



**CPVO**

Community Plant Variety Office

# Annual report 2012







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# CONTENTS

<b>1. Introduction by Martin Ekvad, President of the CPVO</b>	<b>5</b>
<b>2. Foreword by Bronislava Bátorová, Chairperson of the Administrative Council</b>	<b>7</b>
2.1. Introduction	7
2.2. Analysis and assessment of the authorising officer's report	8
<b>3. The Community plant variety rights system</b>	<b>9</b>
<b>4. Training and promotion of the CPVR system</b>	<b>11</b>
4.1. Participation in international fairs and open days	11
4.2. The multi-beneficiary programme on the participation of Albania, Bosnia and Herzegovina, Croatia, Serbia, the former Yugoslav Republic of Macedonia and Turkey in the Community plant variety rights system	12
4.3. Contacts with the African Regional Intellectual Property Organisation (ARIPO)	12
4.4. Contacts with the African Intellectual Property Organisation (OAPI)	13
4.5. Contacts with ASEAN	14
4.6. Contacts with the Plant Breeding Academy	14
<b>5. The Administrative Council</b>	<b>15</b>
<b>6. Organisation of the CPVO</b>	<b>21</b>
<b>7. Quality Audit Service</b>	<b>26</b>
7.1. Assessment of examination offices	26
7.2. Evaluation of first cycle of assessments	26
<b>8. Research and development</b>	<b>28</b>
8.1. Projects approved	28
8.2. Follow-up of finalised R & D projects	30
<b>9. Budget and finance</b>	<b>33</b>
9.1. Overview — outturn	33
9.2. Revenue	33
9.3. Expenditure	34
9.4. Conclusion	34
<b>10. Trends and developments</b>	<b>35</b>
10.1. Applications for Community plant variety protection	35
10.2. Grants of protection	49
10.3. Technical examinations	52
10.4. Technical liaison officers (TLOs)	60
<b>11. Variety denominations</b>	<b>63</b>
11.1. New explanatory notes to the AC guidelines on variety denominations	63
11.2. The CPVO Variety Finder: latest developments	64

11.3. An increased utilisation of the service of cooperation with Member States	66
11.4. Community trade marks will be considered in the assessment of variety denominations	68
<b>12. IT developments</b>	<b>69</b>
12.1. E-services	69
12.2. Operational improvements	69
12.3. Communication tools	69
12.4. Infrastructure development	69
<b>13. Cooperation with the Directorate-General for Health and Consumers</b>	<b>70</b>
13.1. Standing Committee on Community Plant Variety Rights	70
13.2. Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry	70
13.3. Standing Committee on Propagating Material of Ornamental Plants	70
13.4. Standing Committee on Propagating Material and Plants of Fruit Genera and Species	71
13.5. Council working parties	71
<b>14. Contacts with external organisations</b>	<b>72</b>
14.1. Contacts with breeders' organisations	72
14.2. Contacts with UPOV	72
14.3. Contacts with the Organisation for Economic Cooperation and Development (OECD)	74
14.4. Contacts with the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) and the European Patent Office (EPO)	74
14.5. Other contacts	75
<b>15. Public access to CPVO documents</b>	<b>76</b>
<b>16. Report of the CPVO Data Protection Officer (DPO)</b>	<b>77</b>
16.1. Legal background	77
16.2. Role and tasks of the Data Protection Officer	77
16.3. Follow-up of the visit to the CPVO by a delegation from the Office of the European Data Protection Supervisor	78
16.4. Report of the CPVO Data Protection Officer for 2012	78
<b>17. Appeal procedures</b>	<b>80</b>
17.1. Composition of the Board of Appeal of the CPVO	80
17.2. Decisions of the Board of Appeal in 2012	80
17.3. Further appeals to the Court of Justice of the European Union in 2012	84
17.4. Appeals received by the CPVO and decisions reached by the Board of Appeal since its inception (statistics)	88

# 1. INTRODUCTION BY MARTIN EKVAD, PRESIDENT OF THE CPVO



Martin Ekvad

Another year filled with a multitude of activities has passed and I am happy to inform you about these activities in this annual report. As you will see in the foreword of the Chairperson of the Administrative Council, Mrs Bronislava Bátorová, the CPVO (the Office) received an important number of applications in 2012 and the finances of the Office are in good shape. As a result of the fact that the net number of titles in force is increasing, the free reserve of the Office is increasing as well. This allowed for a decision in 2012 to decrease the application fee as from 1 January 2013 from EUR 900 to EUR 650. The decrease is in line with the CPVO mission statement in which it is underlined that the processing of applications should be done at affordable costs.

According to the same mission statement, the processing of applications should be done in a high-quality manner, which brings me to the fact that in 2012 the Quality Audit Service (QAS) of the CPVO completed its first round of audits. The first round of audits has in my opinion been successful. All examination offices entrusted by the Administrative Council have been audited within the time set out and recommendations have been presented to the Administrative Council in a timely manner. On the basis of the recommendations, the Administrative Council has been able to take well-informed decisions. The audits have also led to certain examination offices withdrawing from testing in areas in which they do not have sufficient competence. Certain examination offices have also improved their quality of performance in order to ensure that they reach the quality level set out in the applicable entrustment requirements.

During 2012, the CPVO has taken an active part in a dialogue with the Commission and the Member States on a non-paper issued by the Commission, containing a proposal for a regulation on plant reproductive material. In the document, concrete proposals for new activities of the CPVO are mentioned. It is foreseen that the Commission will adopt a proposal that will be sent to the legislator in 2013. Although the proposal has yet to be adopted, the CPVO needs to reflect on how to adapt to the possible changes and how new tasks should best be executed.

The follow-up of the evaluation of the CPVR system carried out and reported on in 2011 has been postponed. The Administrative Council has nevertheless decided to create an ad hoc legislative working group with the aim of looking into whether changes in the basic regulation should be considered. During two meetings in 2012, key elements of the basic regulation have been discussed such as novelty, variety constituency and essentially derived varieties. Whilst important discussions are carried out in an open, brainstorming kind of way, the group has in mind to draw conclusions and to come up with proposals on how to interpret or change existing legislation. The group will continue its activities in 2013 and aims to draw some final conclusions in 2014.

In 2012, Udo von Kröcher's mandate as Chairperson for the Administrative Council expired and I would like to express my personal gratitude as well as those of all the staff of the Office for the good cooperation we have had under his leadership. I am at the same time happy to congratulate Mrs Bátorová for having been elected Chairperson of the Administrative Council in 2012 and to Andrew Mitchell for his appointment as Vice-Chairperson of the Administrative Council. I look forward to working with Bronislava and Andrew in the years to come.

The most valuable asset of an organisation is the staff and I would like to thank the staff of the CPVO for all the high-quality work performed in 2012.

# 2.

## FOREWORD BY BRONISLAVA BÁTOROVÁ, CHAIRPERSON OF THE ADMINISTRATIVE COUNCIL

### 2.1. Introduction



Bronislava Bátorová

As from November of the report year, I have taken over the chair of the Administrative Council from Udo von Kröcher, Germany. I would like to thank him on behalf of all members of the Administrative Council for his excellent work, for his personal input into this position and for the way he guided the meetings which were very well-run and productive. I am honoured to take over the position from such an excellent chairman and I will do my best to continue in his footsteps. I also would like to congratulate the new Vice-Chairman of the Administrative Council, Mr Andrew Mitchell, from the United Kingdom.

It is very positive to note that the number of applications received for Community plant variety rights from 27 April 1995 to 31 December 2012 was 44 758. Since 2007, the number of applications has stabilised, averaging a little less than 3 000 applications per year. This indicates the stability of the system. The number of applications in 2012 was slightly lower than in the record year 2011 but it could have been affected by a decrease in the application fee from EUR 900 to EUR 650 as of January 2013.

The financial position of the CPVO in 2012 remained strong and the budget outturn was EUR 1.5 million. The free reserve has increased to EUR 7.6 million. The aim for the Office and subsequently the action procedures of the Administrative Council in the coming years would be to return the free reserve level to EUR 5–6 million.

The Administrative Council in the previous year discussed several important issues such as the implementation of the strategic plan 2010–15, the CPVO fees structure, the creation of the Legislative Working Group, the project of cooperation with the Office for Harmonization in the Internal Market (Trade Marks and Designs), consideration of Community trade marks in the examination of proposals for denominations and more.

I would like to thank the members of the Administrative Council for their valuable input during the year. 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.

I would also like to express my gratitude to the staff of the Office for their important work and professional attitude.

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

The President of the CPVO presented the authorising officer's report for the year 2012 to the Administrative Council at its meeting in Angers on 27 February 2013.

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

In 2012, the level of applications was 2 868, a 10 % fall on the previous year, due in part to the change in fee levels to be applied in 2013. Nevertheless, thanks to prudent spending and an increasing number of titles in force, there was a significant positive budget outturn of EUR 1.5 million with a related increase in the free reserve of the CPVO to EUR 7.6 million.

The Administrative Council takes note of the results of the internal audits. It will pay attention to the follow-up to the recommendations by the Office.

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 that 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 which could harm the interests of the CPVO.

# 3.

## THE COMMUNITY PLANT VARIETY RIGHTS SYSTEM



CPVO headquarters, France

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 to 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 (hereinafter '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 European Union (EU). 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 to access 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 Council of the European Union, 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 against decisions of the Board may be brought before the General Court in Luxembourg. Decisions of the Board of Appeal and the Court are published on the Office's website.

The table in Chapter 17 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 5 years in relation to specific genera or species. The effect of a CPVR is that certain specified activities in relation to variety constituents or the harvested material of the newly protected variety require the prior authorisation of the holder of the right, such 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 2 months, the Office publishes its *Official Gazette of the Community Plant Variety Office*, 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.

