing of applications for Community plant variety rights at affordable costs while providing policy guidance and assistance in the exercise of these rights for the benefit of stakeholders.

The stakeholders of the CPVO are the clients of the CPVO, the breeders and their representatives, persons working directly or indirectly for the CPVO, the Administrative Council as well as EU institutions and bodies and, of course, farmers, growers and the general public of consumers.

4.2. Strategic goals

The Office aims to maintain and, where possible, enhance the attractiveness of the Community plant variety protection system in comparison with other relevant intellectual property rights; and it wants to be a benchmark organisation in the management of a plant variety protection system.

4.3. Policy and management objectives

In order to achieve these strategic goals the plan sets four objectives.

- **Optimise quality and cost of the Community plant variety rights system**

The CPVO has defined quality requirements and is building up a quality audit system to make sure that only examination offices meeting the quality requirements are entrusted with technical examinations to be used for CPVO decisions. At the same time, it explores possibilities for reducing costs, especially in crop sectors where costs might be a hurdle for breeders to apply for Community rights. The e-filing services also aim at reducing costs.

- **Improve international cooperation in plant variety protection**

Many varieties protected in the EU also have a market in third countries and repetition of the technical assessment of those varieties should be avoided. The CPVO therefore plays an active role in the UPOV for harmonising the processing of applications on a worldwide scale. Harmonised testing methods allow the exchange of test reports among different countries.

- **Contribute to the enforcement of Community variety rights**

The CPVO has the ambition, within the limits of its competence and financial means, to actively support breeders in their efforts to have their rights respected by the users of their intellectual property.

- **Achieve organisational excellence**

The CPVO aims at remaining an employer of choice with a high performance culture, a responsible resource management, and safe, secure, accurate and continually available IT systems. The CPVO must maintain appropriately sized, skilled and diverse staff. It needs to project accurately the evolution of expenditures and income. Organisational health is directly related to effective communication at every level of the organisation.

4.4. Conclusion

The plan is an essential management tool and there will be regular progress reports. The evaluation carried out by Ernst and Young at the end of 2009 will serve as a baseline.

5. THE ADMINISTRATIVE COUNCIL

The CPVO is supervised by an Administrative Council (AC) comprising representatives of the Member States, the European Commission and their alternates. The AC monitors the activities of the Office. In particular, it is responsible for examining the annual report of the President, adopting the Office's budget, and granting discharge to the President in respect of its implementation. In addition it can provide advice and establish rules on working methods within the Office and issue guidelines on technical examinations, committees of the Office and general matters.

The Administrative Council met twice in 2009, on 10 and 11 March and 27 and 28 October.

At the meeting on **10 and 11 March 2009** in Brussels, the members of the Administrative Council adopted:

- the discharge of the President of the CPVO for implementation of the 2007 budget;
- the provisional accounts for 2008 and the retroactive transfer of EUR 225 295.87 from line 3 500 to line 3 000 to cover total commitments undertaken in 2008;
- the supplementary amending budget for 2009 in accordance with Article 109(3) of the basic regulation;
- the 2009 authorising officer's report (sent to the Court of Auditors);
- the multi-annual staff policy plan for 2010–12;
- the quality requirements for DUS examinations;
- the entrustments of examination offices proposed by the CPVO for the testing of six species.

They entrusted examination offices proposed by the CPVO for the testing of four species.

The members of the Administrative Council also took note of:

- the report of the President of the CPVO, its statistics and the considerable decrease of applications filed since December 2008;
- the provisional accounts for 2008 under Article 78 of the financial regulation;
- the preliminary draft budget for 2010;
- the internal audit report;
- the cash flow management policy;
- the 2008 management report by the President of the CPVO;
- the third social report by the CPVO's Human Resources Service;
- the draft work programme of the CPVO;
- the report on the cases of the Board of Appeal, its statistics and the Court of First Instance cases;
- the five year strategic plan to be adopted in autumn 2009;
- the interest shown by Ciopora in the holding of a seminar on PVR enforcement in the near future in Greece.

The members of the Administrative Council upheld the amendment of the basic regulation with a view to establishing specialised courts in all Member States for the protection of plant varieties. It will be integrated in a broader evaluation of the CPVR system that will be carried out in the next two years.

Finally, they supported the idea of holding a workshop on farm-saved seeds in June 2009.

The members of the Administrative Council **adopted by written procedure on 27 April 2009:**

- the rules on the co-financing of the research and development projects by the CPVO;
- the four new or revised CPVO technical protocols proposed by the Office.

The Administrative Council opened the meeting on **27 and 28 October 2009** in Angers with the election of the new President, Mr von Kröcher, and the new Vice-President, Mrs Bátorová, for a period of three years.

The members of the Administrative Council adopted:

- the draft 2010 budget;
- the strategic plan for 2010–15, as modified by the remarks of the AC members. The performance indicators of the plan will be re-evaluated every two years;
- four new or revised technical protocols for the following species:
 - *Triticum aestivum* L. (CPVO/TP/003/4 Rev)
 - *Pelargonium Zonale* Group and *Pelargonium Peltatum* (L.) Hér (CPVO/TP/028/2)
 - *Calluna Vulgaris* (L.) Hull (CPVO/TP/094/1 Rev 2)
 - *Citrus* L. — Group 1 — Mandarins (CPVO/TP/201/2 Rev);
- the request to confirm the validity of CPVO/TP/121/2 technical protocol for *X Triticosecale* Witt beyond 31.12.2009;
- the 2009 quality audit report on the audit of examination offices and the remuneration of the President of the Audit Advisory Board. Annual meetings will be organised with the technical experts reliable for the audits.

The members of the Administrative Council appointed:

- the 31 experts reliable for the quality audits of the examination offices;
- Mr W. Boer as President of the Audit Advisory Board for a period of three years;
- Mr B. Scholte (ESA), Mr D. Theobald (CPVO) and Mr T. Wollersen (CPVO) as members of the Audit Advisory Board for a period of three years;
- the examination offices proposed by the CPVO for the testing of 27 species.



Administrative Council meeting, October 2009

They also took note of:

- the report of the President of the CPVO. They were pleased to see that the decrease in the number of applications had slowed down since the beginning of 2009;
- the outcome of the annual appraisal of the President and Vice-President of the CPVO;
- the CPVO report on the state of finances and the budget year 2009;
- the report on the agencies by the Court of Auditors;
- the IT projects and evolutions. However, they believe that further discussions with the Member States are necessary before acting on the question of the publication of variety descriptions;
- the evaluation to come of the CPVR system, at the beginning of 2010, by the Commission;
- the modification of Regulation (EC) 1239/95.

Finally, the members of the Administrative Council supported:

- the possible participation of breeders' representatives as observers in AC meetings. The CPVO will first prepare a document establishing the rules, status and procedures of such participation;
- the creation of working groups on farm-saved seeds. They will work in parallel with the CPVR regime;
- the extension of the application deadline for the expression of interest for the entrustment of examination offices on the basis of the new quality requirements until end of November 2009.

Chairman of the Administrative Council:

Mr J. Ileršič (until 6.11.2009)

Mr U. von Kröcher (from 6.11.2009)

Vice-Chairman of the Administrative Council:

Mr U. von Kröcher (until 6.11.2009)

Ms B. Bátorová (from 6.11.2009)



Former and new AC Chairman and Vice-Chairman, October 2009

Members of the Administrative Council

Belgium	<i>Ms C. Vanslebrouck</i> <i>Ms M. Petit (alternate)</i>
Bulgaria	<i>Ms N. Ivanova</i> <i>Alternate vacant</i>
Czech Republic	<i>Mr J. Staňa</i> <i>Mr D. Jurecka (alternate)</i>
Denmark	<i>Ms H. Elberling</i> <i>Ms B. Lund (alternate)</i>
Germany	<i>Mr U. von Kröcher (Chairman)</i> <i>Ms B. Rücker (alternate)</i>
Estonia	<i>Ms P. Ardel</i> <i>Alternate vacant</i>
Ireland	<i>Mr N. McGill (until 14. 5.2009)</i> <i>Mr I. Byrne (from 14.5.2009)</i> <i>Mr D. McGilloway (alternate)</i>
Greece	<i>Mr E. Zangilis</i> <i>Mr K. Michos (alternate)</i>
Spain	<i>Mr E. Rios López (until 6.10.2009)</i> <i>Ms A. Crespo Pazos (from 6.10.2009)</i> <i>Mr L. Salaices Sánchez (alternate)</i>
France	<i>Mr R. Tessier</i> <i>Ms N. Bustin (alternate)</i>
Italy	<i>Ms I. Pugliese</i> <i>Alternate vacant</i>
Cyprus	<i>Ms S. Louka</i> <i>Mr C. Nicolau (alternate)</i>
Latvia	<i>Ms S. Kalinina</i> <i>Alternate vacant</i>
Lithuania	<i>Ms S. Juciuviene</i> <i>Alternate vacant</i>

Luxembourg	<i>Mr M. Weyland</i> <i>Mr F. Kraus (alternate)</i>
Hungary	<i>Ms A. Szenci</i> <i>Ms M. Posteiner Toldi (alternate)</i>
Malta	<i>Ms M. Delia</i> <i>Mr M. Sciberras (alternate)</i>
Netherlands	<i>Mr C. Van Winden (until 7.8.2009)</i> <i>Mr M. Valstar (from 7.8.2009)</i> <i>Mr K. Fikkert (alternate)</i>
Austria	<i>Mr H-P. Zach</i> <i>Mr L. Girsch (alternate)</i>
Poland	<i>Mr E. Gacek</i> <i>Ms J. Borys (alternate)</i>
Portugal	<i>Mr J. de Carvalho (until 20.3.2009)</i> <i>Ms F. Alfarroba (from 20.3.2009)</i> <i>Ms A. Rocha (alternate) (until 20.3.2009)</i> <i>Mr J. de Carvalho (alternate) (from 20.3.2009)</i>
Romania	<i>Mr A. Strenc</i> <i>Ms A. Ivascu (alternate)</i>
Slovenia	<i>Mr J. Ileršič</i> <i>Mr P. Grižon (alternate)</i>
Slovakia	<i>Ms B. Bátorová (Vice-Chairman)</i> <i>Ms M. Andrašková (alternate)</i>
Finland	<i>Mr M. Puolimatka</i> <i>Mr T. Lahti (alternate) (from 13.3.2009)</i>
Sweden	<i>Mr T. Olsson (from 3.3.2009)</i> <i>Ms C. Knorpp (alternate) (from 3.3.2009)</i>
United Kingdom	<i>Mr M. Wray (until 11.11.2009)</i> <i>Mr A. Mitchell (from 11.11.2009)</i> <i>Ms E. Nicol (alternate)</i>
European Commission	<i>Ms P. Testori Coggi</i> <i>Mr J. Gennatas (alternate)</i>

6. ORGANISATION OF THE CPVO

In December 2009, the staff of the Office comprised 12 officials and 36 temporary agents. Thirteen nationalities from the European Union's Member States were represented.

Under the general direction of its President, assisted by the Vice-President, the Office is organised internally into two units and three support services. There is also a fourth service responsible for quality auditing of examination offices. This service is under the administrative responsibility of the President while being independent with regard to its audit operations.

The Technical Unit has as its principal tasks: general coordination of the various technical sectors of the Community plant variety rights system; reception and checking of applications for protection; organisation of technical examinations and technical reports; organisation of variety denomination examinations; preparation for granting of rights; maintenance of the Office's registers, production of official technical publications; relations with applicants, national offices, stakeholders and international organisations; active participation in international committees of technical experts and cooperation in the development of technical analyses and studies intended to improve the system.

The Administrative and Financial Unit is active in two areas.

- Administrative Section: public procurement; organisation of the Office's publications; administration, management and monitoring of the Office's inventory of movable property and buildings; administration of logistical and operational resources with a view to ensuring the smooth functioning of the Office.
- Financial Section: management of financial transactions, treasury management, maintenance of the budgetary and general accounts and preparation of budgets and financial documents; management of fees system.



CPVO headquarters, Angers, France

The Legal Service provides legal advice to the President and other members of the Office staff, in principle on matters related to the Community plant variety rights system, but also on questions of an administrative nature; provides legal interpretations and opinions and also draws up draft legislation; participates in various CPVO committees, thus ensuring that Community procedures and legislation are respected; manages the administration of objections to applicants for CPVRs and provides the Secretariat of the Office's Board of Appeal.

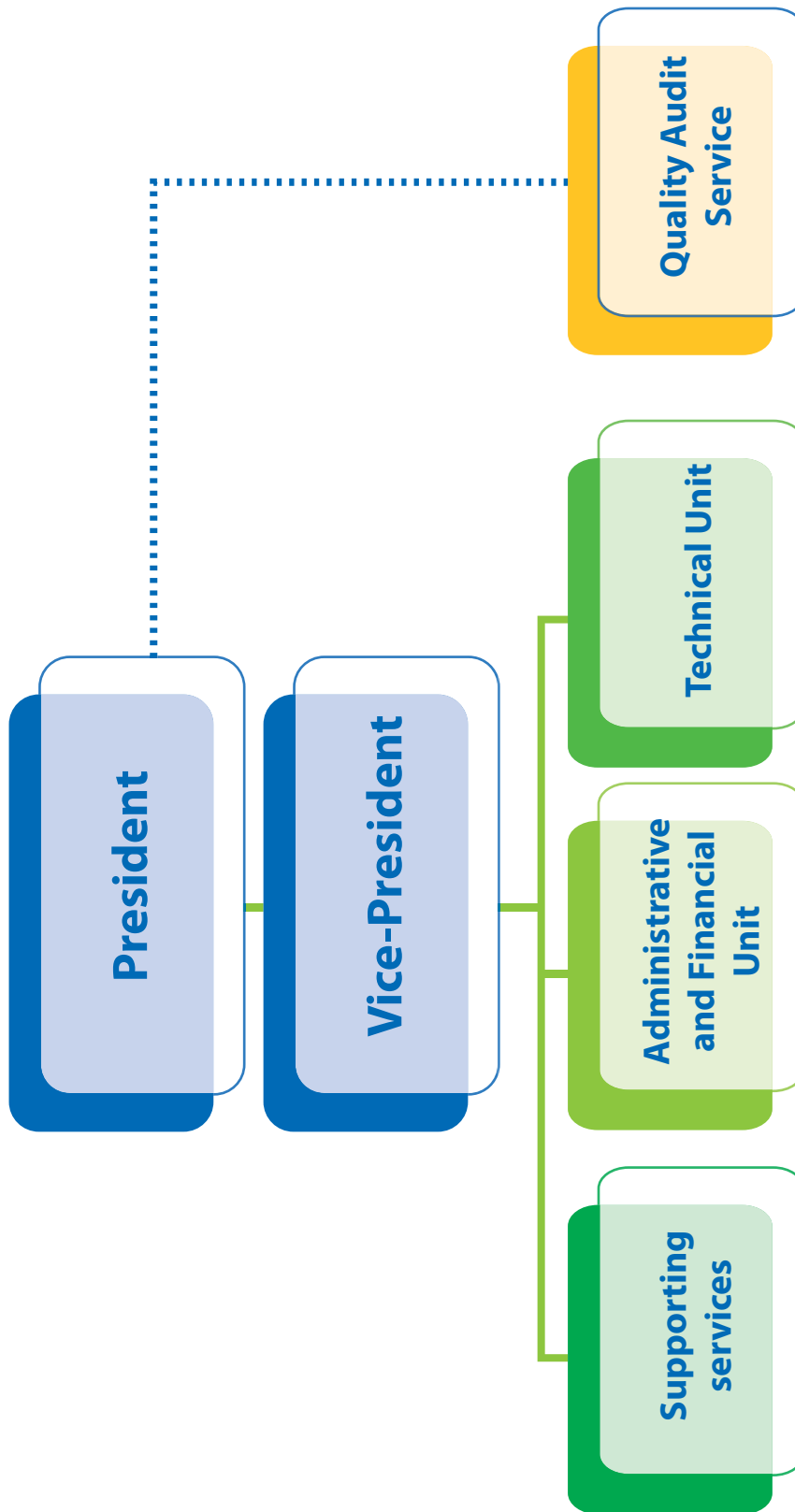
The Human Resources Service deals with the administration and management of the Office's human resources in compliance with the staff regulations of the European Commission.

The IT Service ensures that the Office runs smoothly in computing terms. Its tasks include: analysis of the Office's hardware and software requirements; design, development and installation of new programmes specific to the Office; development and maintenance of the websites of the Office; installation of standard programmes; maintenance of the computer installation and its administration; security of the computer system; helpdesk and interinstitutional cooperation in computing.

The Quality Audit Service is responsible for the verification that technical examination offices meet the quality standards required for providing services to the CPVO in the area of testing compliance of candidate varieties with the distinctness, uniformity and stability (DUS) criteria in addition to novelty.

In 2009, the CPVO prepared a social report with information concerning the turnover, work environment and social aspects of the CPVO. The different headings treated in the report were employment (staff members, recruitment procedure, staff joining or leaving the CPVO, promotions, absenteeism, gender balance), working conditions (hours worked, part-time, parental leave), training (language training, IT training, other training) and professional relations (Staff Committee). The CPVO Social Reports from 2006 to 2009 can be consulted on the CPVO website under the heading 'Annual reports'.

ORGANISATIONAL CHART OF THE CPVO



MANAGEMENT



President
Bart Kiewiet



Vice-President
Carlos Godinho



Assistant to the Vice-President
Cyrielle Antoine



ICT Infrastructure
Sébastien Beugnier



ICT Infrastructure Administrator
Jean-Louis Curnier



Board of Appeal/ Data Protection
Véronique Doreau



Head of Legal Affairs
Martin Ekvad



Human Resources Officer
Anna Isgren

SUPPORTING SERVICES



Human Resources
Deirdre Killeen



IT Developer
Patrick Lecoq



IT Developer
Laura Naïe



Webmaster
Marc Rouillard



Assistant to the President
Marleen Van de Meulebroeke



Quality Audit Team Leader
Gerhard Schuon

QUALITY AUDIT SERVICE

ADMINISTRATIVE AND FINANCIAL UNIT (AFU)



Mailroom
Sharmila Assane Ali



General Services
Thierry Cluzeau



Accounting
Valérie De Caestecker



Accounting/Assistant to Quality Audit
Laurence Dumont



Evaluation Internal Audit/Control
Roseline Fagel



Accounting
Anne-Marie Fernandez



Assistant to the Head of AFU
Béatrice Hodet



Reception
Isabelle Kirsch



Reception
Daniëlle Leenaarts



Public Relations
Bénédicte Legrand



Finances
Ekaterina Mantziaris



Accountant
James Moran



Administration/Logistic
Gil Oliveira



Public Relations/Training
Fabienne Sautoire



Mailroom
Manuel Soares Teixeira



Head of AFU
Thomas Wollersen



Denominations
Carole Bonneau



Fruit and ornamental species
Urszula Braun-Mfodecka



Denominations
Rudi Caes



Register
Pierre-Emmanuel Fouillé



Register
Anne Gardener



Register
Nadège Grantham



Ornamental species
Ghislaine Guilbert



Ornamental species
Ton Kwakkenbos



Register
Eugenio Maiorini



Deputy Head of TU
Jean Maison



Assistant to the Head of TU
Aline Noguès



Fruit and vegetable species
Sergio Semón



Head of TU
Dirk Theobald



Agricultural, fruit and vegetable species
Laurence Théodore



Ornamental species
Jens Wegner



Agricultural species
Anne Weitz

TECHNICAL UNIT (TU)

7. QUALITY AUDIT SERVICE

The Quality Audit Service is responsible for verifying if technical examination offices meet the quality standards required for providing services to the CPVO in the area of testing compliance of candidate varieties with the distinctness, uniformity and stability (DUS) criteria in addition to novelty.

7.1. Compiling entrustment requirements

Taking up elements from the strategic discussion, and involving all stakeholders, a comprehensive set of requirements defining the criteria evaluated during audits of examination offices were compiled. They were approved by the Administrative Council, together with a proposal for the transition to this new style entrustment. The start of the assessment programme was scheduled for the beginning of 2010.

7.2. Establishing assessment capacity

Next to the criteria for entrusting examination offices for DUS testing work on behalf of the CPVO, the Administrative Council approved an assessment approach, documented in the 'Entrustment procedure manual'.

Following the provisions of the manual, a pool of technical experts was established. It involves 31 individuals with long-standing experience in DUS testing and represents the expertise from 12 countries covering all crop sectors and in many cases also auditing. An advisory panel to provide assistance in running the assessment scheme was also created.

Technical experts	
John	Austin
Natascha	Balarezo
Bronislava	Bátorová
Julia	Borys
Virginie	Bertoux
François	Boulineau
Richard	Brand
David	Calvache
Andreja	Čerenak
Pedro Miguel	Chome Fuster
Henk	de Greef
Laetitia	Denecheau
Trevor	Gilliland
Frederick Niall	Green
Joël	Guiard

Andrea	Menne
Jesús	Merida
Carol	Norris
Hilary	Papworth
Daniel	Palmero
Radmila	Šafaříkova
Luis	Salaices
Erik	Schulte
Elizabeth	Scott
Swenja	Tams
Amanda	van Dijk
Nico	van Marrewijk
Johan	Van Waes
Arnold	van Wijk
Brian George	Waters
Jennifer	Wyatt

Scope includes	Agricultural species	Vegetable species	Ornamental species	Fruit species	All
Number of experts	21	14	12	7	31
With auditing experience	14	10	7	3	22

Audit Advisory Board Members		Organisation
Wubbo	De Boer (Chair)	OHIM
Bert	Scholte	ESA
Bruno	Etavard	Ciopora
Thomas	Wollersen	CPVO
Dirk	Theobald	CPVO

7.3. Launching the assessment programme

In order to test the approach, a series of three mock assessments was conducted. This allowed the acquisition of experience in various fields, both for the audit team and for offices visited.

In view of the audit visits scheduled to start in 2010, examination offices were requested to apply for participation in this new form of entrustment. The sequence of the individual assessments was determined for the triennial cycle. The first set of assessments was organised by dispatching audit announcements and identifying the technical experts for individual visits.

8. RESEARCH AND DEVELOPMENT

Following the rules established by the Administrative Council in 2002 for financially supporting projects of interest to the Community plant variety rights system, the Office received several applications for co-financing R & D projects. Under this chapter the Office provides updated information about projects under way and follow-up measures taken in 2009 on projects already concluded.



Roses

European collection of rose varieties: This project was finalised in 2006. The outcome was presented to rose breeders and the professional organisations, ESA and Ciopora, in the form of a questionnaire. A response was received from 22 rose breeders, representing 75 % of all rose applications. In relation to the professional organisations, replies were received from Ciopora, Plantum and ESA. From these reactions, it can be concluded that the majority of the rose breeders, as well as their professional organisations, were in favour of maintaining a DNA sample of their candidate varieties on a voluntary basis. In relation to the DNA fingerprinting of these official samples, the answers were more diverse. Some breeders showed interest, others not. There were some reservations in relation to the costs involved and in relation to the evolution of techniques in time. With that in mind, the implementation of the project will focus on the DNA sample-keeping of the original sample submitted for technical examination as well as the use of such samples in relation to the enforcement of rights.

Development and evaluation of molecular markers linked to disease resistance genes for tomato DUS testing (option 1a): The project was concluded at the end of 2007 and a final report subsequently submitted to the CPVO. The final report of the project expressed a very positive outcome, with molecular markers showing a very close correlation to physiological tests for all the asterisked disease resistance characteristics included in the study. The report's conclusions were first discussed at the CPVO vegetable experts meeting in January 2008, where it was agreed that the project partners (Spain, France, the Netherlands) would carry out a ring trial with a set of reference and candidate tomato varieties during 2008 to look in particular at the reliability of the biomolecular tests in relation to the uniformity criteria, and at a possible future implementation of such tests for DUS testing in this crop.

The outcome of the 2008 ring trial between the three project partners (the Netherlands, France, Spain) indicated the reliability of DNA techniques to identify genes currently used for conferring resistance to *Meloidogyne incognita* (nematodes) and tomato mosaic virus (TMV). Consistent results were obtained, which would fulfil the distinctness criteria as well as the uniformity criteria if a large number of plants were used in the disease resistance test as stipulated in the CPVO tomato technical protocol. The big question remained though as to whether DNA marker techniques were suitable to supplement or replace traditional bioassay techniques within technical examinations and thereby be implemented into the CPVO protocol and UPOV guideline for tomato as a technique for observing nematode and TMV resistance. Following discussions in various fora, it became evident that the present markers which formed the basis of the R & D project were only useful for the genes being used in the current breeding programmes to confer resistance to nematode and

TMV. Particularly with respect to nematode resistance, it was recognised that breeding effort is likely to move forward soon into other genes instead of the current Mi1-2 gene; thus in such situations the current DNA marker techniques would be obsolete. Another issue that was taken into account was the increase in the costs of the DUS tests caused by running the DNA marker techniques on a regular basis as part of those tests. Therefore, after analysis, the CPVO concluded that the DNA marker techniques for disease resistance observations were possibly not ripe and that their integration into the CPVO tomato protocol was not desirable taking into account the limitations outlined above. The DNA marker techniques may however become more advanced in the coming years; and they can presently prove their worth in two particular areas, namely: (i) to test rapidly a tomato reference variety collection in order to get it well structured and to define the susceptible and resistant set of varieties; (ii) to confirm possible inconsistencies found in the bioassay for doubtful plants and thereby provide a more solid decision on uniformity.



Peach tree DUS trials, Italy

Management of peach tree reference collections: The project is two years into its three-year duration. Its aim is to create and manage a peach tree database, via the establishment of an EU *Prunus persica* tree collection structured in varietal groups, using a common database containing phenotypic, visual and molecular descriptions. During the calendar year, the project partners carried out the following work: (i) compilation and creation (updating) of morphological data; (ii) compilation and creation of digital data; (iii) compilation of molecular data; (iv) molecular analysis of varieties; (v) filling of variety database. A final meeting between the project partners is foreseen to take place in Hungary in August 2010. The results obtained to date show encouraging signs that the project's objectives will be accomplished; if so, an updated database containing details of several hundred peach varieties in the reference collections of the four current CPVO examination offices will become available, leading to a rationalisation in the selection and maintenance of reference varieties, thereby improving the quality and performance of peach technical examinations.

Construction of an integrated microsatellite and key morphological characteristic database of potato varieties in the EU common catalogue: This project started in April 2006. The final report was received in spring 2008. The partners involved are Germany, the Netherlands, Poland and the United Kingdom. The project delivered a database including marker profiles of potato varieties, key morphological characteristics and a photo library with light sprout pictures. The aim is to rapidly identify plant material of a vegetatively propagated crop where reference material has to be submitted every year and to ease the management of the reference collection. A discussion paper for the follow-up meeting in January 2010 has been prepared by the Office. At the request of the breeders' association, the possible use of molecular means for variety identification for enforcement purposes has been taken into account.

9. BUDGET AND FINANCE

9.1. Overview — Outturn

The economic crisis which prevailed in 2009 did not leave the Office untouched. The number of applications (particularly for ornamentals) was reduced by 8 % as compared to 2008. In spite of this downturn, the Office managed to achieve a budget outturn ⁽¹⁾ close to equilibrium.

Net outturn for the year:	million EUR
Budgetary revenue (a)	11.78
Budgetary expenses (b)	11.85
Budgetary outturn (c) = (a) – (b)	– 0.07
Non-budgetary receipts (d)	0.27
Net outturn for the budgetary year 2009 (e) = (c) + (d)	0.20

The achievement of this result was possible due to the effect of the new fee structure, and due to the significant savings which were made in discretionary expenses (such as IT investment and recruitment). Furthermore, non-urgent projects were postponed where possible.

9.2. Revenue

The Office's revenue mainly comprises various fees paid by applicants for Community plant variety rights and by holders of Community plant variety rights, and revenue from interest on bank accounts. The total revenue collected in 2009 was EUR 11.8 million.

The principal types of revenue collected in 2009 are broken down as follows:

	Var. (%)	2009	2008
Fees	18	11.39	9.65
Bank interest	– 80	0.16	0.75
Other revenue	– 9	0.24	0.22
Total revenue	11	11.8	10.6

The total fees received in 2009 amounted to EUR 11.4 million, representing an increase of 18 % as compared with the previous year. This was offset to a large extent by a significant reduction in interest income due to a decrease of interest rates to historically low levels in 2009. The Office received further revenue through sales of the *Official Gazette of the CPVO*, administrative operations and grants for the multi-beneficiary programme. The total for these receipts was EUR 0.24 million in 2009.

⁽¹⁾ The difference between revenue and expenditure, including carryovers of commitments to subsequent years and commitments carried over from the previous year that were not used and therefore cancelled.

9.3. Expenditure

The total amount for recorded expenditure and commitments carried over was EUR 11.8 million, compared with EUR 11.7 million in 2008. The increase in staff costs was more than offset by savings in administrative expenditure as regards the new building which was inaugurated in 2009.

	Var. (%)	2009	2008
Staff expenditure	8	5.2	4.8
Administrative expenditure	- 33	1.4	2.1
Operational expenditure	10	5.3	4.8
Total expenditure	1	11.8	11.7

Staff expenditure increased in 2009 due to limited recruitment and career development. The salary grid for staff of the Office, being governed by the levels set by the European Council, is also subject to changes in line with inflation and career progression. Administrative expenditure has seen a significant drop in 2009 due to the completion of the new office building. Operational expenditure which consists mainly of remunerations for examination offices increased in line with budgetary expectations.

9.4. Conclusion

With a balanced outturn in 2009, a treasury of EUR 15.5 million of which EUR 5.6 million is free of any liability, the financial situation of the CPVO remains healthy. Nevertheless, in a situation of slower growth of the Community system, it is important to contain costs at proportionate levels.

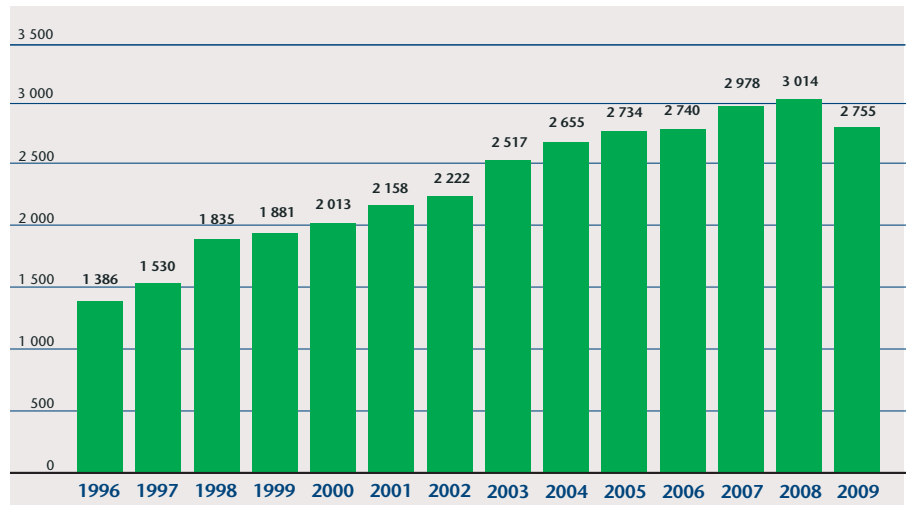
10. TRENDS AND DEVELOPMENTS

10.1. Applications for Community plant variety protection

In 2009, the Office received 2 755 applications for Community plant variety protection. As illustrated in Graph 1, this represents a decrease of 7.9 % compared with the previous year.