# 4. TRAINING AND PROMOTION OF THE CPVR SYSTEM

## 4.1. Participation in international fairs and open days

The CPVO considers its participation in international fairs and open days at examination offices to be a useful opportunity to promote the Community plant variety rights system, to have direct contact with applicants and to provide information to growers. In 2012, the Office participated in two fairs.

- At the end of January 2012, the Office attended the IPM (Internationale Pflanzenmesse) 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 GEVES, the French examination office.

Furthermore, in cooperation with the Office, the German Bundessortenamt held in July an open day mainly for breeders of ornamentals at the premises of its headquarters in Hannover. The event was attended by some 50 stakeholders (breeders, procedural representatives, examiners) and discussed current issues in the ornamental sector, as well as giving participants the opportunity to visit the field trials and reference collections.

In conjunction with the open day at the Bundessortenamt, the Office held in Hannover a workshop mainly for German breeders on the online application system.



Salon du végétal 2012, Angers, France



Open day on ornamentals at the BSA, July 2012, Germany

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

Since 2006, the CPVO has been participating in the so-called multi-beneficiary programme aimed at preparing candidate countries for accession to the European Union. This programme was initially set up for Croatia and Turkey; in 2008, it was extended to the former Yugoslav Republic of Macedonia and, since 2009, it has been open to all countries in the western Balkans region. Albania and Serbia expressed an interest in participating in its activities in 2009; Bosnia and Herzegovina in 2010.

Within the framework of this programme, representatives of the national plant variety rights authorities were invited to participate in crop expert meetings held regularly at the CPVO. Furthermore, training sessions for DUS crop experts were given by CPVO examination offices, such as for citrus fruits by the Spanish Instituto Valenciano de Investigaciones Agrarias, for maize and sunflowers by the Slovakian Central Controlling and Testing Institute in Agriculture (USZUP) and for vine by the German Bundessortenamt as well as on quality requirements to be met by an examination office at the Hungarian Central Agricultural Office. Additionally, a special seminar for breeders and growers was held in Zagreb in preparation of Croatia's accession to the EU. The multi-beneficiary programme also provided funding for the participation of six experts in the 2-week plant variety rights course given by the University of Wageningen in the Netherlands.

## **4.3. Contacts with the African Regional Intellectual Property Organisation (ARIPO)**

The African Regional Intellectual Property Organisation (ARIPO) is an intergovernmental organisation which was established in Lusaka (Zambia) in 1976 by an agreement concluded under the auspices of the United Nations Economic Commission for Africa (ECA) and the World Intellectual Property Organisation (WIPO). ARIPO was created, inter alia, to promote the development of intellectual property laws appropriate to the needs of its members, to establish common services and training schemes and to assist its members in the acquisition and development of technology and the evolving of common views on intellectual property matters. The organisation has 18 member countries. ARIPO is in the process of developing a regional system for the protection of new plant varieties.



ARIPO delegation at the CPVO, November 2012

Martin Ekvad participated in a workshop on the ARIPO regional framework on plant variety protection in Harare, Zimbabwe, in July 2011, which was organised in cooperation with the UPOV. The conclusions of the workshop were presented in the Administrative Council of ARIPO on 29 November 2012, to which the CPVO President participated. A decision was taken to go ahead with the project.

#### **4.4. Contacts with the African Intellectual Property Organisation (OAPI)**

The OAPI, an intergovernmental organisation based in Yaoundé (Cameroon), works on the implementation of the Bangui Agreement, which 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 signed in 2002, with the Director-General of the 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.

In 2012, the Vice-President of the CPVO, Carlos Godinho, participated in a seminar in Cameroon celebrating the 50th anniversary of the OAPI.



ASEAN delegation at the CPVO, October 2012

#### **4.5. Contacts with ASEAN**

The President attended and contributed with a presentation to the fifth East Asia Plant Variety Protection Forum Meeting in Bangkok, Thailand, 28–30 May 2012. Ten south-east Asian countries together with Japan, China and Korea (commonly called 'the 10 + 3') participate in the network. Japan finances the activities. Work is done to exchange best practices and cooperate on a technical level. An aim of the network is to pave the road for UPOV membership of the participating countries and, in the longer term, explore the possibility to set up a regional plant variety protection system.

#### **4.6. Contacts with the Plant Breeding Academy**

In March 2012, the Plant Breeding Academy based in UC Davis California (University of California, USA) visited the CPVO and the Head of the Technical Unit presented the Community plant variety rights system to a group of 25 students. Students at the Plant Breeding Academy are mostly plant breeders aiming at increasing their knowledge in the plant variety sector.

# 5. THE ADMINISTRATIVE COUNCIL

The CPVO is supervised by an Administrative Council comprising representatives of the Member States and the European Commission and their alternates. The Administrative Council monitors the activities of the Office. In particular, it is responsible for examining the management 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, 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 2012, on 20 and 21 March in Brussels and on 27 and 28 November in Angers.

At the meeting on **20 and 21 March** in Brussels, the members of the Administrative Council adopted the following.

- The authorising officer's report for 2011 and analysis and evaluation of the authorising officer's report. This report was included in the Annual Report 2011 and sent to the Court of Auditors.
- The discharge of the President of the CPVO for implementation of the 2010 budget.
- The multiannual staff policy plan for 2013–15.
- The entrustment of the following examination offices:
  - (a) Ministry of Agriculture and Food in Bulgaria;
  - (b) Estonian Agricultural Research Centre (ARC) in Estonia;
  - (c) ILVO in Belgium;
  - (d) UKSUP in Slovakia; and
  - (e) Bundesamt für Ernährungssicherheit in Austria.
- A conditional entrustment of the Centro di Ricerca per la Frutticoltura (CRA-FRU) in Italy was also adopted.
- In the case of Latvia, the entrustment was withdrawn.
- In the case of Romania (ISTIS), the entrustment was suspended until the first AC meeting of 2013.
- The prolongation for 3 years (2013–16) of the current financing system of the quality audit programme.
- Two new technical protocols for *Gaura* L. (CPVO-TP/165/1) and *Buddleja* L. (CPVO-TP/090/1) and the revision of five technical protocols for *Oryza sativa* L. (CPVO-TP/016/2), *Hordeum vulgare* L. sensu lato (CPVO-TP/019/3), *Solanum lycopersicum* L. (CPVO-TP/044/4), *Spinacia oleracea* L. (CPVO-TP/055/4) and *Hydrangea* L. (CPVO-TP/133/2).

The members of the Administrative Council and the observers also supported the establishment of an ad hoc working party of legal experts dealing with legal problems.

The members of the Administrative Council also took note of:

- the report of the President of the CPVO with its statistics;
- the 2011 management report by the President of the CPVO;
- the CPVO social report for 2011;
- the report on the implementation of the strategic plan for 2010–15;
- the internal audit report;
- the annual accounts for 2011 and financial outlook;
- the preliminary draft budget for 2013;
- the adoption foreseen, before the end of 2012, of the regulation reducing the application fee to EUR 650;
- the transfer of the European Observatory on Counterfeiting and Piracy to the Office for Harmonization in the Internal Market (Trade Marks and Designs) in Alicante which would include plant varieties. The CPVO is planning to apply for membership of the observatory.

At the meeting on **27 and 28 November 2012** in Angers, the 24 Member States, present or represented, unanimously elected, in a secret ballot, Mrs Bronislava Bátorová as Chair of the Administrative Council for 3 years from 27 November 2012. They also elected, with 19 votes in favour, Mr Andrew Mitchell as Vice-Chair of the Administrative Council for three years from 27 November 2012.

During this meeting, the members of the Administrative Council adopted the following.

- The draft budget for 2013.
- The appointment of Mr Ladislav Miko and Mr Andrew Mitchell as rapporteurs for the appraisal of the President of the CPVO, and Mrs Dona Simion and Mr Andrew Mitchell for the appraisal of the Vice-President of the CPVO.
- The conclusions of the Legislative Working Group for 2012.
- The appointment of 23 technical experts for QAS assessments for 3 years (2013–16).
- The appointment of five members of the Audit Advisory Board (AAB) for 3 years (2013–16) as foreseen in the ‘QAS entrustment procedure manual’.



Administrative Council meeting, November 2012, Angers.



Martin Ekvad, Bronislava Bátorová and Andy Mitchell

- The entrustment of the following examination offices:
  - (a) Istituto Nazionale di Ricerca per gli Alimenti e la Nutrizione (INRAN) in Italy;
  - (b) GEVES in France;
  - (c) Department of Agriculture, Food and the Marine in Ireland;
  - (d) Statens Jordbruksverk in Sweden;
  - (e) Finnish Food Safety Authority Evira in Finland;
  - (f) Executive Agency for Variety Testing, Field Inspection and Seed Control (EAVTFISC) in Bulgaria.

A conditional entrustment of the Centro di Ricerca per la Frutticoltura (CRA-FRU) in Italy was also adopted.

- Five new technical protocols for *Prunus dulcis* (Mill.) D.A. Webb. (CPVO-TP/056/1), *Olea europea* L. (CPVO-TP/099/1), *Cannabis sativa* L. (CPVO-TP/276/1), *Heuchera* L. (CPVO-TP/280/1), *Echinacea* Moench. (CPVO-TP/281/1) were adopted. In addition, nine revisions of existing protocols for *Fragaria* L. (CPVO-TP/022/3), *Ribes uva-crispa* L. (CPVO-TP/051/2), *Ribes rubrum* L. (CPVO-TP/052/2), *Prunus persica* (L.) Batsch. (CPVO-TP/053/2), *Lilium* L. (CPVO-TP/059/3), *Kalanchoe blossfeldiana* Poelln and hybrids (CPVO-TP/078/3 Rev 1), *Prunus salicina* Lindl. (CPVO-TP/084/2), *Actinidia* Lindl. (CPVO-TP/098/2), *Impatiens* New Guinea Group (CPVO-TP/196/3) and *Lonicera caerulea* L. (CPVO-TP/277/2) were adopted with or without retroactive effect as appropriate.
- The entrustment of the examination offices proposed by the CPVO for the testing of 34 new species.
- The amended version of the new CPVO technical protocol template.