Graph 1

Evolution of the annual number of applications for Community plant variety protection (1996–2009)

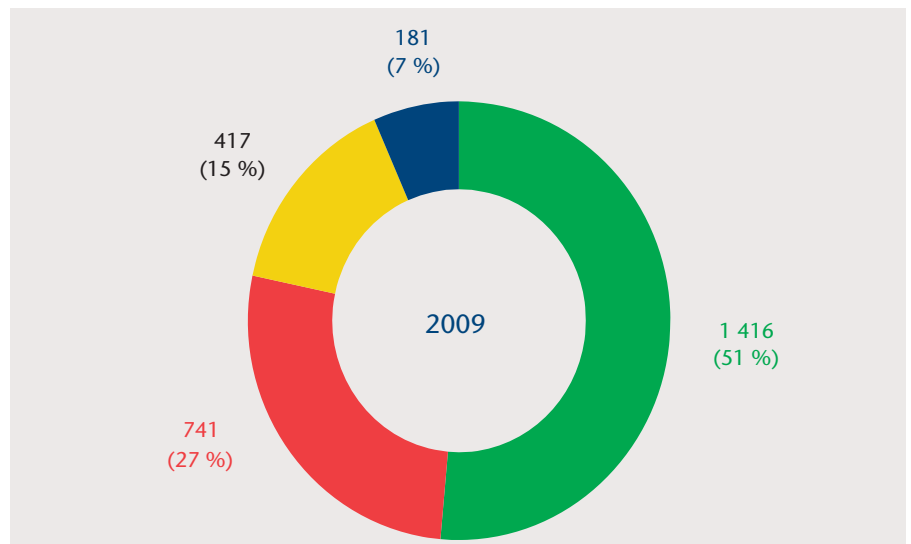


Graph 2 represents shares of the crop sectors in number of applications received in 2009.

Graph 2

Shares in application numbers per crop sector

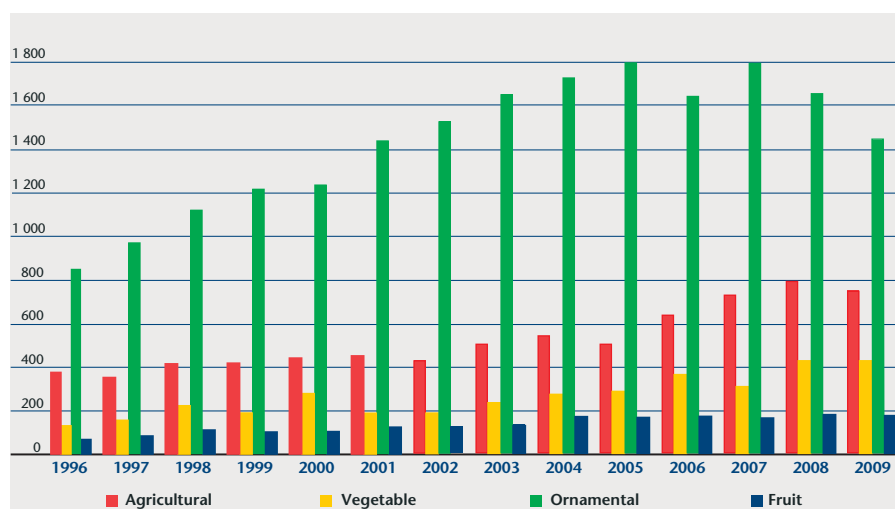
- Ornamental
- Agricultural
- Vegetable
- Fruit



Only vegetable species, as illustrated in Graph 3, show an increase in number of applications (+ 1.5 %). Fruit crops had the same number of applications as in 2008, whilst a decrease in application numbers was recorded for agricultural crops (– 7.0 %), and for ornamentals (– 13.2 %).

Graph 3

Evolution of application numbers per crop sector (1996–2009)



In 2009, 615 applicants filed applications for Community plant variety rights. The table below lists the 50 most frequent users of the Community system and their respective number of applications filed in 2009. These top 50 applicants filed, in total, 1 492 applications, which is equal to 54.2 % of all applications received in that year. These figures illustrate that the Community plant variety rights system is not only attractive to global players but also to medium and smaller-sized breeding companies.

Name of applicant	Country	Number of applications filed in 2009
Syngenta Crop Protection AG	CH	83
Seminis Vegetable Seeds Inc.	US	78
Rijk Zwaan Zaadteelt en Zaadhandel BV	NL	77
KWS Saat AG	DE	77
Nunhems BV	NL	70
Pioneer Overseas Corporation	US	66
RAGT 2n SAS	FR	51
Monsanto Technology LLC	US	49
Florist De Kwakel BV	NL	47
Limagrain Verneuil Holding SA	FR	42
Enza Zaden Beheer BV	NL	41
Paraty BVBA	BE	39
Anthura BV	NL	36
Pioneer Hi-Bred International Inc.	US	35
W. Kordes' Söhne Rosenschulen GmbH & Co. KG	DE	33
Nils Klemm	DE	33
Fides BV	NL	33
Vilmorin SA	FR	29
Tobias Dümmer	DE	26

Viveros Provedo SA	ES	25
Testcentrum voor Siergewassen BV	NL	23
Meilland International SA	FR	23
Norddeutsche Pflanzenzucht Hans-Georg Lembke KG	DE	23
Vletter & Den Haan Beheer BV	NL	23
DLF-Trifolium A/S	DK	22
SARL Adrien Momont et Fils	FR	22
Ball Horticultural Company	US	21
Suntory Flowers Limited	JP	21
RijnPlant BV	NL	20
Deliflor Royalties BV	NL	18
Terra Nova Nurseries Inc.	US	18
Serasem SNC	FR	18
Nickerson International Research SNC	FR	18
KWS Lochow GmbH	DE	17
Grünwald Veredelings BV	NL	17
Elsner Pac Jungpflanzen GbR	DE	16
Agriom BV	NL	16
Sakata Seed Corporation	JP	16
Pieters Joseph & Luc BVBA	BE	16
SARL Agro Selection Fruits	FR	15
Euro Grass Breeding GmbH & Co. KG	DE	15
De Ruiter Intellectual Property BV	NL	15
Dekker Breeding BV	NL	14
Euralis Semences SAS	FR	14
Deutsche Saatveredelung AG	DE	14
Handelskwekerij Verheijen VOF	NL	14
Interplant Roses BV	NL	14
Innovaplant Zierpflanzen GmbH & Co. KG	DE	13
Knud Jepsen A/S	DK	13
HILD Samen GmbH	DE	13

Applicants from outside the European Union must appoint a representative with registered office or with domicile inside the EU to handle their applications. Sometimes mother companies located outside the EU appoint their daughter company in the EU; this is the case for Monsanto, Pioneer, Syngenta, Sakata and Limagrain. EU applicants do not have such an obligation; however, some of them prefer commissioning the application procedure to an external agent. In 2009, 1 130 applications (41.2 %) were filed by 100 procedural representatives. The table below lists the 15 most 'active' procedural representatives for 2009 having submitted in total 848 applications.

Name of procedural representative	Country	Number of applications filed in 2009
Royalty Administration International CV	NL	218
Hortis Holland BV	NL	99
Monsanto Holland BV	NL	78
Pioneer Hi-Bred SARL	FR	75
Syngenta Seeds BV	NL	71
Deutsche Saatgutgesellschaft mbH Berlin	DE	68
Monsanto SAS	FR	43
Wuesthoff & Wuesthoff	DE	36
GPL International A/S	DK	29
Moerheim New Plant BV	NL	27
CNB (U.A.)	NL	24
Pioneer Genetique SARL	FR	24
Syngenta Seeds GmbH	DE	19
Sakata Ornamentals Europe A/S	NL	17
Future Plants Licentie BV	NL	15

10.1.1. Ornamental species



Chrysanthemum DUS trials, the Netherlands

With 52 % of the applications received in 2009, ornamentals continue to represent the largest group of applications filed for Community plant variety rights. As can be seen in Graph 3 (p. 31), the ornamental sector remains the most important in terms of number of applications each year, even though a sharp decline in application numbers was recorded for ornamentals in two consecutive years (– 216 applications in 2009 and – 153 applications in 2008).

There are various reasons for this decrease, such as the economic conditions or other systems for protecting intellectual property (e.g. trademarks).

Table 1 shows the 10 most important ornamental crops in terms of the number of applications. Changes in the importance of most of these crops — with the exception of orchids and *Impatiens* — seem to be rather accidental. In 2009, *Chrysanthemum* and *Rose* remain, in that order, by far the most important species. For orchids in general, and *Phalaenopsis* and *xDoritaenopsis* in particular, a sudden dramatic increase was observed in 2006–07, followed by a steep decline. As for *Impatiens*, the decline may mark a trend.



Phalaenopsis DUS trials, the Netherlands

Table 1: Number of applications of the 10 most important ornamentals

GENUS	2002	2003	2004	2005	2006	2007	2008	2009	Total
<i>Rosa</i> L.	182	191	218	168	180	154	169	155	1 417
<i>Chrysanthemum</i> L.	181	186	147	160	197	167	158	162	1 358
<i>Petunia</i> Juss. and <i>Callibrachoa</i> Llave & Lex.	104	51	71	87	70	99	53	73	608
<i>Pelargonium</i> L'Her. ex Aiton	61	72	69	114	77	66	67	49	575
<i>Lilium</i> L.	60	65	85	64	63	59	44	56	496
<i>Impatiens</i> L.	104	63	66	98	56	51	39	18	495
<i>Gerbera</i> L.	48	79	44	66	45	39	77	63	461
<i>Phalaenopsis</i> Blume & <i>xDoritaenopsis</i> hort.	5	18	41	11	63	109	77	50	374
<i>Dianthus</i> L.	41	58	35	57	38	34	34	29	326
<i>Osteospermum</i> L.	25	39	53	56	39	31	40	28	311

The most surprising increase in the number of applications in 2009 was for *Euphorbia hypericifolia* L. (syn. *Chamaesyce hypericifolia* (L.) Millsp.). Until 2008 only three applications were received, whereas only last year 17 varieties of this species entered the CPVO register. The picture below shows the 'new species'.

It is also interesting to note that there are differences in the time kept for the legal protection of varieties of different genera. At the end of 2009, out of the 15 277 rights granted in total for ornamental varieties, 9 324 (61 %) are still active. The table below gives information on the number of rights still in force for a few species. Consistent differences between species can be noticed. There might be a number of reasons for this phenomenon, such as a change in consumer preferences, breeding trends, differences in intensity of breeding activities or the time and expenses required to develop new varieties.



Chamaesyce hypericifolia

Genus	Rights granted	Rights still in force: absolute (relative)
<i>Chrysanthemum</i> L.	1 719	918 (53 %)
<i>Clematis</i> L.	90	87 (97 %)
<i>Dahlia</i> Cav.	220	163 (74 %)
<i>Gerbera</i> L.	546	152 (28 %)
<i>Impatiens</i> L.	702	344 (49 %)
<i>Lilium</i> L.	589	342 (58 %)
<i>Pelargonium</i> L'Her. ex. Aiton	944	521 (55 %)
<i>Petunia</i> Juss. and <i>Callibrachoa</i> Llave & Lex.	634	408 (64 %)
<i>Rosa</i> L.	2 193	1 239 (56 %)
<i>Tulipa</i> L.	245	111 (45 %)

One particularity of the ornamentals is the great diversity of species; most of them have a rather low number of applications. The great diversity of ornamental species becomes evident when looking at chapter 10.3.2.7 (p. 49). The vast majority of the taxa are ornamentals.

The Office may base its decision to grant Community plant variety rights on a technical examination carried out in the frame of a previous application for plant breeders' rights in an EU Member State. The table below shows the percentage of reports taken over during the last 10 years.

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Percentage of report takeovers	17.8	16.5	11.3	8.0	9.4	5.9	7.2	5.0	6.3	4.1

As some national protection systems are subsidised, the fees for the technical examination may be considerably lower. One can assume, therefore, that applicants take advantage of that situation, especially when there is a big increase in examination fees. In 2007, the examination fees were modified, resulting in a dramatic increase from EUR 1 200 in 2006 to EUR 2 140 in 2009 for *Kalanchoe*, *Pelargonium* and *Saintpaulia*. However, as can be seen from the table below, the percentage of reports taken over has only significantly increased for *Pelargonium* applications, suggesting that the additional administrative burdens related to an advance application for plant breeders' rights in an EU Member State do not outweigh the increased financial burden.

Species	Percentage of report takeovers in 2006	Percentage of report takeovers in 2009
<i>Kalanchoe</i> Adans.	0	0
<i>Pelargonium</i> L'Her. ex. Aiton	26	42
<i>Saintpaulia</i> H. Wendl.	0	0



Barley DUS trials, Finland



Cereals DUS trials, Finland

10.1.2. Agricultural species

The year 2009 showed a decrease of 7 % in the number of applications.

The 10 most important species in the agricultural sector are the same as in the previous years: maize at the top again, followed by wheat and potato. In the fourth position, oilseed rape overtook barley for the first time. However, the general distribution of applications over species remains stable in 2009.

The following table shows the number of applications received per year over all agricultural species since 2003.

All agricultural species	2003	2004	2005	2006	2007	2008	2009	Total
Total	495	536	499	610	733	791	741	4 405

Table 2 shows the number of applications for the 10 most important agricultural species for the last seven years.

Table 2: Number of applications of the 10 most important agricultural species

Species	2003	2004	2005	2006	2007	2008	2009	Total
<i>Zea mays</i> L.	184	169	181	212	248	222	219	1 435
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	42	75	54	76	91	87	76	501
<i>Solanum tuberosum</i> L.	66	50	34	84	66	94	87	481
<i>Brassica napus</i> L. emend. Metzg.	40	41	29	44	71	85	96	406
<i>Hordeum vulgare</i> L. sensu lato	52	52	44	45	55	69	64	381
<i>Helianthus annuus</i> L.	28	27	40	30	38	49	46	258
<i>Lolium perenne</i> L.	4	6	16	20	11	26	20	103
<i>Triticum durum</i> Desf.	13	13	13	8	14	13	17	91
<i>Pisum sativum</i> L. sensu lato	9	11	21	11	14	14	10	90
<i>x Triticosecale</i> Witt.	7	15	7	7	14	13	7	70
Total	445	459	439	537	622	672	642	3 816

Today, the agricultural sector covers 84 species, amongst those are also varieties of water plants for bio mass production such as *Azolla caroliniana* or *Eichhornia crassipes* or new interspecific hybrids such as *Hordeum chilense x Triticum turgidum* and grass species such as *Bromus sitchensis* or *Poa trivialis*.