The members of the Administrative Council also agreed to hold two seminars in 2013. The first would be on enforcing variety rights and held in May in Italy, and the second on the patent/variety rights interface in late 2013 in Brussels.

The members of the Administrative Council also took note of the following.

- The duties and functions of the Chair of the Administrative Council;
- the report of the President of the CPVO with its statistics;
- the 2013 annual work programme of the CPVO;
- the status and follow-up of research and development projects;
- the draft 'Plant reproductive material' regulation has been delayed; the text should be ready in the first quarter of 2013 to be adopted by the Commission and submitted to the Council and the European Parliament;
- the conclusions of the Interinstitutional Working Group on the Joint Statement and Common Approach on EU decentralised agencies endorsed by the European Parliament, the Council and the Commission;
- the cases before the CPVO Board of Appeal and the Court of Justice of the European Union;
- the new cooperation project with OHIM as regards the testing of variety denominations;
- the inclusion of interspecific hybrids in Annex I to the contract without going through the new species procedure, in close cooperation with the designated examination office;
- the changes proposed to the explanatory notes of the guidelines on variety denominations and called upon the Commission to take the necessary steps to amend Regulation (EC) No 637/2009 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species.

The members of the Administrative Council were also consulted on possible changes to the organisation of the Administrative Council meetings. They finally agreed to continue to hold two face-to-face meetings a year (one over two days and the other on one day), with the option to take part by videoconference if possible. The number of written procedures would be increased and the present language regime maintained.

Furthermore, some discussions were held during this meeting about the fee structure of the CPVO. The members of the Administrative Council agreed that it was too soon to take a decision and asked the CPVO to draft a new document containing a more thorough analysis of the fee structure by the next meeting.

Finally, the members of the Administrative Council have been informed about the Commission's proposal for a regulation to enforce the Nagoya Protocol on access to genetic resources and benefit sharing arising from their use. The aim was to enable access and benefit sharing and develop compliance measures in the EU. The protocol would be binding and may enter into force in 2014.

### **Chairperson of the Administrative Council**

Mrs B. Bátorová (from 27.11.2012)

Mr U. von Kröcher (until 27.11.2012)

### **Vice-Chairperson of the Administrative Council**

Mr A. Mitchell (from 27.11.2012)

Mrs B. Bátorová (until 27.11.2012)

### **Members of the Administrative Council**

Belgium	Ms F. De Schutter (from 22.5.2012) Ms C. Vanslebrouck (until 22.5.2012) Ms M. Petit (alternate)
Bulgaria	Ms B. Pavlovska Mr T. Gadev (alternate)
Czech Republic	Member vacant Mr J. Staňa (until 18.4.2012) Mr D. Jurecka (alternate)
Denmark	Mr G. Deneken Mr E. Lawaetz (alternate)
Germany	Mr U. Von Kröcher Mr H. Freudenstein (alternate)
Estonia	Ms L. Puur Alternate vacant
Ireland	Mr D. Coleman Mr J. Claffey (alternate)
Greece	Member vacant Mr K. Michos (alternate)
Spain	Mr A. de León Llamazares (from 1.6.2012) Ms A. Crespo Pazos (until 1.6.2012) Mr L. Salaices Sanchez (alternate)
France	Mr R. Tessier Alternate vacant
Italy	Ms I. Pugliese Alternate vacant
Cyprus	Mr C. Christou Mr C. Nicolaou (alternate)
Latvia	Ms S. Kalinina Alternate vacant
Lithuania	Ms S. Juciuviene Ms I. Kemeziene (alternate from 19.6.2012) Ms D. Kirvaitiene (alternate until 19.6.2012)
Luxembourg	Mr M. Weyland Mr F. Kraus (alternate)
Hungary	Ms A. Szenci Alternate vacant

Malta	Ms M. Delia Mr C. Leone Ganado (alternate)
Netherlands	Mr M. Valstar Mr K. Fikkert (until 9.10.2012) Mr K. van Ettehoven (alternate from 9.10.2012)
Austria	Mr H.-P. Zach Mr L. Girsch (alternate)
Poland	Mr E. Gacek Mr M. Behnke (alternate)
Portugal	Ms F. Alfarroba Mr J. Fernandes (alternate)
Romania	Ms M. Cindea (from 17.9.2012) Ms A. Ivascu (until 17.9.2012) Alternate vacant
Slovenia	Member vacant Mr J. Ileršič (until 16.9.2012) Mr P. Grižon (alternate)
Slovakia	Ms B. Bátorová Ms D. Vongrejová (alternate from 16.1.2012) Ms M. Jakubová (alternate until 16.1.2012)
Finland	Member vacant Mr T. Lahti (until 30.9.2012) Alternate vacant Mr M. Puolimatka (alternate until 30.9.2012)
Sweden	Mr A. Falk (from 5.3.2012) Ms C. Knorpp (until 5.3.2012) Mr T. Olsson (alternate)
United Kingdom	Mr A. Mitchell Ms E. Nicol (alternate)
European Commission	Mr L. Miko Ms D. Simion (alternate)

# 6.

## ORGANISATION OF THE CPVO

In December 2012, the Office employed 45 persons, 11 officials and 34 temporary agents. Eleven 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 three units and two support services. There is also a service responsible for the 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 or takeover 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 the fees system.

**The Legal Unit** provides legal advice to the President and other members of staff of the Office, in principle on matters related to the Community plant variety rights system, but also on questions of an administrative nature; provides legal interpretations and



CPVO headquarters, Angers, France

opinions and also draws up draft legislation; participates in various CPVO committees, thus ensuring that European Union 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.

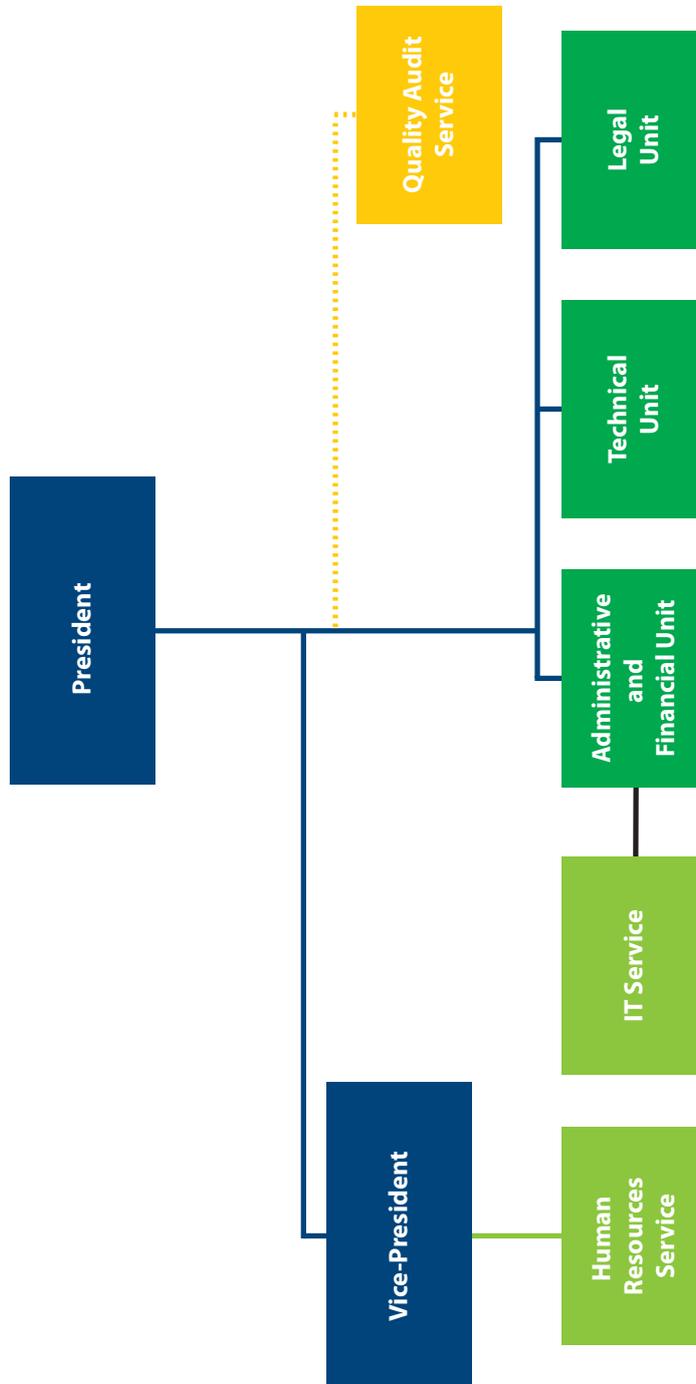
**The Human Resources Service** deals with the administration and management of the Office's human resources in compliance with the Staff Regulations of the European Commission.

**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. Since 1 August 2012, the IT Service is under the responsibility of the Administrative and Financial Unit.

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

In 2012, the CPVO prepared a social report with information concerning the turnover, work environment and social aspects of the CPVO. The different headings covered 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 work, parental leave, teleworking), training (language training, IT training, other training) and professional relations (staff committee). The CPVO social reports from 2006 to 2012 can be consulted on the CPVO website under the heading 'Annual reports'.

## ORGANISATION CHART OF THE CPVO



**PRESIDENCY**



**President**  
Martin Ekvad



**Vice-President**  
Carlos Godinho



**Assistant to the President**  
Marleen Van de Meulebroeke



**Assistant to the Vice-President**  
Cyrille Antoine



**IT Service**  
Sébastien Beugnier



**IT Service**  
Jean-Louis Curnier



**IT Service**  
Patrick Lecoq



**IT Service**  
Laura Naie



**IT Service**  
Marc Rouillard



**Human Resources**  
Deirdre Killeen



**Human Resources**  
Anna Verdini



**Public Relations/  
Training**  
Fabienne Santoire



**Head of AFU**  
Thomas Wollersen



**Assistant to the Head of AFU**  
Béatrice Hodet



**Accountant**  
James Moran



**Accounting**  
Valérie De Caestecker



**Accounting/Assistant to Quality Audit Service**  
Laurence Dumont



**Accounting**  
Anne-Marie Fernandez



**Administration/Logistics**  
Gil Oliveira



**Administration/Mailroom**  
Isabelle Lanteri



**Evaluation/Internal Audit and Control**  
Roseline Fagel



**Finances**  
Ekaterina Mantziaris



**General Services**  
Thierry Cluzeau



**Mailroom**  
Manuel Soares Teixeira

**SUPPORT SERVICES**

**ADMINISTRATIVE AND FINANCIAL UNIT (AFU)**

**QUALITY AUDIT  
SERVICE**



**Quality Audit  
Team Leader**  
Gerard Schuon



**Head of TU**  
Dirk Theobald



**Deputy Head of TU**  
Jean Maisson



**Assistant to the  
Head of TU**  
Aline Noguès



**Agricultural, fruit  
and vegetable species**  
Laurence Théodore



**Agricultural species**  
Anne Weitz



**Denominations**  
Carole Bonneau



**Denominations**  
Rudi Caes



**Denominations/  
Public Relations**  
Bénédicte Legrand



**Fruit and ornamental  
species**  
Urszula Braun-Młodecka



**Fruit and vegetable  
species**  
Sergio Semon



**Ornamental species**  
Laetitia Denécheau



**Ornamental species**  
Ghislaine Guilbert



**Ornamental species**  
Jens Wegner



**Register**  
Pierre-Emmanuel Fouillé



**Register**  
Anne Gardener



**Register**  
Nadège Grantham



**Register**  
Ioana Piscoi



**Register**  
Francesco Saldi

**LEGAL UNIT**



**Legal Affairs**  
Muriel Lightbourne



**Board of Appeal/  
Data Protection**  
Véronique Doreau

**TECHNICAL UNIT (TU)**

# 7. QUALITY AUDIT SERVICE

The Quality Audit Service (QAS) implements the CPVO quality audit programme. It carries out regular assessments at examination offices in order to verify whether these fulfil the entrustment requirements when testing candidate varieties against the DUS criteria. The assessments relate to any work in relation to DUS activities for the species within the examination offices' scope of entrustment.

## 7.1. Assessment of examination offices

With assessment visits to 10 examination offices in 2012, the first triennial audit cycle was completed. All Member State examination offices involved in the evaluation of candidate varieties had been visited at least once by the end of 2012. As in the previous 2 years, the assessment programme resulted generally in positive recommendations to the CPVO Administrative Council. Notwithstanding the fact that corrective measures had to be implemented where the on-site visit identified weak spots in an examination office's DUS work. The corrective actions included measures to enhance test arrangements but also the decision to discontinue DUS testing on certain species.

## 7.2. Evaluation of first cycle of assessments

The President of the Office decided at the occasion of completing the first assessment cycle to look back and evaluate whether the objectives of the programme were met. Based on this review he concluded that, since its inception, the assessments achieved their goal of serving as a sound basis for the Administrative Council's entrustment decisions. They also provided confidence in the competence of the CPVO's network of examination offices. Examination offices could demonstrate that they complied with the entrustment requirements and were able to make adjustments where necessary.



Quality audit experts meeting, October 2012, Angers



Quality audit mission in Polish examination office

The evaluation confirmed that the implementation of the assessment programme respected the concept of independence in relation to the information exchange between the QAS and other CPVO functions while offering sufficient transparency in order to enable stakeholder involvement.

In the spirit of continual improvement, the analysis identified areas that would be addressed in the next assessment cycle, notably a transition to a risk-based approach with the aim to make the assessments even more efficient.

# 8.

## RESEARCH AND DEVELOPMENT

Following the rules established by the Administrative Council in 2002 and reviewed in 2009 for financial support to projects of interest to the Community plant variety rights system, the Office received in 2012 several applications for (co-)financing R & D projects. In this chapter, the Office provides updated information about projects under way and follow-up measures taken in 2012 on projects already concluded.

### 8.1. Projects approved

#### **'Harmonization of vegetable disease resistances 2'**

The CPVO formally approved earlier in 2012 the co-funding of the research and development (R & D) project 'Harmonization of vegetable disease resistances 2' coordinated by GEVES (France), with project partners from the Czech Republic, Germany, Hungary, the Netherlands, Spain, the United Kingdom and the European Seed Association (ESA). The project is a follow-up to the earlier 'Harmonization of vegetable diseases resistances' completed in 2008, although the new project will deal with seven disease resistances in pepper, pea and lettuce. A first meeting was organised by GEVES, the project coordinator, at the end of June, in order to obtain consensual agreement amongst the project partners on the schedule of work to be done, and the races/ isolates and example varieties which would be utilised. Work in the second half of 2012 was focused on the description and comparison of the existing tests for these disease resistances. The next meeting of the group is scheduled for mid-May 2013. The project is expected to be finalised in 2015.

#### **'Impact analysis of endophytes on the phenotype of varieties of *Lolium perenne* and *Festuca arundinacea*'**

This project is coordinated by the CPVO, with the following project partners: Bundessortenamt (Germany), ESA (breeding companies: DLF Trifolium and Barenbrug), FERA (United Kingdom), GEVES (France). The project aims at clarifying the possible



In vitro culture, Spain



Citrus, Spain

impact that the presence of endophytes in varieties of *Lolium perenne* (Lp) and *Festuca arundinacea* (Fa) might have on the phenotype, and thus on the expression of the characteristics observed during the DUS tests and eventual consequences in terms of quality requirements for material to be submitted for that purpose. The project foresees the assessment of four varieties from each species, with two stages of endophyte infections (0% endophytes and 100%). These varieties will be integrated into regular DUS tests during two growing cycles using the relevant CPVO technical protocol. The conclusive report is expected at the end of 2015. The preparation of the plant material started in January 2013 so that the establishment period of the plants takes place during 2013.

#### **‘Reducing the number of obligatory observation periods in DUS testing for candidate varieties in the fruit sector’**

This project is coordinated by the CPVO, with the following project partners: Bundessortenamt (Germany), Ciopora, Coboru (Poland), CRA-FRU (Italy), GEVES (France), OEIW (Spain), National Food Chain Safety Office (Hungary), NPVO (Czech Republic) and Plantum.

Costs of DUS testing for candidate fruit varieties are relatively high compared to varieties in other crop sectors. The CPVO has committed itself to investigate how such cost could be reduced. The issue was discussed in the group with fruit experts in 2009. Several options for a possible cost reduction which need further investigation have been identified. One of them was the reduction of the number of obligatory DUS cycles for candidate varieties.

The aim of the project is to determine (i) whether there is indeed technical justification of two satisfactory crops of fruit in order to make a conclusion on DUS and (ii) draw up a subsequent reliable variety description. Five species will be considered: peach, strawberry, apple, raspberry and grapevine. Varieties where the CPVO technical protocol has been implemented and which have been registered (national listing, national plant variety rights, Community plant variety rights) in the past 5 years should be considered.

The project was approved by the President of the CPVO in the end of 2012. It will have a duration of 6 months. The outcome may lead to a reduction of the number of obligatory DUS cycles for candidate varieties with the consequent reduction of the DUS costs for applicants.

## 8.2. Follow-up of finalised R & D projects

### European collection of rose varieties

As a follow-up to the project, after consultation with rose breeders and professional organisations, it was decided to keep a DNA sample from the original plant material submitted for each technical examination, on a compulsory basis. One possible use of such a sample could be to, in cases where there are doubts, verify (as far as the applicable techniques allow) the identity of material ordered in order to be grown as reference in a DUS test, comparing the DNA fingerprint of material received as a reference variety with the fingerprint of the DNA stored for that same variety. This sample could also be used in relation to the enforcement of rights on request of the breeder. In a future context, this sample could be used in the management of the reference collection.

A procedure setting out the details of the DNA sampling as part of the technical examination has been defined, on the basis of which a call for tender to select a laboratory was launched. In 2011, Naktuinbouw was entrusted for a period of 4 years. The sampling started during the course of the 2011 DUS trial.

A DNA sample from the original plant material submitted for each rose technical examination is kept on a compulsory basis, following the adopted procedure. The leaves are collected in the different entrusted examination offices (Bundessortenamt, Naktuinbouw and NIAB) and sent to the entrusted laboratory (Naktuinbouw). DNA extractions and storage take place in this laboratory. Since starting the project, the DNA of 390 candidates varieties tested in 2011 and 2012 have been extracted and stored. The pilot project will be reviewed at the end of 2014.

The cost of the sampling and the extraction will be supported by the Office.



Seed germination test, the Netherlands



DUS trials on pot roses, Germany

### **Management of peach tree reference collections**

This collaborative 3-year project amongst the CPVO's entrusted examination offices and their technically qualified bodies for *Prunus persica*: GEVES and INRA (France), OMMI (Hungary), CRA-FRU (Italy) and IMA and CITA (Spain) was concluded in summer 2011. The project partners analysed a total of 510 peach varieties in their reference collections (including 12 common to all of them) under the following four themes: (i) compilation of morphological data; (ii) creation of standardised digital data; (iii) generation of molecular data; (iv) creation of a phenotypic and molecular variety database.