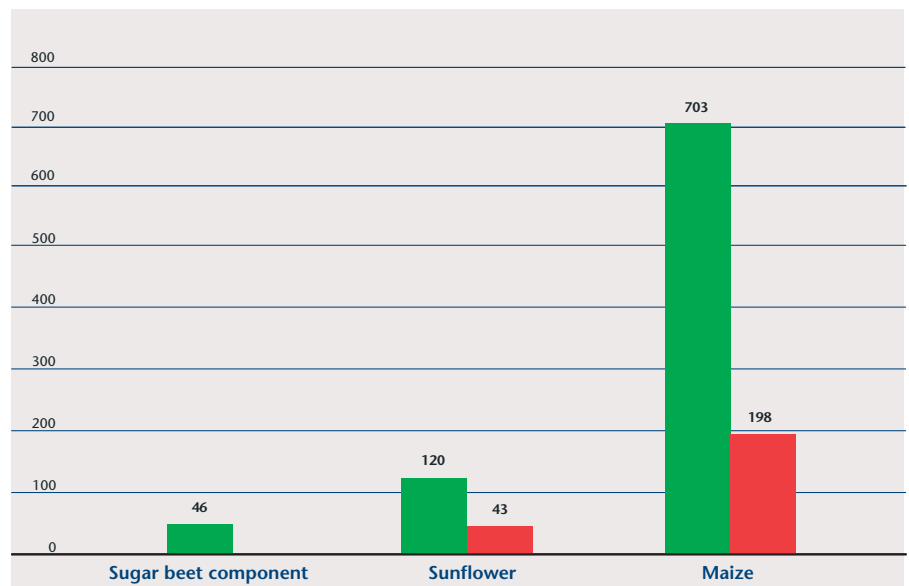
With regard to the technical examination of candidate varieties, the DUS test has in many cases already been carried out in the framework of the procedure for national listing, or it is in the process of being carried out at the time of the application. The DUS report can therefore be taken over from entrusted examination offices, according to Article 27 of the implementing rules (Commission Regulation (EC) No 874/2009), if it constitutes a sufficient basis for a decision.

The ratio of technical examinations of agricultural species organised on behalf of the Office to takeovers has remained fairly stable during the past years. On average, 80 % of the reports can be taken over from examination offices.

In general, the number of technical examinations on behalf of the Office is more important for varieties of species with inbred lines, such as maize, sunflower and sugar beet components, as the following graph illustrates. Since the year 2000, sugar beet components are always tested on behalf of the CPVO. It is the only species in the agricultural sector where a centralised testing procedure has been put in place. For sunflower applications the number of technical examinations compared to takeover of DUS reports is more important than for maize applications; for these species the large majority of applications received concern parental lines.

Graph 4
Ratio of takeovers to technical examinations (2006–09)

- Takeover
- Technical examination



The following table refers to the comparison between the number of varieties registered into the common catalogue (CC) of agricultural species in 2009 and the number of applications for Community plant variety rights (CPVR) received during the same year for four important agricultural species.

Species	Number of varieties listed in CC in 2009	Number of applications for CPVR received in 2009	%
Oilseed rape	101	96	95
Wheat	129	76	59
Potato	87	87	100
Ryegrass	69	20	29

Although the list of varieties behind the figures in both columns is not 100 % identical, the figures give a good indication of the different attitudes of breeders depending on the species. Potato breeders clearly look for a high degree of protection, maybe due to the fact that this is a vegetatively propagated species and thus particularly susceptible to illegal propagation. The low percentage of applications concerning recently registered ryegrass varieties is generally reflected in the small number of *Lolium* applications compared to other species over the years (see Table 2, p. 36).

10.1.3. Vegetable species

Although vegetable applications in the first three months of the year were substantially lower than those at the same period in 2008, numbers picked up rapidly during the middle part of the year, giving the impression that 2009 was going to be another bumper year for the vegetable sector. However, figures dropped in the fourth quarter, with the overall result that there was only a slight increase (+ 1.5 %) in vegetable applications in 2009. Nonetheless, this was a new all-time record for this sector. In an opposite trend to what was seen in 2008, parent line applications decreased to just 91 (- 35 %), whereas hybrid applications almost doubled in numbers to 125 during the course of 2009. When



Endive DUS trials, the Netherlands



Carrot DUS trials, the Netherlands

one considers that applications for national listing in EU Member States either saw a slight decrease or on the whole remained stable, it is encouraging to see that many more vegetable varieties to be found in commerce are now being protected by Community plant variety rights. This demonstrates that breeders view Community rights as a valuable tool to safeguard against infringements of their varieties, particularly in the light of recent developments such as the vegetative propagation of hybrids and the current tough economic climate.

Over the decade as a whole, annual applications for Community rights to vegetable varieties rose by 70 % (from 246 to 417), demonstrating the increasing value and effectiveness of the system by vegetable breeders.

Table 3: Number of applications for major vegetable species (2000–09)

Species	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
<i>Lactuca sativa</i>	62	41	53	80	106	94	93	101	117	109	856
<i>Lycopersicon esculentum</i>	5	12	11	17	32	30	68	27	55	65	322
<i>Phaseolus vulgaris</i>	33	14	20	26	21	28	28	18	21	14	223
<i>Pisum sativum</i>	24	10	15	16	16	19	28	16	23	13	180
<i>Capsicum annum</i>	13	8	4	5	8	15	12	23	47	20	155
<i>Cucumis sativus</i>	4	2	4	10	3	5	4	20	27	40	119
<i>Brassica oleracea L. botrytis</i>	16	8	4	5	8	2	13	4	13	6	79
<i>Cucumis melo</i>	2	1	3	4	9	9	9	13	14	12	76
<i>Allium porrum</i>	12	4	2	4	3	13	6	7	9	13	73
<i>Cichorium endivia</i>	6	1	3	4	7	16	11	4	14	4	70
<i>Spinacea oleracea</i>	0	11	1	3	9	9	1	4	6	15	59
<i>Brassica oleracea L. alba DC</i>	16	0	0	7	2	5	10	3	7	8	58
<i>Allium cepa</i>	2	13	0	9	0	8	6	5	2	9	54
<i>Cynara scolymus</i>	0	8	13	3	10	4	0	0	3	7	48
<i>Daucus carota</i>	2	4	5	1	1	6	0	6	10	4	39

Another trend which the Office has identified over the last 12 months is the sudden increase in vegetable rootstock applications, and in particular for tomato. With evermore resources being dedicated by seed companies to developing new vegetable varieties with resistance to an increasing number of pests and diseases, some breeders have sought to combat infection via the use of rootstocks, which means that the variety being grafted onto it can develop its full potential in organoleptic qualities. Regarding the issue of pest and disease resistance, concerted efforts are now being made by vegetable seed companies via the ESA (European Seed Association) to harmonise the nomenclature and testing of these. In this respect, the CPVO welcomes these moves by the industry in order that both breeders and registration/authorities move in step; the Office will follow closely the advances made by the industry and revise its technical protocols accordingly so that DUS testing reflects the most recent advances made in vegetable pest and disease resistance breeding.

At its annual meeting with vegetable experts and the ESA, the CPVO discussed ways of reducing the duration and costs of vegetable technical examinations. The main conclusions of the discussion were (i) to avoid having overly long tables of characteristics and maintain only those which are of use for identification purposes on a regular basis — this will avoid the need to make unnecessary observations on characteristics which are more for descriptive purposes and thus allow the examination office to save time and resources; (ii) in those cases where a variety appears to be clearly distinct, uniform and stable after one period year and the indications are that a second growing period would not throw up any conflicting results, then, upon consultation with the CPVO, the technical examination can be concluded at that stage. It is hoped that once these improvements in the procedure are implemented via revisions of CPVO vegetable protocols, examination offices will save time and costs, which can subsequently benefit breeders.

10.1.4. Fruit species

The number of fruit CPVR applications in 2009 remained the same as in the previous year, with a total of 181. Peach maintained its pre-eminent position as the major fruit species, whilst there was an increase in apple applications but a halving of strawberry applications.



Apple DUS trials, France



Grapevine

Blueberry species, which had been one of the major fruit crops in the last five years with almost 50 applications filed over that time, saw no new applications at all in 2009. It remains to be seen if this was a trend crop reflecting market preferences or if figures will pick up again in the coming decade. The number of fruit applications managed to stay stable in 2009 due to a strong showing from grapevine, but also due in large part to a single dispatch of 25 peach applications from a new applicant to the Community rights system (Viveros Provedo SA, ES); had it not been for this, fruit figures in 2009 could have seen a drop of more than 10 %, so it will be interesting to see what the tendency will be in 2010.

Over the decade as a whole, annual applications for Community rights of fruit varieties almost doubled from 94 to 181, demonstrating the increasing value and effectiveness of the system by fruit breeders.

Table 4: Number of applications for major fruit species (2000–09)

Species	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
<i>Prunus persica</i>	22	27	35	36	51	32	53	33	50	64	403
<i>Fragaria x ananassa</i>	15	27	13	26	7	25	21	19	36	18	207
<i>Malus domestica</i>	17	17	26	18	10	30	18	15	21	29	201
<i>Prunus armeniaca</i>	6	6	10	11	22	8	29	26	13	8	139
<i>Vitis L.</i>	7	1	10	3	11	3	14	4	3	15	71
<i>Rubus idaeus</i>	1	0	3	10	4	1	4	14	12	5	54
<i>Prunus salicina</i>	1	4	1	8	11	2	3	8	6	2	46
<i>Prunus avium</i>	2	8	3	1	8	6	5	5	2	3	43
<i>Vaccinium corymbosum</i>	0	0	0	0	8	4	0	12	16	0	40
<i>Pyrus communis</i>	8	3	4	8	1	8	3	1	2	2	40
<i>Citrus L.</i>	4	5	0	3	7	4	3	3	3	2	34
<i>Actinidia Lindl.</i>	1	5	4	3	0	3	2	4	8	3	33

In spite of the fact that annual applications for fruit varieties in 2009 remained exactly the same as in the previous year, one possible effect of the important increase in 2008 of examination fees for fruit applications is that there has been a shift in the number of technical examinations the CPVO organises with respect to the number of technical reports it requests to 'takeover' from other EU authorities, due to the fact that there was already a prior application for national PVR/ listing for the same variety. Whereas in 2008 the CPVO organised 139 technical examinations in comparison to requesting 42 'takeovers' (3.3:1 ratio), this figure changed dramatically in 2009 to 102 technical examinations compared to 79 'takeovers' (1.3:1 ratio). In the current economic climate, and taking into account that, depending on the national authority, the total cost of a technical examination for a fruit variety can be several hundred euros instead of several thousand euros if it was firstly applied and consequently tested by the CPVO, it is understandable that certain applicants have chosen to take this route to save money, whilst all the while ensuring that they still have protection throughout the EU via Community rights.

by Germany, France and the United States. Also in 2009, only minor fluctuations in the origin of applications were observed. The map below gives an overview of the number of applications received from different European countries in 2009. Table 5 gives the application numbers for the 10 most important countries outside Europe.

Table 5: The 10 most important non-European countries from which CPVR applications were filed in 2009

Country of main applicant	Number of applications received in 2009
USA	333
Japan	57
Australia	25
Israel	18
New Zealand	17
Taiwan	9
Thailand	8
Canada	7
Costa Rica	5
Argentina	5

10.2. Grants of protection

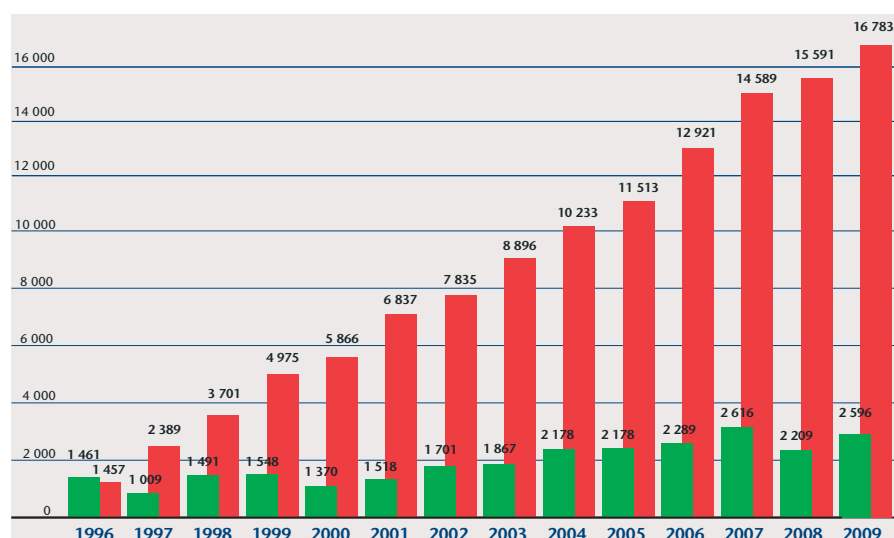
In 2009, the Office granted nearly 2 600 titles for Community protection. A detailed list of all protected varieties (status as of 31 December 2009) is published in the separate annex to this annual report.

By the end of 2009, there were 16 783 Community plant variety rights in force. Graph 5 shows the number of titles granted for each year from 1996 to 2009 and illustrates the continuous increase of varieties under protection within the Community system.

Graph 5

Community plant variety rights granted and rights in force at the end of each year (1996–2009)

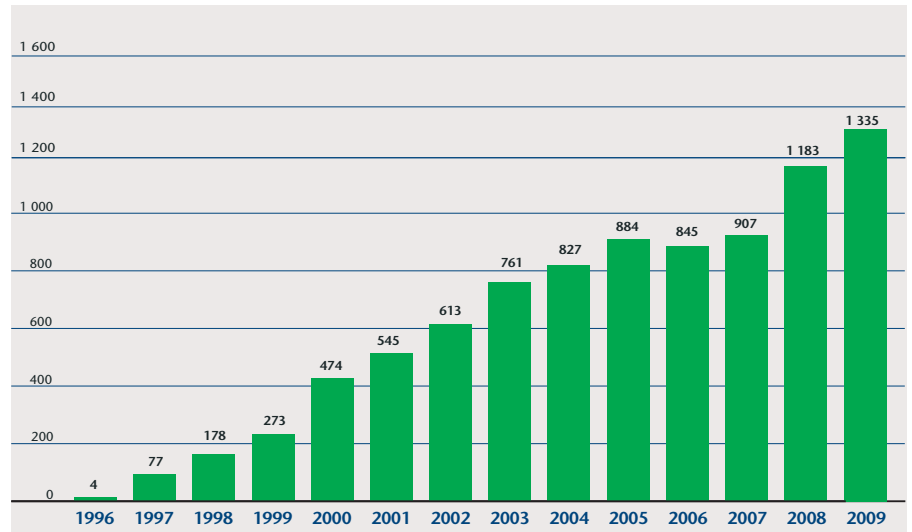
- Titles granted
- Varieties under protection



The development in the number of Community plant variety rights in force must be seen in conjunction with the number of rights surrendered (Graph 6). The number of rights granted still greatly outweighs the number of surrenders despite the remarkable increase of rights surrendered in the last two consecutive years. The increase of surrenders as such is not a surprise.