The main conclusions of the final report were presented to the CPVO in October 2011. The project coordinator (GEVES), outlined that the information exchanged between the project partners had been invaluable in drawing up better phenotypic descriptions of peach varieties and structuring the reference collections according to the genetic background of the constituent varieties. A database for the storage and management of all these data (GEMMA) was created by GEVES, and it was proposed that the full updating of this database be continued in the future by all the project partners via the GEMMA framework, in order to have a more efficient selection of comparison varieties for peach DUS testing.

The CPVO proposed a set of concrete follow-up measures which the project coordinator should consider with the other project partners, with the aim of improving the management of the reference collections in the four entrusted examination offices, and the overall efficiency of DUS testing in peach. A first step in achieving this was a meeting held in mid-October in which all the project partners discussed issues in relation to the contribution and access of each partner to the GEMMA database managed by GEVES. Contractual agreement discussions are currently taking place between the project partners and the CPVO in this respect.

### **Construction of an integrated microsatellite and key morphological characteristic database of potato varieties in the EU common catalogue (CC)**

This project started in April 2006. The final report was received in spring 2008. The partners involved are Bundessortenamt (Germany), Coforu (Poland), Naktuinbouw (Netherlands), and SASA (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. At the request of the breeders' association, ESA, the possible use of molecular means for variety identification for enforcement purposes has been taken into account. Several conference calls in 2010 and 2011 with the project partners and ESA were held in order to agree upon the follow-up of the project results and their implementation in the DUS test. A ring test was organised in 2012 involving all nine entrusted examination offices. Emphasis was placed on the harmonization of the variety descriptions from the different examination offices. The conclusions of the ring test and the possible follow-up are now compiled and will be discussed with the same experts at a meeting in Edinburgh in June 2013 on a DUS trial site.

A procedure for the sending of tubers of candidate varieties to a laboratory so that their DNA can be extracted and profiled for the management of the reference collection is under discussion with the project partners. A call for tender for the election of two laboratories is under preparation. The CPVO is currently discussing with the project partners the setting up of a new follow-up project which would involve the nine entrusted examination offices for potato. This requires positions to be elaborated concerning access rights and financial implications.

### **A potential UPOV option 2 approach for barley high-density SNP genotyping**

This project was presented by the National Institute of Agricultural Botany (NIAB) in the United Kingdom; the grant agreement was signed at the end of 2010. The project considers three possible approaches: (i) calculation of correlations between molecular and morphological distances; (ii) quantification of morphological and molecular distances against pedigree; (iii) genomic selections for phenotypic predictions. If such correlation exists, and calibration thresholds for the phenotype can be established, this could be used as a powerful tool for the grouping of varieties in the growing trial. The project started at the beginning of 2011 and the final report was presented in February 2012. The correlation which could be established does not allow setting up calibration thresholds for the phenotype; additional work would need to be carried out. The CPVO is currently discussing with the project coordinator the interest in a possible follow-up project.

# 9.

## BUDGET AND FINANCE

### 9.1. Overview — outturn

The budget outturn for 2012 showed a significant increase on previous years, due mainly to lower than expected spending. Revenue was only slightly higher than in previous years, in part due to a lower number of applications, as applicants waited for the new reduced application fee for January 2013.

Net outturn for the year	(million EUR)
Budgetary revenue (a)	13.1
Budgetary expenses (b)	11.7
<b>Budgetary outturn (c) = (a) – (b)</b>	<b>1.4</b>
Non-budgetary receipts (d)	0.1
<b>Net outturn for the budgetary year 2012 (e) = (c) + (d)</b>	<b>1.5</b>

The net outturn for the year was slightly over EUR 1.5 million, almost double the figure for the previous year.

### 9.2. Revenue

The Office's revenue mainly comprises various fees paid by applicants for, and holders of, Community plant variety rights and revenue from interest on bank accounts. The total revenue collected in 2012 was EUR 13.15 million.

	Variation (%)	2012 (million EUR)	2011 (million EUR)
Fees	- 1.09	12.63	12.77
Bank interest	43.10	0.32	0.22
Other revenue	-	0.20	0.01
<b>Total revenue</b>	<b>1.10</b>	<b>13.15</b>	<b>13.00</b>

The total fees received in 2012 amounted to EUR 12.635 million, representing a decrease of 1.09 % in comparison with the previous year. Interest income is recorded for the budgetary accounts based on the date of actual receipt of the interest. Other revenue includes a grant from the European Commission of EUR 200 000, in the context of the multi-beneficiary programme. There was no comparable receipt the previous year.

### 9.3. Expenditure

In 2012, the total amount of recorded expenditure and commitments carried over was EUR 11.74 million, compared with EUR 12.3 million in 2011.

	Variation (%)	2012 (million EUR)	2011 (million EUR)
Staff expenditure	- 2.03	5.56	5.67
Administrative expenditure	- 33.78	0.99	1.49
Operational expenditure	-1.07	5.19	5.14
<b>Total expenditure</b>	<b>- 4.58</b>	<b>11.74</b>	<b>12.30</b>

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. In 2012, staff expenditure fell mainly due to the ongoing deadlock on changes to salary amounts at the level of the European Council and European Commission. Administrative expenditure fell significantly due mainly to lower spending on property and IT. Operational expenditure, which consists mainly of remuneration for examination offices, remained stable.

### 9.4. Conclusion

The net result in 2012 is significantly higher than the previous year. A new reduced application fee, which came into force in 2013, should help bring the outturn to a much lower level in 2013.

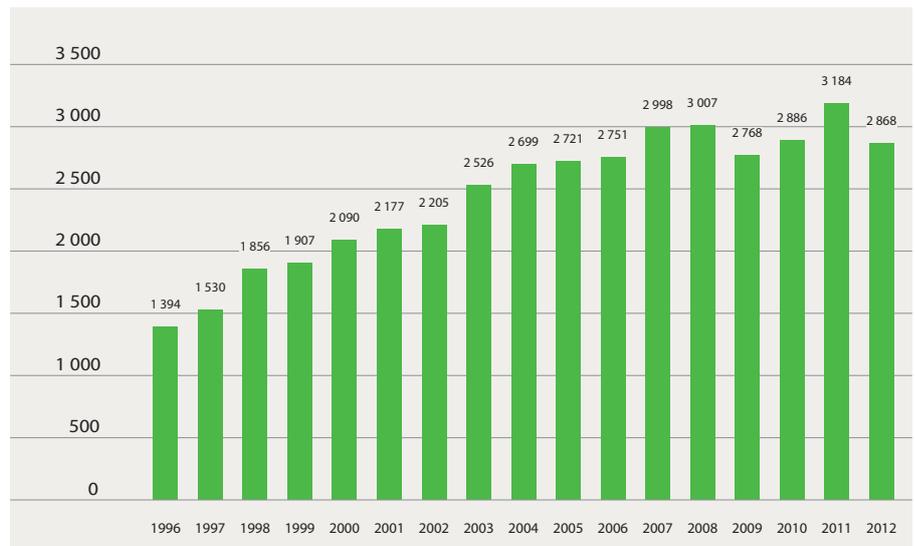
# 10. TRENDS AND DEVELOPMENTS

## 10.1. Applications for Community plant variety protection

In 2012, the Office received 2 868 applications for Community plant variety protection. As illustrated in Graph 1, this represents a decrease of 9.92 % compared with the previous year (all figures are based on the date of arrival of the application documents at the Office).

**Graph 1**

Evolution of the annual number of applications for Community plant variety protection (1996–2012)

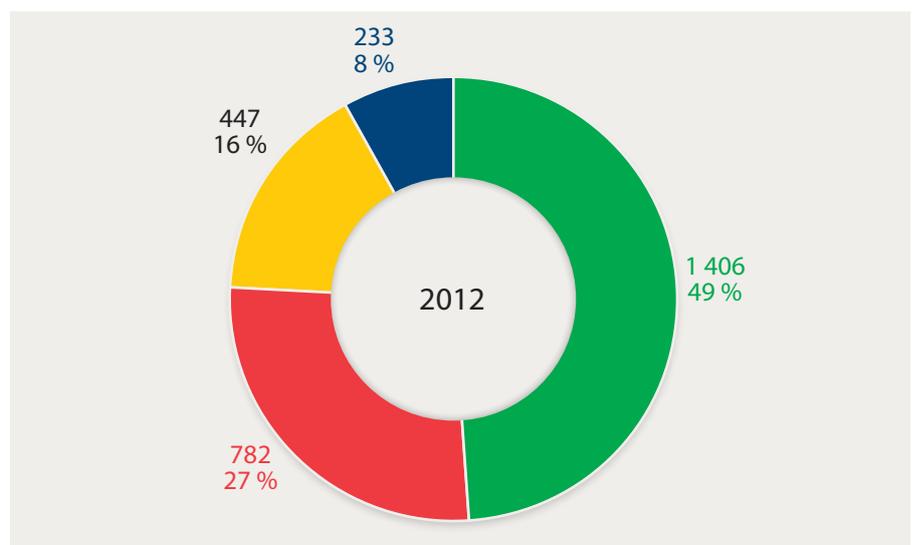


Graph 2 represents the shares of the crop sectors in number of applications received in 2012.