Graph 6

Number of surrenders of Community plant variety rights (1996–2009)

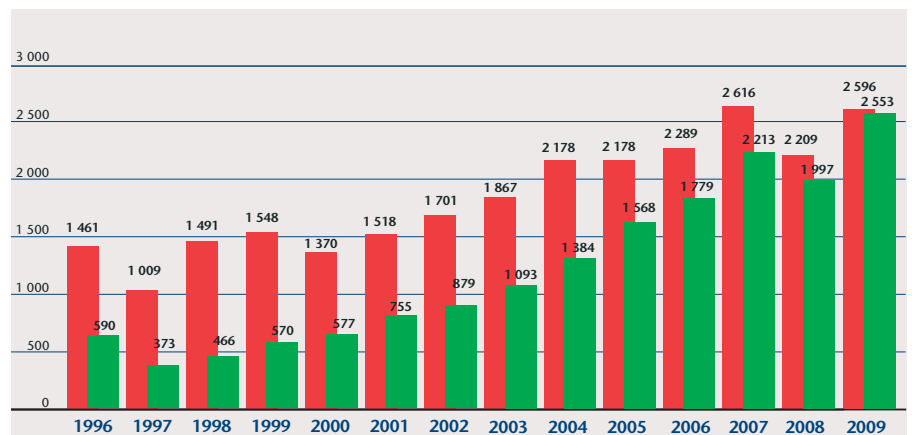


Graph 7 shows the number of rights granted in the years 1996 to 2009 that are still in force. As can be seen, the majority of rights are surrendered within a few years. The Community plant variety rights system is still too young to say how many varieties will actually enjoy their full term of protections of 25 or 30 years. However, figures suggest that it will not be more than one third of all the varieties once protected. This also suggests that the current period of protection might generally be rather well adapted to the needs of breeders. This does not exclude that for some individual species crop specific situations might exist in that respect.

Graph 7

Number of rights granted each year from 1996 to 2009 and still in force on 31.12.2009

● Number of rights granted
● Number of rights in force



10.3. Technical examinations

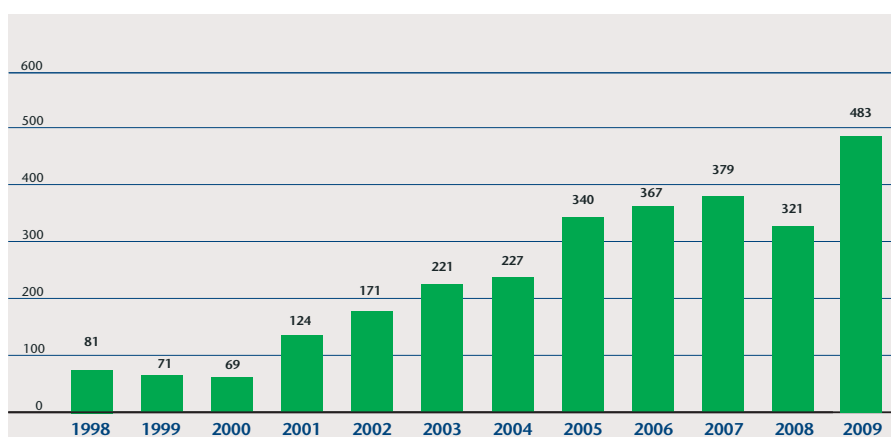
In 2009, the CPVO initiated 1 792 technical examinations, 94 examinations fewer than in 2008. The decrease is linked to the decreasing number of applications, in particular the decrease of applications for ornamentals. For vegetable and agricultural crops, a large number of technical examinations have already been carried out under the framework of the national listing procedure. Changing number of applications for these crops thus affects the number of examinations only marginally.

10.3.1. Sales of reports

Authorities of other countries regularly base their decisions on applications for plant variety rights on technical examinations carried out on behalf of the CPVO (international cooperation, takeover of reports). Graph 8 illustrates the number of reports which the Office made available to other authorities.

Graph 8

Evolution in the number of DUS testing reports made available to other PVR authorities (1998–2009)



By the end of 2009, the Office had sold 2 854 technical reports to 36 countries. The most important countries are given in Table 6. In 2009, South American countries continued to noticeably increase the number of their requests for reports to the Office, especially in the ornamental sector. Kenya should also be mentioned as it requested a high number of reports (mainly roses) and it now appears in the top 10 of requesting countries.

Reports made available concern mainly ornamental species. The Office has set up a flexible approach in respect of the UPOV agreed fee for making reports available: requesting countries can pay this fee directly but they can also opt for the alternative according to which the Office sends the invoice to the applicant in the requesting country, where the report is sent free of charge.

Table 6: The 10 most important countries having bought DUS technical reports from the CPVO (1998–2009)

Country	Number of reports bought
Israel	439
Ecuador	289
Brazil	268
Switzerland	267
Norway	212
Colombia	207
Kenya	183
New Zealand	175
Canada	161
France	106

10.3.2. Relations with examination offices

10.3.2.1. Thirteenth annual meeting with the examination offices

In 2009, the CPVO held its 13th annual meeting with its examination offices, which is also attended by representatives from the European Commission, the UPOV office as well as the breeders' organisations Ciopora and ESA. The main subjects of discussion were:

- the evaluation of a decision of the CPVO's Administrative Council of 2006 on the status of plant material;
- public access to national technical protocols for DUS via the CPVO home page;
- applicants' access to trials of DUS tests and technical verifications;
- the keeping of records of growing conditions in technical examinations;
- language regime of the DUS report and the variety description;
- reduction of costs/duration of fruit DUS testing;
- remuneration of examination offices for cancelled requests for technical verifications;
- publication of variety description on the CPVO home page;
- publication of photos of protected varieties taken by examination offices.



Thirteenth examination offices' annual meeting, Angers

Furthermore, the participants were informed as to the state of affairs regarding the online application system, the publication of the official Gazette in electronic form, the launching of the audit programme for examination offices as well as variety denominations and the involvement of external experts in DUS testing at examination offices.

10.3.2.2. Preparation of CPVO protocols

In 2009, experts from the Member States' examination offices were invited to participate in elaborating technical protocols for DUS testing which were subsequently approved by the Administrative Council (see Chapter 5). The following meetings were held.

- Agricultural experts: a draft protocol was discussed for *Triticum aestivum*; *Lolium ssp.*, oil seed rape and *Festuca ssp.*
- Fruit experts: the drafts of the technical protocols for mandarins, apple root stocks and avocado were discussed.
- Vegetable experts discussed protocols for four species: pea, maize, Japanese bunching onion and cauliflower.
- Ornamentals experts discussed in the frame of UPOV meetings the three new or revised technical protocols: roses, pelargonium and *Calluna vulgaris*.

10.3.2.3. Further development of the centralised database for variety denominations

In 2005, the Office released a website to test proposals for variety denominations for similarity. Today, the database contains more than 600 000 denominations from national listing and plant variety rights registers of the EU and UPOV Member States. It also contains the register of ornamental varieties commercialised in the Dutch auction system in the Netherlands. The database is available on the basis of a restricted access to national authorities of EU Member States, the European Commission and UPOV. Since 2007, a new version of the website also gives EU-based applicants and their procedural representatives the possibility to pre-check their denomination proposals for similarity. In 2009, the jurisprudence section has been developed. It contains a selection of decisions of the variety denomination committee of the Office with the purpose to illustrate the implementation of the guidelines of the Administrative Council on the subject-matter. All users have access to this section where a searching tool enables them to look for examples according to various criteria.

The Office has also developed a new project of cooperation on denomination testing with the purpose of harmonising within the EU the implementation of the rules for suitability of variety denominations. EU National Authorities will have the possibility to ask online for CPVO advice as to the acceptability of their new denomination's proposals. In case of controversial opinions, exchanges of views could take place but the decision will remain in the hands of the authority where the application for registration has been made. The project will be launched at the beginning of 2010.

10.3.2.4. Crop experts meetings

Two meetings with agricultural experts were held in 2009 to discuss trial design and uniformity standards in wheat, the revision of the oilseed rape technical protocol and the preparation of technical protocols for *Lolium* and *Festuca* species.

One fruit experts meeting was held to discuss: a partial revision of the mandarin protocol and the creation of CPVO technical protocol for apple rootstocks and avocado; phytosanitary documentation and harmonisation according to species; continuing discussions on the feasibility for the reduction in duration/costs of fruit technical examinations; analysis on whether to undertake possible new R & D project for apple mutation groups.

One vegetable experts meeting was held to discuss: the revision of the technical protocols for pea, cauliflower and maize/sweet/pop corn and the creation of a CPVO technical protocol for Japanese bunching onion; characteristics in CPVO vegetable protocols; ESA discussion paper on vegetable disease resistances; different germination standards in parent lines; the possibility to have a new CPVO vegetable open day for 2010; final conclusion and analysis on whether to adopt some of the measures emanating from the R & D project 'Harmonisation of resistance tests to diseases of vegetable crops in the European Union' and its resultant ring trial; continuing discussions on the feasibility for the reduction in duration/costs of vegetable technical examinations.

10.3.2.5. Seminar of farm-saved seeds

Farmers in the EU enjoy for certain crops and under certain conditions the so-called farmer's privilege on farm-saved seeds allowing them to propagate protected varieties without paying any or only a reduced licence fee to the holder of the plant breeder's rights. This exemption is based upon Article 14 of Council Regulation 2100/94; there is a comparable legal basis at the national level in different EU Member States. At a seminar held in Brussels, the outcome of a survey on the implementation of this law was held. The survey revealed large differences in collecting information from farmers on the use of such farm-saved seeds. The different approaches applied in the Member States were discussed.



Grass experts meeting, October 2009, Angers

10.3.2.6. Collaboration with Japan

In 2006, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) and the CPVO began cooperation in respect of technical examinations. In the framework of this cooperation Japanese experts visited the CPVO and its examination offices in Germany, the Netherlands and the United Kingdom during 2008. Members of the CPVO and the German Bundessortenamt visited the Japanese examination office working on behalf of the MAFF. These technical visits aimed at a harmonisation of the conduct of technical examinations of several ornamental species. As a result, the MAFF began at the end of 2007 to base its decisions on applications for plant variety rights on technical examinations carried out by European examination offices. In turn, the Administrative Council of the Office approved the use of results of DUS examinations carried out in Japan for *Petunia* and *Calibrachoa* varieties as from 2008. In 2009, the contractual basis for taking over Japanese technical reports has been prepared.

10.3.2.7. New species procedure

In 2009, the Administrative Council of the CPVO entrusted the examination office for the following botanical taxa forming so-called 'new species inventories':

Aloe L. x *Gasteria* Duval
Andromeda polifolia L.
Azolla caroliniana Willd.
Brassica oleracea L. convar. *acephala* (DC.) Alef.
Bromus sitchensis
Dierama K. Koch
Diervilla sessilifolia Buckley
Echeveria DC.
Eichhornia crassipes (Mart.) Solms
Evolvulus nuttallianus Roem. & Schult. (syn. *Evolvulus pilosus* Nutt.)
Exochorda racemosa (Lindl.) Rehder
Gasteria Duval
Geum quellyon Sweet x *G. rivale* L.
Hordeum chilense x *Triticum turgidum*
Isotoma axillaris Lindl. (syn: *Laurentia axilláris* (Lindl.) E. Wimm.)
Jasminum multiflorum (Burm. f.) Andrews
Justicia carnea Lindl.
Kniphofia Moench
Lemna minor L.
Leucophyllum candidum I.M. Johnst.
Leucothoe fontanesiana (Steud.) Sleumer
Ligustrum delavayanum Har.
Lobularia Desv.
Lobularia maritima (L.) Desv.
Lophomyrtus x ralphii (Hook. f.) Burrett
Metasequoia glyptostroboides Hu & W. C. Cheng
Mimulus aurantiacus Curtis
Nasturtium officinale W. T. Aiton
Passiflora xbelotii hort. ex Pépin
Passiflora xkewensis Goldring
Poa trivialis L.
Portulaca oleracea L.
Prunus cerasifera Ehrh. x *Prunus armeniaca* L.
Prunus cerasifera Ehrh. x *Prunus persica* (L.) Batsch



Seeding of vegetable trials, the Netherlands

Prunus cerasus L. x (*Prunus cerasus* L. x *Prunus maackii* Rupr.)
Prunus fruticosa Pall. x *Prunus serrulata* Lindl. var. *Lannesiana*
Prunus incana (Pall.) Batsch x *Prunus tomentosa* Thunb.
Sansevieria trifasciata var. *laurentii* (De Wild.) N. E. Br.
Sisyrinchium atlanticum E. P. Bicknell
Tamarix tetranda Pall. ex M. Bieb.
Triticum monococcum L.
Uncinia rubra Colenso ex Boott
Vaccinium vitis-idaea L.
Zea mays L. (sweet and popcorn)

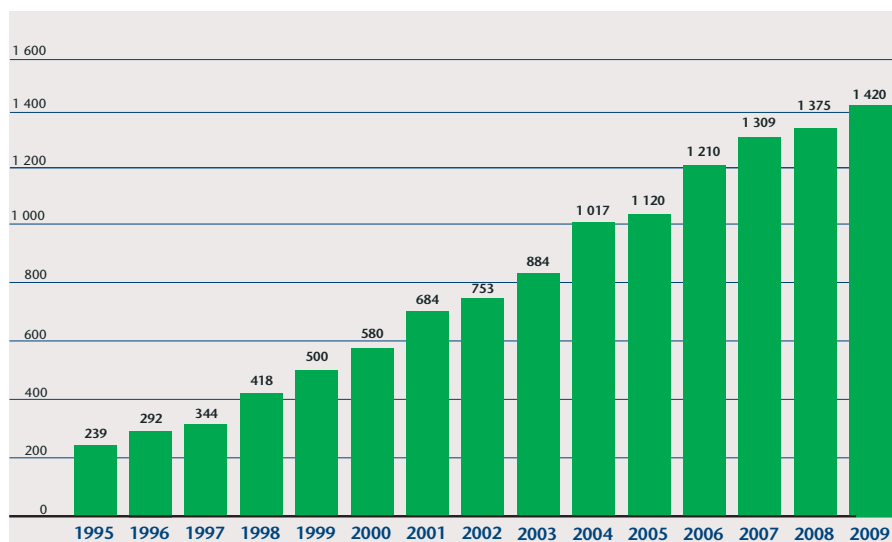
Re-entrustment for *Aster* L. and *Gypsophila* L.

As a consequence of the termination of cooperation with the Israeli examination office for *Aster* L. and *Gypsophila* L., the Administrative Council decided to entrust the examination office in the Netherlands with the two genera.

Graph 9 illustrates the evolution in the number of botanical taxa for which the CPVO received applications. At the end of 2009, applications for varieties belonging to 1 420 taxa were filed with the Office.

Graph 9

Evolution of the number of botanical taxa for which the CPVO received applications (1995–2009)



10.3.2.8. List of examination offices working on behalf of the CPVO

Centre wallon de recherches agronomiques (CRA-W)
Département 'Production Végétale'
Rue de Liroux 9
5030 Gembloux, BELGIUM
<http://www.cra.wallonie.be>

Instituut voor Landbouw- en Visserijonderzoek (ILVO)
Eenheid Plant — Teelt en Omgeving
Caritastraat 21
9090 Melle, BELGIUM
<http://www.ilvo.vlaanderen.be>

Executive Agency of Variety Testing
Ministry of Agriculture and Forestry
Field Inspection and Seed Control
125 Tsarigradsko Shosse Bld, Block 1
BG-1113 Sofia, BULGARIA
<http://iasas.government.bg>

Central Institute for Supervising and Testing in Agriculture (UKZUZ)
Hroznová 2
656 06 Brno, CZECH REPUBLIC
<http://www.ukzuz.cz>

Ministry of Food, Agriculture and Fisheries
The Danish Plant Directorate
Skovbrynet, 20
2800 Kgs. Lyngby, DENMARK
<http://www.pdir.fvm.dk>

University of Aarhus
Danish Faculty of Agricultural Sciences
Department of Horticulture
Kirstinebjergvej 10
5792 Aarslev, DENMARK
<http://www.agrsci.org>

Bundessortenamt (BSA)
Osterfelddamm 80 Postfach 610440
30604 Hannover, GERMANY
<http://www.bundessortenamt.de>

Agricultural Research Centre
Variety Department
Teaduse 4/6
Saku
75501 Harjumaa, ESTONIA
<http://pmk.agri.ee>

Department of Agriculture, Fisheries and Food (DAFF)
Office of the Controller of Plant Breeders' Rights
Backweston Farm
Leixlip Co. Kildare, IRELAND
<http://www.gov.ie/daff>

Ministry of Rural Development and Food
Variety Research Institute of Cultivated Plants
57400 Sindos-Thessaloniki, GREECE
<http://www.varinst.gr>

Oficina Española de Variedades Vegetales (OEVV)
Ministerio de Medio Ambiente y Medio Rural y Marino
Calle Alfonso XII No 62, 2a planta
28014 Madrid, SPAIN
<http://www.mapya.es>

Groupe d'étude et de contrôle des variétés et des semences (GEVES)

Rue Georges Morel

BP 90024

49071 Beaucouzé Cedex, FRANCE

<http://www.geves.fr>

Ente Nazionale Sementi Elette (ENSE)

Via Ugo Bassi 8

20159 Milano MI, ITALY

<http://www.ense.it>

Centro di Ricerca per la Frutticoltura (CRA-FRU)

Via di Fioranello 52

00134 Roma RM, ITALY

<http://frutticoltura.entecra.it>

Centro di Ricerca per la Viticoltura (CRA-VIT)

Viale XXVIII Aprile 26

31015 Conegliano Veneto TV, ITALY

<http://www.inea.it/isv/>

Ministry of Agriculture of the Republic of Latvia

Seed control department

Lielvarde street 36/68

LV-1006 Riga, LATVIA

<http://www.vaad.gov.lv>

Central Agricultural Office (OMMI)

Keleti Karoly U. 24

1024 Budapest, HUNGARY

<http://www.ommi.hu>

Naktuinbouw

Sotaweg 22, Postbus 40

2370 AA Roelofarendsveen, NETHERLANDS

<http://www.naktuinbouw.nl>

Bundesamt für Ernährungssicherheit

Institut für Sortenwesen

Spargelfeldstraße 191 Postfach 400

1226 Wien, AUSTRIA

<http://www.ages.at>

Centralny Ośrodek Badania Odmian Roślin Uprawnych (Coboru)

63-022 Słupia Wielka, POLAND

<http://www.coboru.pl>

Direcção-Geral de Agricultura e Desenvolvimento Rural (DGADR)

Divisão Sementes, Variedades e Recursos Genéticos

Edifício 2 — Tapada de Ajuda

1349-018 Lisboa, PORTUGAL

<http://www.dgadr.pt>

State Institute for Variety Testing and Registration (ISTIS)

61 Marasti Av., Sector 1

P.O. Box 32-35

RO-011464 Bucharest, ROMANIA

<http://istis.ro>

Central Controlling and Testing Institute in Agriculture (UKSUP)

Variety Testing Department

Matúškova 21

83316 Bratislava, SLOVAKIA

<http://www.uksup.sk>

Finnish Food Safety Authority (Evira)

Mustialankatu, 3

FI-00790 Helsinki, FINLAND

<http://www.evira.fi>

Swedish Board of Agriculture (Statens jordbruksverket)
Gjuterigatan 4
SE-551 82 Jönköping, SWEDEN
<http://www.sjv.se>

Plant Variety Rights Office (PVRO)
Food and Environment Research Agency (FERA)
White House Lane, Huntingdon Road
Cambridge CB3 0LF, UNITED KINGDOM
<http://www.fera.defra.gov.uk>

National Institute of Agricultural Botany (NIAB)
Ornamental crops
Huntingdon Road
Cambridge CB3 0LE, UNITED KINGDOM
<http://www.niab.com>

Servicio Nacional de Inspección y Certificación de Semillas (SNICS)
Av. Presidente Juarez 13
Col. el Cortijo
54000 Tlalnepantla, MEXICO
<http://www.sagarpa.gob.mx>

10.3.2.9. Participation in international fairs



Salon du végétal 2009, France

The CPVO considers its participation in international fairs and open days at examination offices as a useful tool to promote the Community plant variety rights system, to have direct contact with applicants and to provide information to growers. In 2009, the Office participated in three fairs.

- At the end of January 2009, the Office attended the 'IPM' in Essen, Germany. The stand was shared with German colleagues from the Bundessortenamt. Even though the fair is open to the entire field of horticulture the focus lies with ornamentals.
- The 'Salon du Végétal', which takes place at the end of February in Angers, France, is a fair mainly for growers of ornamental plants in which the Office regularly participates together with the French examination office GEVES.
- The Dutch 'Hortifair', which takes place in October in Amsterdam, is another regularly attended event of the ornamental world. Here, the stand was shared with Naktuinbouw and VKC (Vaste Keurings Commissie).

10.4. Technical liaison officers (TLOs)

The CPVO tries to have a close and efficient working relationship with its examination offices and the national offices of the Member States. Therefore, in 2002, the Office formalised a network of contact persons on a technical level in the Member States, the so-called 'technical liaison officers' (TLOs). The TLOs play an important role in the relationship of the Office with its examination offices.

The following principles apply:

- the TLOs are appointed by the relevant member of the Administrative Council;
- there is only one TLO per Member State;
- any modification as far as the TLO is concerned is communicated to the CPVO through the relevant member of the Administrative Council.

The role of the TLO can, in general, be defined as being the contact point for the Office on a technical level. This means the following in particular.

- Invitations for the annual meeting with the examination offices are, in the first place, addressed to that person. If the TLO is not attending, he/she should communicate the person who is attending that meeting to the CPVO.
- Invitations for expert groups on a technical level are initially addressed to the TLO who is in charge of nominating the relevant expert to the CPVO. Once an expert group has been set up, further communications or invitations are directly addressed to the relevant expert designated.
- The TLO should be the person on a national level who is in charge of distributing information of technical relevance in respect of the Community plant variety rights system within his or her own country/authority, e.g. informing colleagues (crop experts) on conclusions drawn at the annual meeting of the examination offices, etc.
- Technical inquiries, which are sent out by the CPVO in order to collect information, should be addressed to the TLOs. Examples are:
 - new species procedures, in order to prepare the proposal for the nomination of examination offices to the Administrative Council;
 - questionnaires in respect of closing dates, quality requirements, testing of GMOs, etc.



Technical liaison officers and CPVO staff, December 2009, Angers

- For communications of a general technical nature, the Office contacts the TLOs first. Specific problems, such as in respect of a certain variety, may be discussed in the first instance directly at the level of the crop expert at the examination office and of the relevant expert at the CPVO.

The latest version of the list of appointed TLOs (status as at 31 December 2009) is as follows:

Bronislava Bátorová	UKSUP Central Controlling and Testing Institute in Agriculture Department of Variety Testing Variety Testing Department Slovakia
Julia Borys	Coboru Centralny Ośrodek Badania Odmian Roślin Uprawnych Poland
Elena Craita Checiu	State Office for Inventions and Trademarks Romania
Maureen Delia	Seeds and Other Propagation Material Unit Plant Health Department Rural Affairs and Paying Agency Division Ministry of Rural Affairs and the Environment Malta
Gerhard Deneken	Ministry of Food, Agriculture and Fisheries Plant Directorate Department of Variety Testing Denmark
Dionysia Fasoula	Ministry of Agriculture, Natural Resources and Environment Department of Agriculture Cyprus
José Fernandes	DGADR Direcção-Geral de Agricultura e Desenvolvimento Rural Divisão Sementes, Variedades e Recursos Genéticos Portugal
Krieno Fikkert	Raad voor Plantenrassen The Netherlands
Barbara Fürnweger	Bundesamt für Ernährungssicherheit Austria
Zsuzanna Füstös	Central Agricultural Office Hungary
Primož Grižon	Ministry of Agriculture, Forestry and Food Phytosanitary Administration of the Republic of Slovenia Slovenia
Joël Guiard	GEVES Groupe d'étude et de contrôle des variétés et des semences France
Sigita Juciuvienė	Lithuanian State Plant Varieties Testing Centre Lithuania
Sofija Kalinina	Ministry of Agriculture of the Republic of Latvia Seed Control Department Latvia
David McGilloway	DAFF Department of Agriculture, Fisheries and Food Office of the Controller of Plant Breeders' Rights Ireland

Paivi Mannerkorpi	European Commission Directorate-General for Health and Consumers Unit 1 — Biotechnology and plant health Belgium
Pavla Nikolova	Executive Agency of Variety Testing Ministry of Agriculture and Forestry Field Inspection and Seed Control Bulgaria
Kaarina Paavilainen	KTTK — Plant Production Inspection Centre Seed Testing Department Finland
Eha Puusild	Estonian Agricultural Board Variety Department Estonia
Mara Ramans	PVRO Plant Variety Rights Office Department for Environment Food and Rural Affairs (DEFRA) United Kingdom
Beate Rücker	BSA Bundessortenamt Germany
Radmila Safarikova	UKZUZ Central Institute for Supervising and Testing in Agriculture Fruit Testing Station Czech Republic
Luis Salaices Sánchez	OEV Oficina Española de Variedades Vegetales Ministerio de Medio Ambiente y Medio Rural y Marino Spain
Achilios Sotiriou	Ministry of Rural Development Variety Research Institute of Cultivated Plants Greece
Karin Sperlingsson	Statens Utsädeskontroll Sweden
Domenico Strazzulla	MIPAF Ministero delle Politiche Agricole e Forestali Dipartimento della Qualità dei Prodotti Agroalimentari e dei Servizi Italy
Camille Vanslebrouck	OPRI Office de la Propriété Intellectuelle Belgium
Marc Weyland	Administration des Services Techniques de l'Agriculture Service de la Production Végétale Luxembourg

10.5. The multi-beneficiary programme on the participation of Albania, Turkey, Croatia, Serbia and the former Yugoslav Republic of Macedonia in the Community plant variety rights system

Since 2006, the CPVO participates in the so-called multi-beneficiary programme aiming at preparing candidate countries for the accession to the European Union. This programme was initially set up for Turkey and Croatia; in 2008 it was extended to the former Yugoslav Republic of Macedonia, and since 2009 it is open to all countries of the western Balkan region. Albania and Serbia expressed an interest in participating in its activities.

In the framework of this programme, representatives of the national plant variety rights authorities were invited to participate in crop expert meetings regularly held at the CPVO. Furthermore, experts from the candidate countries were trained at the examination offices already working on behalf of the CPVO. Additionally, EU experts trained staff in the candidate country.

The workshops and seminars are adapted to the situation in each country. While for the recent candidate countries activities were focused on fact finding and fundamental issues, experts from experienced countries received specialised training such as the GAIA evaluation method that has been taught to Croatian experts.

For Croatia in particular, the activities of the programme have helped to align the national authorities to the Community plant variety system and it shall be pointed out as a sign of success that in 2010, the first training activity for the other candidate countries will take place in Croatia.

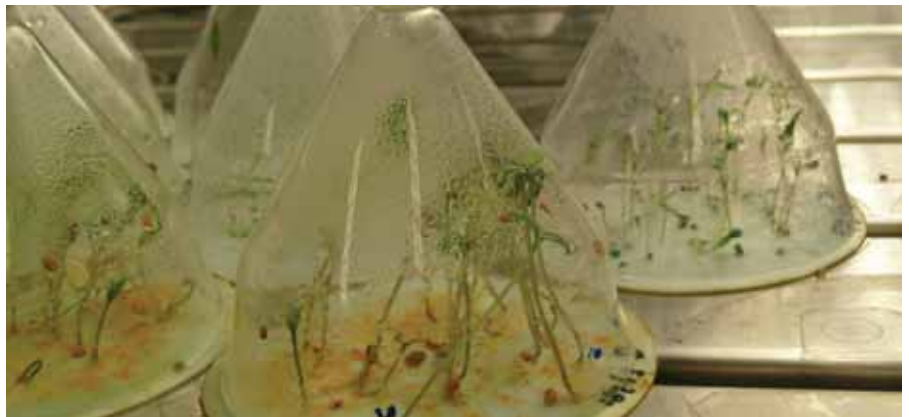
11. ENFORCEMENT

11.1. Seminars

In recent years the Office has organised seminars on the enforcement of plant varieties in Brussels, Warsaw and Madrid. The last few seminars were organised in 2008 by the Office in collaboration with national authorities in Sofia and in Bucharest. Officials, lawyers, breeders, farmers and staff from the Office presented different aspects of enforcing Community and national plant variety rights under Community and national law. The discussions that took place showed that this subject is of as much interest in the two most recent Member States of the European Union as it is in other EU Member States. All presentations made during the seminars are published on the website of the Office. Breeders' organisations have shown appreciation for these seminars as they raise important issues on the agenda of both national authorities and other stakeholders. In 2009 it was decided that a seminar on enforcement of plant variety rights should be organised in Athens in 2010.

11.2. Farm-saved seed

Article 14 of the basic regulation provides an exemption to the scope of rights provided for in Article 13.2 of the basic regulation. Farmers may for certain species and under certain conditions use seeds of protected varieties from the harvest for the purpose of sowing them in the coming season. Experience shows that farmers make use of this exemption to a large extent, but in many cases no remuneration is paid to the holders of the protected varieties. However, the collection of remuneration for farm-saved seeds (FSS) is more efficient in some Member States than in others. For this reason the Office commissioned Dr Hans-Walter Rutz of the Bundessortenamt to make a study of the collection of FSS and of how it differs in various Member States. The conclusion of the study shows that the lack of efficiency in collecting remuneration is mainly due to the difficulties holders face in getting adequate information on the use of FSS. Another issue raised in the conclusions is that the definition of small farmers (exempted from paying remuneration for the use of FSS) is obsolete and difficult to apply.



Seed germination test, the Netherlands

As a follow-up to the study, the Office organised, in 2009, a meeting for the purpose of analysing the situation to see if improvements in the collection of information concerning the use of FSS could be made under the present rules or if amendments of the rules would be opportune. Breeders, farmers, Member States and the Commission participated in the meeting as well as a lawyer presenting the applicable rules and how the rules have been interpreted by the European Court of Justice. Examples of efficient collection systems were given as well as systems which do not function very well. The conclusion of the meeting confirmed that problems in collecting information on the use of FSS do exist, that there is a need to amend, or even abolish, the definition of small farmers and that the definition of 'own holding' could be improved. Farmers stressed that a high level of compliance with the obligation for farmers to give information and pay for the use of FSS will only be reached if the system in place is simple and user-friendly. Participants to the meeting agreed that the details of possible changes would be best discussed in working groups. Presentations made during the meeting are available on the website of the Office.

On the basis of a proposal of the President of the Office, the Administrative Council decided that the Office should take the initiative to create a working group with representatives from all the relevant stakeholders with the aim of analysing the details of how the collection of remuneration for FSS could be improved and whether legislative initiatives would be appropriate. The Office has invited stakeholders to participate in meetings to take place in 2010.

11.3. Database containing court cases on PVR

One of the challenges in enforcing plant variety rights is that the legal procedure as well as the interpretation of the law can be rather difficult. The studying of case-law is in many cases a helpful tool when interpreting the law and the procedural tools available. For this reason the Office has created a database on its website containing case-law on plant variety right cases from courts in the EU. The full text of the cases in their language of origin as well as a summary in English can be uploaded from the database. In addition, a search tool can be used to facilitate the finding of relevant cases. The Office is working with a contributor from each Member State providing the Office with new cases. The Belgian lawyer, Mr Philippe de Jong, assisted the Office in creating the database and setting up the network of contributors.

12. IT DEVELOPMENTS

In 2009, the CPVO developed several tools, for both internal and external usage.