**Graph 2**

Shares in application numbers per crop sector in 2012

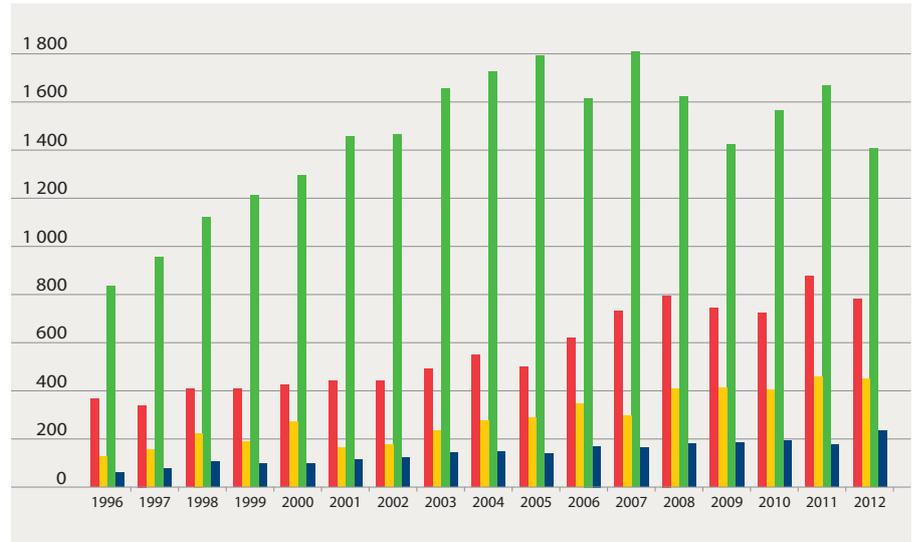
- Ornamental
- Agricultural
- Vegetable
- Fruit



Graph 3 shows the evolution of the number of applications per crop sector since 1996. The only increase in terms of number of applications during 2012 was observed in the fruit sector (+ 30.90 %). By contrast, application numbers for agricultural varieties saw a decline (– 10.93 %) after having peaked last year. Application numbers for ornamental varieties decreased (– 15.71 %) as well as for vegetables (– 2.83 %).

**Graph 3**  
Evolution of application numbers  
per crop sector (1996–2012)

- Agricultural
- Vegetable
- Ornamental
- Fruit



In 2012, 567 applicants filed applications for Community plant variety rights. The following table lists for each crop sector the 15 most frequent users of the Community system and their respective number of applications filed in 2012. These top 15 applicants have a relative share of applications ranging from 83.9 % for vegetables, over 59.7 % for agricultural species and 57.5 % for fruit species, to as little as 34.9 % for ornamentals. This range does not only reflect the concentration in breeding in particular in the vegetable sector, it also shows that, in the case of ornamentals, a great number of ‘small’ breeders are in business seeking protection for their varieties. The concentration in breeding may be seen as an indication for the investment behind each variety relative to the revenues it delivers.

#### Agricultural sector:

Top 15 applicants	Country	Number of applications in 2012
Pioneer Overseas Corporation	United States of America	93
Limagrain Europe SA	France	61
RAGT 2n SAS	France	54
KWS Saat AG	Germany	47
Pioneer Hi-Bred International Inc.	United States of America	36
Adrien Momont et Fils SARL	France	27
Caussade Semences SA	France	21
Euralis Semences SAS	France	19
DLF-Trifolium A/S	Denmark	17
Maisadour Semences SA	France	17
Norddeutsche Pflanzenzucht Hans-Georg Lembke KG	Germany	17
SESVanderHave NV/SA	Belgium	17
Monsanto Technology LLC	United States of America	16
Syngenta Seeds Ltd	United Kingdom	13
Deutsche Saatveredelung AG	Germany	12
<b>Total</b>		<b>467</b>

#### Vegetable sector:

Top 15 applicants	Country	Number of applications in 2012
Nunhems BV	Netherlands	62
Monsanto Holland BV	Netherlands	60
Enza Zaden Beheer BV	Netherlands	54
Syngenta Crop Protection AG	Switzerland	51
Rijk Zwaan Zaadteelt en Zaadhandel BV	Netherlands	51
Vilmorin SA	France	20
Seminis Vegetable Seeds Inc.	United States of America	15
Takii & Company Ltd	Japan	11
Crookham Company Inc.	United States of America	9
Genista Srl a Socio Unico	Italy	8
Pop Vriend Research BV	Netherlands	8
Sakata Vegetables Europe SAS	France	8
Elsoms Seeds Ltd	United Kingdom	6
Bejo Zaden BV	Netherlands	6
Semillas Fitó SA	Spain	6
<b>Total</b>		<b>375</b>

**Fruit sector:**

Top 15 applicants	Country	Number of applications in 2012
Agro Selections Fruits SAS	France	21
PSB Produccion Vegetal SL	Spain	20
Driscoll Strawberry Associates Inc.	United States of America	17
CIV — Consorzio Italiano Vivaisti — Società consortile a r.l.	Italy	13
Florida Foundation Seed Producers Inc.	United States of America	7
Institut de Recerca í Tecnologia Agroalimentaries (IRTA)	Spain	7
The New Zealand Institute for Plant and Food Research Limited	New Zealand	7
Alma Mater Studiorum-Università di Bologna	Italy	6
Fall Creek Farm and Nursery Inc.	United States of America	6
Jacques Marionnet GFA	France	6
Feno GmbH	Italy	5
Jean-Pierre Darnaud	France	5
Marie-France Bois	France	5
Sant'Orsola Società Cooperativa Agricola	Italy	5
Institut National de la Recherche Agronomique (INRA)	France	4
<b>Total</b>		<b>134</b>

**Ornamental sector:**

Top 15 applicants	Country	Number of applications in 2012
Syngenta Crop Protection AG	Switzerland	57
Tobias Dümmer	Germany	53
Anthura BV	Netherlands	47
Fides BV	Netherlands	45
Terra Nova Nurseries Inc.	United States of America	42
Nils Klemm	Germany	35
Poulsen Roser A/S	Denmark	34
Ball Horticultural Company	United States of America	27
Bernard Création Végétale (BCV) SARL	France	27
Suntory Flowers Limited	Japan	25
W. Kordes' Söhne Rosenschulen GmbH & Co. KG	Germany	25
Deliflor Royalties BV	Netherlands	24
Boeket Handelmaatschappij BV	Netherlands	17
Piet Schreurs Holding BV	Netherlands	17
Sande Breeding BV	Netherlands	16
<b>Total</b>		<b>491</b>

Applicants from outside the European Union must appoint a representative with a registered office or with a 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 example, for Monsanto, Pioneer, Syngenta and Sakata. EU applicants do not have such an obligation; however, some of them prefer to outsource the application procedure to an external agent. In 2012, 1 307 applications (45.57 %) were filed by 136 procedural representatives. The following table lists the 15 most 'active' procedural representatives for 2012, having submitted in total 862 applications.

Name of procedural representative	Country	Number of applications filed in 2012
Royalty Administration International CV	Netherlands	241
Syngenta Seeds BV	Netherlands	87
Pioneer Hi-Bred SARL	France	80
Hortis Holland BV	Netherlands	65
Deutsche Saatgutgesellschaft mbH Berlin	Germany	64
Pioneer Génétique SARL	France	49
Hans-Gerd Seifert	Germany	42
Limagrain Europe SA	France	42
Ronald Houtman Sortimentsadvies	Netherlands	35
Società Italiana Brevetti SpA	Italy	29
WürttembergKunze	Germany	28
Moerheim New Plant BV	Netherlands	27
Plantipp BV	Netherlands	26
Limagrain Nederland BV	Netherlands	25
Coöperatieve Nederlandse Bloembollencentrale UA	Netherlands	22
<b>Total</b>		<b>862</b>



DUS trials on *Euphorbia* L., Denmark



DUS trials on *Alstroemeria* L., the Netherlands

### 10.1.1. Ornamental species

With 49 % of the applications received in 2012, ornamentals continue to represent the largest group of applications filed for Community plant variety rights. As can be seen in Graph 3, the ornamental sector remains the most important in terms of number of applications each year. However, in 2012, the share of applications for ornamental crops fell for the first time below the 50 % threshold. There may be a number of reasons behind the drop in application numbers: merger of companies, refraining from protecting varieties or protecting only a few varieties of a given series, seeking protection through other systems such as patents (where possible) or trade marks and the postponement of some applications from 2012 to 2013 in order to profit from the lower application fee. Also, as breeders of ornamental varieties are mostly small or mid-size companies, the costs for variety protection take a higher share of the budget than for big players.

One particularity of the ornamentals is the great diversity of species. For many of them, there are a rather low number of applications.

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 — seem to be rather accidental. Also in 2012, roses and chrysanthemums remain by far the most important species. With the exception of dianthus, in no major species could the number of applications reach the same level as in the previous year. This decline is particularly remarkable for roses.

The Office may base its decision to grant Community plant variety rights on a technical examination carried out within the framework of a previous application for plant breeders' rights in an EU Member State. Such takeover of reports concerns less than 5 % of ornamentals,

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

Species (group)	2008	2009	2010	2011	2012	Total
<i>Rosa</i> L.	168	155	200	239	131	893
<i>Chrysanthemum</i> L.	157	162	175	153	146	793
<i>Phalaenopsis</i> Blume & × <i>Doritaenopsis</i> hort.	77	50	85	84	47	343
<i>Petunia</i> Juss. & <i>Calibrachoa</i> Llave & Lex.,	53	78	77	58	54	320
<i>Pelargonium</i> L'Her. ex Aiton,	67	49	44	74	45	279
<i>Gerbera</i> L.	77	63	37	58	36	271
<i>Lilium</i> L.	45	56	55	63	37	256
<i>Dianthus</i> L.	34	29	61	30	54	208
<i>Osteospermum</i> L.,	40	28	32	24	24	148
<i>Impatiens</i> L.	39	18	30	22	17	126
<b>Total</b>	<b>757</b>	<b>688</b>	<b>796</b>	<b>805</b>	<b>591</b>	<b>3 637</b>

which is a considerably lower percentage than for the vegetable or agricultural sectors and is due to the absence of any listing requirement before commercialising ornamental varieties.