12.1. E-publications

The President of the Office decided in 2009 to produce internally, starting from 2010, three publications in electronic format (the Official Gazette of the Office, the Annex to the Annual report and the S2 gazette) which will be available through the CPVO website for consultation or download. According to this decision such publications will be published from 2010 onwards in electronic format only. To implement this decision, the IT Service has elaborated a study and developed the necessary software.

The Official Gazette will be published on the CPVO website every two months starting from February 2010, the Annex to the Annual report will also be published in February 2010 and the S2 gazette in September 2010.

The CPVO has taken advantage of this occasion to introduce some improvements in the presentation of these publications, which are available in 22 official languages, and to include some navigation tools in the PDF files in order to make their consultation more user-friendly.

A free subscription facility will be developed and included in the CPVO newsletter which will be published in the second half of 2010. Subscribers will also be informed online when the publications are made available.

12.2. Online applications

The CPVO decided in 2007 to create an online application system with the aim of allowing applicants and procedural representatives to fill in electronic forms and send applications to the CPVO by electronic means.

The project development was started in 2008 and it is expected to be available for applicants at the beginning of March 2010. It is foreseen that during the launching phase e-applications will only be possible for a limited number of species (namely potato, peach, lettuce, chrysanthemum and rose) and in English. It is nevertheless the intention of the Office to make the application form and all technical questionnaires available in Dutch, German and French by the end of 2010.

The Office also committed to make the system available to Member States willing to use it.

12.3. Cooperation in variety denominations testing

The Office has developed a new project of cooperation on denomination testing with the purpose of harmonising within the EU the implementation of the rules for suitability of variety denominations. EU National Authorities have the possibility of asking online for CPVO advice as to the acceptability of their new denomination proposals before publication. In the event of controversial opinions, exchanges of views could take place but the decision will remain in the hands of the authority in which the application for registration has been made. It is expected that this tool will be operational in the CPVO Variety Denomination Database in February 2010.

12.4. Set-up of the electronic content management (ECM) solution, 'Docman'

In 2008, the Office started the implementation of the ECM solution EverSuite (Docman) published by the company Ever Team. The documents linked to the application files and the administrative activities (invoices, accountancy documents, orders, human resources documents, presidency documents, etc.) were integrated into Docman in 2008.

In 2009, the Office continued the integration of new document profiles: appeal documents, documents of the Legal Unit, Quality Audit Service documents, technical matter documents, third party documents. After several months of testing the tool, the President of the Office took, in November 2009, the decision to use this ECM solution as the Official register for the applications and titles. At the end of 2009, most of the documents of the agency were managed with Docman. This document referential is intended to be used in the future, amongst other purposes, for the electronic publication of documents on the web and to exchange documents with clients and other third parties.

13. COOPERATION WITH THE DIRECTORATE-GENERAL FOR HEALTH AND CONSUMERS

The following Committees are organised by the European Commission on a more or less regular basis. Staff members of the CPVO attend these meetings as observers in case the agenda is of particular interest for the Office.

13.1. Standing Committee on Community Plant Variety Rights

This Committee did not meet in 2009.

13.2. Standing Committee on Seeds and Propagating Material for Agricultural, Horticulture and Forestry

This Committee met four times during 2009 in Brussels and staff members of the CPVO attended all meetings.

Of particular interest for the CPVO throughout the year 2009 were the following items:

- discussion on a draft Commission directive amending Commission Directives 2003/90/EC and 2003/91/EC setting out implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species;
- the continued discussion on a draft Commission proposal as regards the acceptance of landraces and varieties threatened by genetic erosion for marketing;
- the updating of the botanical names of plant species;
- the discussions on rootstocks for vegetable planting material;
- the discussion on a draft Commission regulation establishing implementing rules as to the suitability of variety denominations of agricultural and vegetable species (codified version);
- programme for the Community comparative trials;
- the developments in the Commission's review of the legislation on seed and propagating material;
- the discussions on the Commission working programme for 2010.

13.3. Standing Committee on Propagating Material of Ornamental Plants

This Committee did not meet in 2009.

13.4. Standing Committee on Propagating Material and Plants of Fruit Genera and Species

This Committee met twice in 2009. The CPVO participated in both meetings. The following items were of interest for the CPVO:

- the continued discussion on possible implementing measures for Council Directive 2008/90/EC;
- a first discussion on a possible adoption of a certification scheme for fruit plants propagating material and fruit plants.

The Office also participated in three working groups organised by the Commission in order to draft proposals for the implementing measures mentioned above.

13.5. Council working parties

Following an invitation from the Directorate-General for Health and Consumers to integrate the representation from the European Commission, the CPVO participated in different competent preparatory bodies of the Council.

Of particular interest for the CPVO throughout the year 2009 were the following items:

- coordination of UPOV meetings (Council, Consultative Committee and Administrative and Legal Committee);
- preparation of forthcoming OECD meetings (schemes for the varietal certification of seed moving in international trade).

14. CONTACTS WITH EXTERNAL ORGANISATIONS

14.1. Contacts with Ciopora and ESA

The CPVO has intensive contacts with the two breeders' organisations, which represent the users of our system: Ciopora, the organisation of breeders of asexually reproduced ornamental and fruit varieties and the European Seed Association (ESA) which, on a European level, organises breeders of agricultural and vegetable varieties. Representatives of both organisations participate in all the relevant meetings of technical experts organised by the Office and are involved in its research and development programme. Ciopora and ESA take active part in and contribute to seminars and workshops organised by the CPVO to spread information on all aspects of the Community PVP system.

In order to give both organisations the possibility of expressing their views concerning the issues to be discussed by the Administrative Council, a delegation of the CPVO and the Administrative Council meets with representatives of Ciopora and ESA shortly before each Administrative Council meeting.

In its October meeting of the report year, the Administrative Council has taken the decision in principle to grant the observer status to representative breeders' organisations. This decision will be implemented in 2010.

In 2009 the CPVO attended the annual meetings of Ciopora and ESA, respectively in Campinas (Brazil) and in Brussels (Belgium).

14.2. Contacts with UPOV

The CPVO has participated in UPOV activities since 1996. In July 2005 the European Community became a member of UPOV.

During 2009, as members of the EC delegation, CPVO officials participated in the activities of UPOV and attended the meetings of the following bodies and committees of the International Union:



UPOV TWO annual meeting, September 2009, Angers

- UPOV Council;
- Legal and Administrative Committee;
- Technical Committee;
- Consultative Committee;
- technical working parties (agricultural crops, vegetables, fruit crops, ornamental plants and forest trees, BMT review group); in June, the CPVO participated for the first time in the technical working party for computers (TWC) held in Alexandria, USA;
- Advisory Group of the Legal and Administrative Committee.

The CPVO hosted, in September 2009, in Angers, the technical working party for ornamental plants (TWO).

In 2009, the Head of the Technical Unit participated in the meetings of the Enlarged Editorial Committee, in his capacity as chairman of the technical working party for agricultural crops (TWA).

Furthermore, the CPVO attended in September the Second World Seed Conference organised in Rome jointly by UPOV, OECD, FAO, ISTA and ISF.

The CPVO also collaborated in the training course for Latin American countries on protection of plant variety rights organised by UPOV, WIPO and the Spanish authorities, in Santa Cruz de la Sierra, Bolivia, in November.

The Vice-Secretary-General of UPOV participates in most of the meetings of the CPVO Administrative Council. Senior officials of the UPOV office also regularly attend experts meetings or working groups organised by the CPVO dealing with technical and legal issues of common interest.

The CPVO signed a memorandum of understanding in October 2004 with UPOV for a programme of cooperation. In the framework of this cooperation the CPVO exchanged information with UPOV during the development of its centralised database on variety denominations in order to ensure compatibility with the existing UPOV plant variety database (UPOV-ROM). Both databases contain data on plant varieties for which protection



UPOV TWO annual meeting, September 2009, Angers

has been granted, or which are the subject of an application for protection and also those which are included in national lists of varieties for marketing purposes.

The CPVO's centralised database operates on the basis of a system of codes attributed to botanical names and developed by UPOV. Since its release in July 2005, the Office and UPOV started to exchange data extensively, UPOV collecting data from non-EU UPOV countries and the Office bringing together data from the EU. The CPVO assisted UPOV in the attribution of codes to the species name of varieties of the UPOV-ROM.

In several regions of the world where countries are members of UPOV, such as Asia, Africa, Latin America and the Caribbean, there is an emergent interest to know the details, cumulated experience and results relating to plant variety rights systems with a regional scope. The CPVO frequently provides speakers for seminars and technical workshops organised by UPOV.

14.3. Contacts with the African Intellectual Property Organisation (OAPI)

OAPI, an intergovernmental organisation based in Yaoundé (Cameroon), works on the implementation of the Bangui Agreement that has established a regional system of intellectual property rights of which plant breeders' rights form a part. Consequently, it is particularly interested in the experience gained by the CPVO running the Community system.

The President of the Office has signed, with the Director-General of OAPI, a memorandum of understanding setting up the framework for future cooperation. The decision of the Administrative Council of OAPI for the entry into force of the PBR system in 2006 and its implementation will provide multiple opportunities for cooperation in several fields of activity.

A regular exchange of publications is maintained.

The Vice-President of the CPVO contributed in April of the report year to a seminar organised by OAPI on plant variety protection under the UPOV convention held in Duala, Cameroon.

Officials of OAPI paid a study visit to the CPVO in December 2009.



OAPI delegation at CPVO, December 2009

14.4. Contacts with the OECD

The CPVO closely follows the activities of the Organisation for Economic Cooperation and Development (OECD) in the seed and variety sector. The Vice-President of the CPVO attended the meetings of the Extended Advisory Group and of the Technical Working Group on varietal identity and purity which took place in Paris in January and November 2009 and the annual OECD meeting in Paris in June 2009.

14.5. Other contacts

The CPVO maintains regular external contacts by participating in meetings organised by:

- the Personnel and Administration DG of the Commission: staff regulations' implementation matters;
- the Budget DG of the Commission: implementation of the new financial regulation and the internal audit function;
- heads of the European seed certification agencies.

In addition, other fields of external activity can be mentioned, such as:

- the Translation Centre Administrative Council;
- the coordination of the EU agencies at management level;
- the annual coordination meeting of the Publications Office with the EU agencies.

15. PUBLIC ACCESS TO CPVO DOCUMENTS

In 2001, specific rules on public access to documents held by the European Parliament, the Council and the Commission were introduced by the adoption of Regulation (EC) No 1049/2001 ^(?). In order for these rules to apply also to documents held by the Office, a new article, Article 33(a), was introduced to the basic regulation in 2003 by the adoption of Council Regulation (EC) No 1650/2003 ^(?).

Article 33(a) contains the following elements.

- Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents shall also apply to documents held by the Office. This provision entered into force on 1 October 2003.
- The Administrative Council shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001. The Administrative Council adopted such practical arrangements on 25 March 2004. Those rules entered into force on 1 April 2004.
- Decisions taken by the Office on public access to documents may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice.

Regulation (EC) No 1049/2001 as well as the rules adopted by the Administrative Council are available on the website of the Office. Information on these rules and forms to use when requesting access to a document have also been published on the website of the Office.

The Office follows up the implementation and application of the rules on public access to documents by reporting annually on information such as the number of cases in which the Office refused to grant access to documents and the reasons for such refusals.

Year of receipt	Number of requests for access received	Number of refusals	Reasons for such refusals	Confirmatory applications
2004	30	6 (partial)	Confidential technical questionnaire not sent	
2005	55	2 (partial)	Confidential technical questionnaire not sent	
2006	58	6 (partial)	Confidential technical questionnaire not sent	
2007	55	17 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	2 (successful)
2008	57	19 (partial)	Confidential technical questionnaire/ information of commercial interest not sent	
2009	54	28 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent/ photos not available	2 (successful)

^(?) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L145 of 31.5.2001, p. 43.

^(?) Council Regulation (EC) No 1650/2003 of 18 June 2003 amending Regulation (EC) No 2100/94 on Community plant variety rights, OJ L245 of 29.9.2003, p. 28.

16. REPORT OF THE CPVO DATA PROTECTION OFFICER (DPO)

16.1. Legal background

Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individual rights with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data was adopted for the purpose of complying with Article 286 of the Treaty establishing the European Community. Article 286 requires the application to the Community institutions and bodies of the Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data.

Processing of data has quite a broad meaning and not only means transferring data to third parties, but also collecting, recording and storing data, whether or not by electronic means.

16.2. Role and tasks of the data protection officer

Regulation (EC) No 45/2001 requires the nomination of at least one data protection officer in the institutions and bodies who should ensure in an independent manner the internal application of the provisions in the regulation.

The DPO keeps a register of all personal data processing operations in the institution/body and informs on rights and obligations, provides services and makes recommendations. The DPO notifies risky processing of personal data to the European Data Protection Supervisor (EDPS) and responds to requests from the EDPS.

By decision of the President of 24 April 2007, a DPO was appointed at the CPVO for a term of two years. The term was renewed in 2009. In 2009 a temporary agent was employed for a period of nine months to assist the DPO with implementing the rules on the protection of personal data.

16.3. Report of the CPVO data protection officer for 2009

For 2009, the DPO drafted an 'action plan' which she achieved in the following areas.

- She implemented a register containing CPVO procedures in which personal data is being processed on the CPVO intranet.
- She updated the inventory of the processing of personal data.
- She assessed procedures of the Office and submitted prior notifications to the EDPS.
- She organised internal meetings with controllers responsible for the processing of personal data.
- She drafted various data protection notices which have been included in the intranet and Internet.
- She advised management on issues concerning data protection.

Moreover, the DPO and the DPO assistant participated in DPO meetings held by the EDPS and the DPOs from the other EU institutions and agencies.

17. APPEAL PROCEDURES

17.1. Composition of the Board of Appeal of the CPVO

The Board of Appeal of the CPVO is composed of a chairman, an alternate to the chairman and of qualified members.

17.1.1. Chairman and alternate of the Board of Appeal

The chairman of the Board of Appeal, Mr Paul van der Kooij, and his alternate, Mr Timothy Millett, were appointed for a term of five years by Council Decision 2007/858/EC of 17 December 2007 (OJ L 337, 21.12.2007, p. 105).

17.1.2. Qualified members of the Board of Appeal

In accordance with the procedure prescribed by Article 47(2) of Council Regulation (EC) No 2100/94, the Administrative Council of the CPVO, at its meeting of 14 and 15 March 2006, adopted the following list of qualified members of the Board of Appeal for a period of five years starting on 23 February 2006.

List of qualified members 2006–11

- | | |
|--------------------------------|---|
| 1. Andersen, Preben Veilstrup | 27. Mijs, Jan Willem |
| 2. Balzanelli, Sergio | 28. Millett, Timothy |
| 3. Barendrecht, Cornelis Joost | 29. Oliviusson, Peter |
| 4. Beslier, Stéphane | 30. Patacho, Rosa Hermelinda Vieira Martins |
| 5. Bianchi, Pier Giacomo | 31. Pause, Christof Frank |
| 6. Bianchi, Richard | 32. Perracino, Mauro |
| 7. Blouet, Françoise | 33. Petit-Pigéard, Roland |
| 8. Bonne, Sophia | 34. Pinheiro de Carvalho, Miguel Ângelo Almeida |
| 9. Borrini, Stefano | 35. Reheul, Dirk |
| 10. Bould, Aubrey | 36. Riechenberg, Kurt |
| 11. Bra, Maria | 37. Roberts, Timothy Wace |
| 12. Brand, Richard | 38. Rofes I Pujol, Maria Isabel |
| 13. Calvache Quesada, David | 39. Rosa-Perez, José-Manuel |
| 14. Chanzá Jordán, Dionisio | 40. Royon, René |
| 15. Chartier, Philippe | 41. Rücker, Beate |
| 16. Csurös, Zoltán | 42. Russo, Pietro |
| 17. Del Rio Pascual, Amparo | 43. Santangelo, Enrico |
| 18. Gresta, Fabio | 44. Scott, Elizabeth |
| 19. Guiard, Joël | 45. Siboni, Eugenio |
| 20. Guissart, Alain | 46. Turrisi, Rosario Ennio |
| 21. Köller, Michael | 47. Ullrich, Hanns |
| 22. Kralik, Andrej | 48. van der Kooij, Paul |
| 23. Laurens, François | 49. Van Marrewijk, Nico |
| 24. López-Aranda, José Manuel | 50. Van Overwalle, Geertrui |
| 25. Margellos, Théophile | 51. Veiga da Cruz de Sousa, Pedro António |
| 26. Menne, Andrea | 52. Wiesner, Ivo |

17.2. Decisions of the Board of Appeal in 2009

In 2009, the Board of Appeal met on three occasions and took four decisions. Indeed, two appeal files, A005/2008 and A010/2008, were dealt with together.