The introduction in 2010 of the principle that any competent examination office can be entrusted for the DUS test of any species has resulted in a situation where, for a number of ornamental species, more than one examination office is available to undertake DUS examination. Whereas in the past a centralised testing situation existed, the CPVO has now to decide at which examination office a certain candidate variety is going to be examined. For that reason, the CPVO's Administrative Council has extended the criteria to be applied by the CPVO. Ornamental experts have nevertheless requested a better centralisation of species and the Administrative Council gave the mandate to the Office to make a proposal.

The Office will have to take into consideration not only climatic conditions but also the wishes of the breeder and the other varieties under examination. These new criteria began to be applied during the course of 2011 and, at this stage, it appears that, most of the time, breeders do not express a preference that is different from the place where the CPVO intended to organise the technical examination.



DUS trials on *Mandevilla* Lindl., the Netherlands



DUS trials on *Pelargonium Grandiflorum*, Germany



DUS trials on cereals, Bulgaria



DUS trials on barley, Finland

### 10.1.2. Agricultural species

The year 2012 showed a decrease of 11 % in the number of applications just after 2011 when an all-time high had been reached. In 2012, agricultural varieties represented 27 % of all applications. This decrease brings back the annual number of applications to its regular level.

The following table shows the number of applications received per year over all agricultural species since 2005, with a total covering 1995–2012.

	2005	2006	2007	2008	2009	2010	2011	2012	Total (1995–2012)
All agricultural species	498	619	730	796	745	725	878	782	10 605

Table 2 shows the number of applications for the 10 most important agricultural species for the last 8 years.

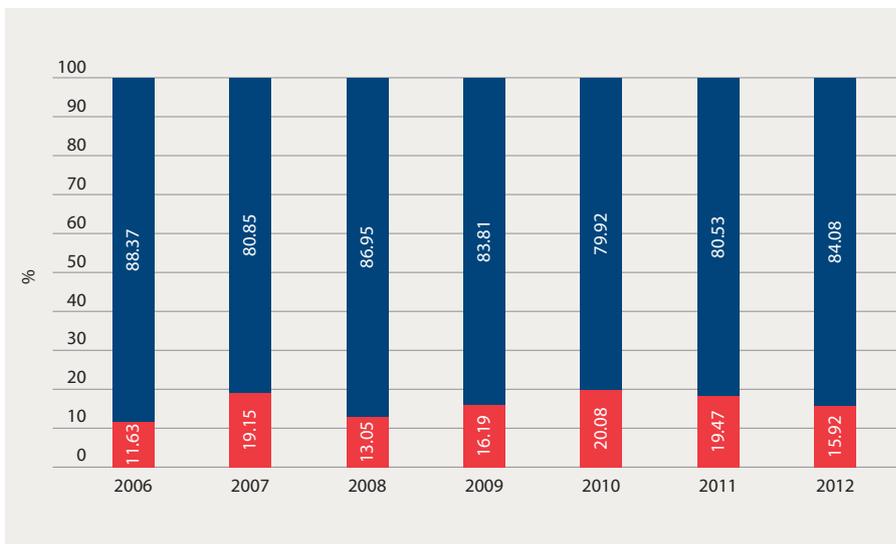
**Table 2:** Number of applications of the 10 most important agricultural species from 2005 until 2012 with a total covering 1995–2012

Species	2005	2006	2007	2008	2009	2010	2011	2012	Total (1995–2012)
<i>Zea mays</i> L.	181	212	249	226	221	220	264	216	3 364
<i>Solanum tuberosum</i> L.	35	92	63	91	86	63	80	75	1 223
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	53	76	91	87	76	92	115	85	1 217
<i>Brassica napus</i> L. emend. Metzg.	31	44	70	86	95	75	71	107	913
<i>Hordeum vulgare</i> L. sensu lato	46	46	54	68	67	56	60	72	896
<i>Helianthus annuus</i> L.	40	30	38	49	46	66	73	42	661
<i>Beta vulgaris</i> L. Ssp. vulgaris var. altissima Döll	3	8	17	4	18	7	18	17	258
<i>Triticum durum</i> Desf.	13	8	13	14	17	14	32	16	227
<i>Lolium perenne</i> L.	16	20	11	26	20	19	30	20	226
× <i>Triticosecale</i> Witt.	5	7	14	13	7	9	11	6	149

**Graph 4**

Evolution in percentage of the ratio of technical examinations to takeovers of DUS reports in the agricultural sector (2006–2012)

- Technical examinations
- Takeovers



As in previous years, *Zea mays* is the most important species in the agricultural sector although its number of applications decreased in 2012 for the first time. After a large increase in applications for wheat in 2011, oilseed rape applications increased by more than 30 % compared to 2011. Although the number of applications of potatoes was lower than for wheat in 2012, potatoes overtook wheat as being the second most important species over the long run.

Given that the large majority of applications refer to species that are covered by the European Union seed directives, about 80 % of all applications have already undergone a DUS test when the CPVR application is filed, or the DUS test is at least ongoing. This allows the Office to take over the DUS report from entrusted examination offices, in accordance with Article 27 of the regulation (Commission Regulation (EC) No 874/2009), if it constitutes a sufficient basis for a decision. If this is not the case, the Office organises a technical examination carried out by an entrusted examination office.



DUS trials on rice, Spain



Potato light sprouts, Ireland



DUS trials on peppers, Spain



DUS trials on lettuces, Spain

### 10.1.3. Vegetable species

In a similar way to the global number of applications for Community plant variety rights in 2012, the vegetable sector saw a drop in figures in 2012 compared to the previous record-breaking year. Vegetable applications totalled 447, which was a slight 2.8 % drop compared to the 2011 figure. The final figure was helped by a late rally of 51 vegetable applications in December.

For the first time, the number of grants awarded in a calendar year for vegetable varieties surpassed the number of yearly vegetable applications: 472 grants compared to 448 applications. This was helped by entrusted examination offices being much more punctual in the delivery of final reports, thereby reducing backlogs which had existed in the past.

The top three vegetable species per number of yearly applications have remained the same in recent years: lettuce (104), tomato (71) and pepper (33) in that order, with the first and second places being unchallenged. The year 2012 saw a new high of hybrid vegetable varieties (165) being applied for, which compares to 67 vegetable parent line varieties being applied for during that same period. This demonstrates the worth and necessity of a strong intellectual property protection for breeders, in spite of the fact that hybrid varieties are meant to have their own biological protection as a result of the segregation of characteristics in the F2 generation. Reported cases of vegetative propagation of F1 hybrid varieties in valuable greenhouse crops, intensive selection within the F2 generation in onion, and the more extensive use of backcrossing means breeders need to be able to cover their backs to prevent their breeding efforts being exploited unfairly.

The issue of asterisked (obligatory) disease-resistance characteristics continues to draw much discussion. The national Slovak breeders association has taken the matter to its National Constitutional Court. The court has to decide on how the Slovak legislation should be implemented and whether for their national listing purposes European legislation can impose that there has to be breeding for certain disease resistances. A ruling from the Slovak court is expected at the end of 2013. Until that time, the CPVO will not formally

touch the matter and implements a moratorium on new asterisked disease-resistance characteristics within its vegetable technical protocols. In the meantime though, the Office has brainstormed the related issue of a possible new practical approach in the use of disease-resistance characteristics. With the assistance of national vegetable experts and representatives of ESA, the group explored ways in which the breeding of disease-resistance would be more up to individual breeders rather than being imposed through the CPVO protocols. This could have an important impact though on the way the technical examination is carried out, particularly the optimisation of the selection of comparison varieties and the size of the DUS trial. Interesting possibilities were raised and so far no option has been discarded. The CPVO will make further investigations on this topic during the course of 2013.

Discussions continued in 2012 on the issue of 'parallel' DUS testing in vegetables, where a candidate variety has its two independent growing cycles carried out almost simultaneously in two different locations. This has the advantage that for some species the duration of the technical examination can be almost halved. More details were received from Naktuinbouw and GEVES (the CPVO's two principal entrusted examination offices for vegetables) on how they apply this principle at their national level in the Netherlands and France. The Office proposed a draft set of working rules to its entrusted vegetable examination offices on how such a system could work for DUS tests initiated by the CPVO. Examination offices were generally in favour of the set of rules but indicated that these could be improved to take into account certain circumstances. Further improvements will be made to the set of rules in order that they can be implemented within the coming year.

The number of e-applications received by the Office continues to increase. The take-up rate in 2012 for the vegetable sector was 60 %, the highest of all crop sectors. This was helped by the creation of 21 e-technical questionnaires (e-TQ) for vegetable species in 2012. There are now 41 vegetable e-TQs available to applicants, and the aim is that, by the end of 2013, all CPVO vegetable technical protocols (currently 48) will be covered by an e-TQ.



DUS trials on tomatoes, Spain



DUS trials on cabbages, France



DUS trials on apples, France



DUS trials on oranges, Spain

#### 10.1.4. Fruit species

The number of fruit CPVR applications in 2012 increased to 232. As in previous years, the top three species were peach, strawberry and apple, in that order.

Discussions with the stakeholders in the fruit sector continued in 2012 with regard to ways to optimise DUS testing for this sector. A research and development (R & D) project amongst the entrusted examination offices for a set of species identified in 2011, which would investigate possible differences in results between the first satisfactory fruiting period and the second satisfactory fruiting for varieties having completed DUS testing in recent years, has been formulated. The objective of the project would be to see if the differences between the two fruiting periods were significant with regard to the outcome of the final test report and the declaration on distinctness, uniformity and stability of the candidate variety. If it were to be found that, in most cases, such differences were not significant, the CPVO may consider having just one obligatory satisfactory fruiting for those candidate varieties found to have no difficulties with regard to their distinctness, uniformity and stability. Although such an approach could be feasible for seedling fruit varieties, it may still be necessary to have at least two satisfactory crops of fruit for mutant varieties (e.g. apple).