17.2.1. Appeal A 010/2007 — ‘Lemon Symphony’

On 5 September 1996, Mr Jørn Hansson submitted an application for the ‘Lemon Symphony’ variety of the *Osteospermum ecklonis* species. The CPVR was granted on 6 April 1999.

On 11 April 2007, the appellant filed a nullity request against the ‘Lemon Symphony’ CPVR. He claimed that the submitted plant material did not meet the necessary requirements because it had been treated with a growth regulator. He also claimed that, since ‘Lemon Symphony’ hadn’t been tested between 1997 and 2001, it showed a large number of changes in the expression of several characteristics. This request was rejected by the CPVO on 10 May 2007.

On 1 October 2007, notice of appeal was lodged against the refusal of the CPVO to declare ‘Lemon Symphony’ null and void (A010/2007).

The Board of Appeal declared the appeal against CPVO’s letter of 10 May 2007, refusing to take a nullity decision admissible, even without a formal decision taken because ‘a decision also exists if its content has the character of a ruling that concerns the rights of the party addressed and that gives the impression of being intended to be final’.

The Board of Appeal found the appeal not well founded.

It considered that the influence of the growth regulator did not affect the testing and that the examination of ‘Lemon Symphony’ by the Bundessortenamt was properly conducted, according to the existing national protocol at the time and taking into consideration the absence of UPOV guidelines in 1997 for *Osteospermum* species.



Board of Appeal meeting, September 2009, France

It considered that the modification of the variety description was justified since a new protocol for *Osteospermum* species had been adopted by the CPVO in 2000, which modified certain scales within the examination procedure in comparison with 1997.

Consequently, the Board of Appeal rejected the appeal and decided that the appellant would bear the costs of the appeal proceedings, according to Article 85 of Regulation (EC) 2100/94 of 27 July 1994.

17.2.2. Appeals A 004/2008 ‘Gold Star’ and A 005/2008 — ‘Fach004’

On 15 May 2008, Hortis Holland BV lodged an appeal on behalf of Fachja BV, against Decision C316 cancelling the CPVR for the ‘Gold Star’ variety of the *Beaucarnea Lem.* species and Decision R827 refusing a CPVR to the ‘Fach004’ variety of the same species, due to lack of uniformity and stability.

During the technical examination, the applicant was requested to provide new material for the variety ‘Fach004’ since the plants submitted were old decapitated plants. The plants of ‘Gold Star’, submitted as reference variety, did not conform to the material described in the variety description of 2004, which raised the question as to whether it lacked stability. A technical verification of the latter variety was therefore initiated. The applicant was also asked to inform the Office of the growing conditions which were appropriate to his view.

On 4 June 2007, the CPVO informed the applicant of the outcomes of the technical verification of ‘Gold Star’ and the examination of ‘Fach004’. ‘Gold Star’ lacked uniformity in leaf width and leaf colour; ‘Fach004’ lacked uniformity in leaf width and plant height. The application for ‘Fach004’ was refused and protection for the variety ‘Gold Star’ was cancelled.

In its appeal of 15 May 2008, Fachjan BV contested the growing conditions in which the examinations had been run. He pleaded for the reversal of the two decisions, for a new verification of ‘Gold Star’ and re-examination of ‘Fach004’ by Naktuinbouw in the Netherlands and for compensation of the costs incurred until the appeal date.

The Board of Appeal found the appeal admissible, but only partially founded. It stated that the complaint of the appellant against the growing conditions was to be considered realistic, even though the appellant did not answer the repeated requests of the CPVO and Bundessortenamt to furnish growing details. According to the Board, the trial design and the growing conditions had not been carried out under optimal circumstances.

Consequently, the Board of Appeal, on 21 April 2009, decided to cancel decisions C316 and R827 and ordered the CPVO to initiate complementary examinations of both varieties at the CPVO’s expenses at the Budessortenamt. The reimbursement of anterior costs was denied and two thirds of the appeal fees reimbursed.

17.2.3. Appeal A 010/2008 — ‘Jewel’

On 28 June 2004, Rusticas Del Guadalquivir, representing Florida Foundation Seed Producers Inc., applied for Community protection of the ‘Jewel’ variety of the *Vaccinium corymbosum* L. species.

In 2005, the Bundessortenamt, appointed examination office, carried out a technical trial, using the TG/137/3 technical protocol issued by UPOV on four plants of the said variety. Examiners noted a lack of homogeneity of the ‘Jewel’ variety over the course of two seasons of observation for one of the four plants and regarding a characteristic that was not included in the said protocol.

Thus, the CPVO refused the application for protection of the ‘Jewel’ variety. The applicant appealed that decision on 22 October 2008, submitting that:

- agro-climatic conditions were unsuitable for growing ‘Jewel’;
- the method of growing the variety could have affected the growth of the plants and caused differences between them in terms of the expression of certain characteristics;
- the quality of the plant material (method of producing plants, plant material too young, mixture of varieties by the examination office, etc.) could also have affected the growth of the plants and caused differences;
- the protocol was unsuitable for judging varieties of blueberry.

All the arguments listed above were refuted by both the examination office and the CPVO.

The appeal was considered admissible and well founded. The Board of Appeal cancelled Decision R853 of 25 August 2008 and condemned the CPVO to bear the costs of the appeal. The Board sustained its position in the following grounds:

- the conditions for carrying out the trials and observations could not explain the differences observed in the plant that had been declared to be a different type within the ‘Jewel’ variety. The examining office’s experience and the results obtained with respect to other varieties of the same type clearly showed that the examination of this variety was carried out under conditions guaranteeing a fair assessment of distinctness, uniformity and stability;
- the appellant’s argument regarding the quality of the plant material delivered for examination was irrelevant to the method of production of the said plant material in that it was up to it to ensure the adoption of a homogenous method of production in order to guard against any undue cause of heterogeneity. The theory advanced by the appellant that the plants were mixed up by the examining office was highly unlikely given that the plants provided were individually labelled;

- the appellant's observations regarding the protocol were deemed to be inadmissible. The Board of Appeal upheld the CPVO's arguments referring to Chapter 6(6.2) of UPOV's General Introduction on DHS examinations (document TG/1/3) and which states that any characteristic, whether listed in the protocol or not, can be used to judge the homogeneity of a variety applied for (this is confirmed by Article 8 of Regulation (EC) 2100/94). However, The Board stated that the use of an additional characteristic should have been approved in advance by the President of the CPVO (cf. Article 23 of Regulation (EC) 874/2009). Considering this hadn't been done, the different characteristic observed and on which the non-homogeneity of 'Jewel' was founded should not have been applied to the concerned examination.

17.2.4. Appeal A011/2008 — 'Santa Fe'

On 28 June 2004, Rusticas Del Guadalquivir, representing Florida Foundation Seed Producers Inc., applied for Community protection of the 'Santa Fe' variety of the *Vaccinium corymbosum* L. species.

In 2005, the Bundessortenamt, appointed examination office, carried out a technical trial, using the TG/137/3 technical protocol issued by UPOV on four plants of the said variety. Examiners noted a lack of homogeneity of the 'Santa Fe' variety for two of the four plants that 'showed a type of condensed, compact and ramified growth resulting in a plant habit that differed from the other two plants'.

Thus, the CPVO refused the application for protection of the 'Santa Fe' variety by Decision R855 of 25 August 2008. The applicant appealed that decision on 22 October 2008, sustaining that:

- agro-climatic conditions were unsuitable for growing 'Santa Fe';
- the method of growing the variety could have affected the growth of the plants and caused differences between them in terms of the expression of certain characteristics;
- the quality of the plant material (method of producing plants, plant material too young, mixture of varieties by the examination office, etc.) could also have affected the growth of the plants and caused differences;
- the protocol was unsuitable for testing varieties of blueberry.

All the arguments listed above were refuted by both the examination office and the CPVO.

On 8 October 2009, the appeal was considered admissible, but unfounded. The Board of Appeal therefore upheld Decision R855 of 25 August 2008 and ordered the appellant to bear the costs of the appeal.

The Board sustained its position on the following grounds:

- the error underlined by the CPVO in the annex of the decision rejecting the application for 'Santa Fe' had no bearing on the proper conduct of the procedure;
- the conditions for carrying out the trials and observations could not, in themselves, explain the differences observed in the plants that had been declared to be a different type within the 'Santa Fe' variety. The examining office's experience and the results obtained with respect to other varieties of the same type clearly showed that the examination of this variety was carried out under conditions guaranteeing a fair assessment of distinctness, uniformity and stability;
- the appellant's argument regarding the quality of the plant material delivered for examination was irrelevant to the method of production of the said plant material in that it was up to them to ensure the adoption of a homogenous method of production in order to guard against any undue cause of heterogeneity. The theory advanced by the appellant that the plants were mixed up by the examining office was highly unlikely given that the plants provided were individually labelled;
- the appellant's observations regarding the protocol was inadmissible as they related to parts of the protocol in force at the time of the application for protection that were complied with by the examination office;
- the plants judged to be different by the examining office differed on the basis of a characteristic included in the protocol for examination applicable to this species at the date of the application for protection.

17.3. Further appeal to the Court of Justice of the European Communities in 2009

In accordance with Article 73 of Regulation (EC) No 2100/94, a further appeal to the Court of Justice of the European Communities shall lie from decisions of the Board of Appeal.

17.3.1. New further appeals in 2009

In 2009, no further appeal was lodged against decisions of the Board of Appeal.

17.3.2. Rulings by the Court of First Instance

In 2009, no ruling was taken by the CFI.

17.4. Appeals received by the CPVO and decisions reached by the Board of Appeal since its inception

Number of notices of appeal lodged with the CPVO	Reasons for appeal	Number of decisions reached by the Board of Appeal	Number and date of the decision	Date of publication in the Official Gazette of the CPVO
1996				
0	Not applicable (n/a)	0	n/a	n/a
1997				
2	— Variety denomination (1) — Novelty (1)	0	n/a	n/a
1998				
2	— Variety denomination (1) — Novelty (1)	0	n/a	n/a
1999				
2	— Distinctness (1) — Novelty (1)	1	A2/98 of 14.9.1999	15.4.2000
2000				
8	— Distinctness (1) — Article 55(4) BR (*) (3) — Non-payment of annual fees (4)	2	A1/99 of 25.1.2000 A2/99 of 19.5.2000 (interim decision)	15.4.2000 15.4.2000
2001				
1	Article 8 BR (1)	2	A2/00 of 27.3.2001 A4/00 of 6.12.2001	15.6.2001 15.4.2002
2002				
35	— Non-payment of annual fees (25) — Distinctness (8) — Article 11 BR (1) — Article 55 BR (1)	1	A5/00 of 28.5.2002	15.8.2002

(*) BR: Basic regulation (Council Regulation (EC) No 2100/94).

Number of notices of appeal lodged with the CPVO	Reasons for appeal	Number of decisions reached by the Board of Appeal	Number and date of the decision	Date of publication in the Official Gazette of the CPVO
2003				
6	<ul style="list-style-type: none"> — Article 7 BR (3) — Article 8 BR (2) — Article 55 BR (1) 	15	<ul style="list-style-type: none"> A5/02 of 2.4.2003 A1/02-2/02-3/02 of 1.4.2003 A018/2002 of 14.5.2003 A8/02-9/02-10/02-11/02-12/02-13/02 of 15.5.2003 A017/2002 of 3.4.2003 A023/2002 of 8.10.2003 A031/2002 of 8.12.2003 A021/2002 of 9.12.2003 	<ul style="list-style-type: none"> 15.6.2003 15.6.2003 15.8.2003 15.8.2003 15.6.2003 15.12.2003 15.2.2004 15.2.2004
2004				
8	<ul style="list-style-type: none"> — Article 20 (1) — Non-payment of annual fees (1) — Distinctness (3) — Variety denomination (1) — Uniformity (1) — Novelty (1) 	5	<ul style="list-style-type: none"> A003/03 of 4.6.2004 A004/03 of 4.6.2004 A005/03-006/03 of 28.9.2004 A001/2004 of 16.12.2004 	<ul style="list-style-type: none"> 15.8.2004 15.8.2004 15.12.2004 15.2.2005
2005				
4	<ul style="list-style-type: none"> — Article 11 BR (1) — Distinctness (2) — Article 10 (1) 	4	<ul style="list-style-type: none"> A006/2004 of 15.6.2005 A005/2004 of 16.6.2005 A004/2004 of 18.7.2005 A001/2005 of 8.11.2005 	<ul style="list-style-type: none"> 15.8.2005 15.8.2005 15.10.2005 15.1.2006
2006				
1	<ul style="list-style-type: none"> Non-payment of annual fees (1) 	3	<ul style="list-style-type: none"> A003/2004 of 2.5.2006 A004/2005 of 13.10.2006 A007/2005 of 7.7.2006 	<ul style="list-style-type: none"> 15.8.2006 15.12.2006 15.10.2006

Number of notices of appeal lodged with the CPVO	Reasons for appeal	Number of decisions reached by the Board of Appeal	Number and date of the decision	Date of publication in the Official Gazette of the CPVO
2007				
8	<ul style="list-style-type: none"> — Novelty (1) — Non-payment of annual fees (1) — Article 55(4) of BR (2) — Distinctness (1) — Article 20 (1) — Article 21 (1) — Article 87 (1) 	6	<ul style="list-style-type: none"> A001/2007 of 11.9.2007 A003/2007-004/2007 of 21.11.2007 A005/2007 of 4.12.2007 A006/2007 of 4.12.2007 A007/2007 of 4.12.2007 	<ul style="list-style-type: none"> 15.12.2007 15.2.2008 15.2.2008 15.2.2008 15.2.2008
2008				
12	<ul style="list-style-type: none"> — Non-payment of annual fees (7) — Article 8 (4) — Article 20 (1) 	3	<ul style="list-style-type: none"> A011/2007 of 9.9.2008 A009/2008 of 3.12.2008 A001/2008 002/2008 of 4.12.2008 	<ul style="list-style-type: none"> 15.12.2008 To be published To be published
2009				
10	<ul style="list-style-type: none"> Article 7 — Distinctness (1) Article 8 — Uniformity (5) Article 11 — Entitlement (1) Article 20 — Nullity (1) Article 21 — Cancellation (2) — one of which for non-payment of annual fees 	4	<ul style="list-style-type: none"> A010/2007 of 23.1.2009 A004/2008 and A005/2008 of 21.4.2009 A010/2008 of 8.10.2009 A011/2008 of 8.10.2009 	<ul style="list-style-type: none"> 15.6.2009 15.8.2009 15.2.2010 15.2.2010

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