The increasing number of entrusted examination offices for several fruit species means that DUS testing for such species has been 'decentralised'. While this leads to a greater choice of DUS testing stations for applicants, it can also become a source of confusion as, for climatological reasons, these different examination offices have different submission dates for the delivery of plant material. In order to harmonise the situation, an agreement was reached amongst entrusted examination offices to have common closing dates for the receipt of new applications, whilst still maintaining their current submission periods for plant material. This harmonization will ensure that all applications received by the CPVO by a certain date, for a given fruit species, will commence DUS testing in the same growing period irrespective of where they are going to be examined. These new harmonised closing dates were communicated to fruit applicants in summer 2012, in order that they could come into effect for the 2012/13 submission period.

Whereas biomolecular techniques are not utilised within DUS tests carried out for the CPVO, an increasing number of fruit applicants and title holders are making use of DNA fingerprints in order to enforce their Community plant variety rights. Experience has shown that a typical procedure is to have a specialised laboratory taking a sample of plant material (e.g. leaves) from the plants of the variety undergoing DUS testing at the entrusted examination office or, in the case of protected varieties, from the plants now held in the reference collection of the examination office that carried out the DUS test. The CPVO allows such samples to be taken from the plant material that underwent the technical examination as it stands in the living reference collection of the examination office as long as a formal request is made by the applicant/title holder of the variety in question. The DNA fingerprint obtained from the official plant sample can then be compared against the DNA fingerprint of plants that are the subject of a supposed infringement of rights. If the two parties in question do not come to an agreement, then the case can be taken to court by the applicant/title holder of the variety. The CPVO has learnt that several cases of infringement of Community plant variety rights for fruit varieties have already passed through tribunals (especially in Spain), and the resulting judgments have almost always favoured the title holder, with a consequent financial penalty for the infringer. The CPVO believes that such actions demonstrate the importance of enforcing Community plant variety rights once they are granted in an effective manner, particularly in the case of fruit trees where the DUS test can last a number of years and the infringement may have taken place during the period of provisional protection between the date of publication of the application and the date the protection is granted.



Grapevine



DUS trials on vine, Italy

### 10.1.5. Origin of the applications

Since the creation of the Community Plant Variety Office, applications have been received from over 50 countries. Nearly every year, more than one third of all applications received have originated from the Netherlands, underpinning the important role of that country in the breeding sector. In 2012, however, the share of Dutch applications fell to 31.2 % reflecting the decreased importance of ornamentals in the Community plant variety rights system. The Netherlands is followed, quite some distance behind, by France, Germany and the United States. In previous years, the number of applications received from Germany was usually slightly higher than from France, also here the drop in ornamental applications becomes visible. In 2012, only minor fluctuations were observed in the origin of applications. The following map below gives an overview of the number of applications received from different European countries in 2012.



Table 3 shows the application numbers for the 10 most important countries outside the EU.

**Table 3:** The 10 most important non-EU countries from which CPVR applications were filed in 2012

Country of main applicant	Number of applications received in 2012
USA	350
Switzerland	114
Japan	65
Australia	22
New Zealand	20
Israel	15
Thailand	14
Canada	5
Republic of China (Taiwan)	5
South Africa	4

## 10.2. Grants of protection

In 2012, the Office granted 2 640 titles for Community protection which represents the highest number ever granted by the CPVO within a calendar year. A detailed list of all protected varieties (as of 31 December 2012) is published on the CPVO website, in the separate annex to this annual report.

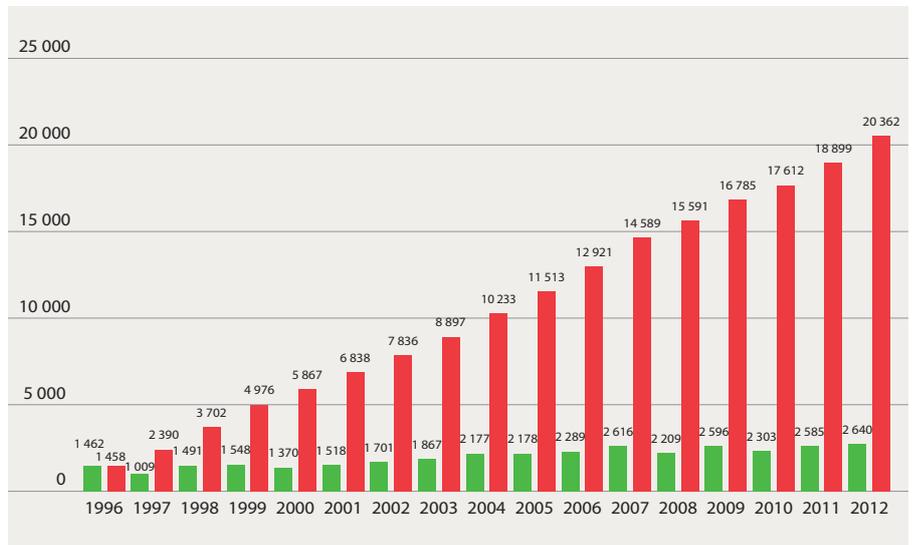
By the end of 2012, there were 20 362 Community plant variety rights in force. Graph 5 shows the number of titles granted for each year from 1996 to 2012 and illustrates the continuous increase in the number of varieties under protection within the Community system.

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. As older varieties are replaced by newer ones, the number of surrenders is expected to approach more closely the number of applications. The regular increase in the number of surrenders is therefore not a surprise. However, in 2011 and 2012, an important drop in surrenders was observed, which reveals that title holders have decided to, in general, keep their varieties protected over a longer period.

### Graph 5

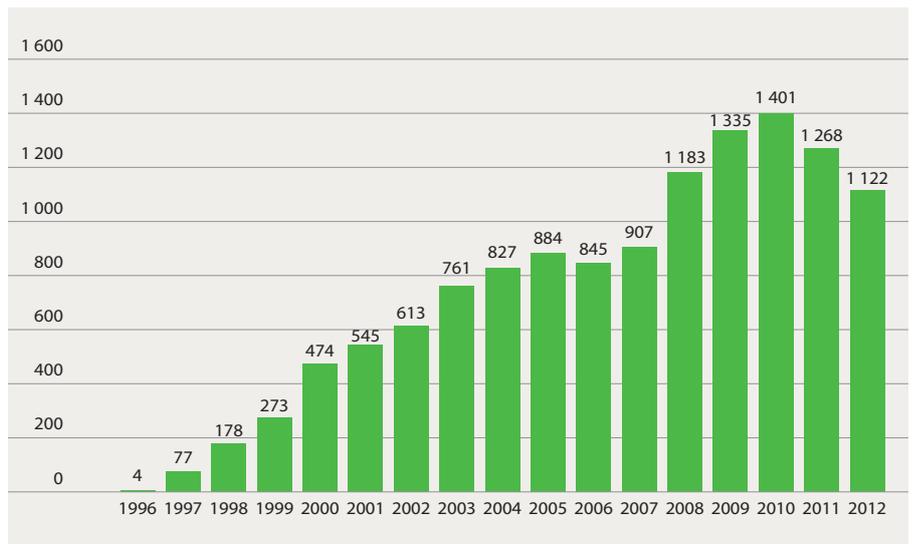
Community plant variety rights granted and rights remaining in force at the end of each year from those granted per year (1996–2012)

- Titles granted
- Rights in force at the end of each year



### Graph 6

Number of surrenders of Community plant variety rights (1996–2012)



### Graph 7

Number of rights granted each year from 1996 to 2012 and those remaining in force on 31.12.2012 from those granted per year

- Number of rights granted
- Number of rights remaining in force



Graph 7 shows the number of rights granted in the years 1996 to 2012 and those still in force on 31 December 2012. A large number 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 protection of 25 or 30 years. However, figures suggest that it will be a small percentage 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 preclude the idea that, for some individual species, crop-specific situations might exist.

At the end of 2012, of the 33 559 rights granted in total, 20 362 (60 %) were still active. Table 4 illustrates that fruit varieties are generally kept protected for a longer period and that, within each crop sector, the situation varies from species to species. 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 expense required to develop new varieties.

**Table 4: Percentage of granted rights that were still in force on 31 December 2012**

Crop sector	Species	Proportion %
<b>Agricultural</b>		<b>63</b>
	<i>Hordeum vulgare</i> L. sensu lato	56
	<i>Zea mays</i> L.	60
	<i>Triticum aestivum</i> L. emend. Fiori et Paol.	64
	<i>Solanum tuberosum</i> L.	70
	<i>Festuca rubra</i> L.	89
<b>Vegetable</b>		<b>70</b>
	<i>Cichorium endivia</i> L.	52
	<i>Lactuca sativa</i> L.	62
	<i>Solanum Lycopersicum</i> L.	79
	<i>Capsicum annum</i> L.	84
	<i>Daucus carota</i> L.	89
<b>Ornamental</b>		<b>56</b>
	<i>Gerbera</i> L.	26
	<i>Chrysanthemum</i> L.	52
	<i>Rosa</i> L.	53
	<i>Phalaenopsis Blume &amp; Doritaenopsis hort.</i>	73
	<i>Clematis</i> L.	94
<b>Fruit</b>		<b>81</b>
	<i>Fragaria × ananassa</i> Duch.	68
	<i>Prunus persica</i> (L.) Batsch	80
	<i>Malus domestica</i> Borkh.	84
	<i>Prunus avium</i> (L.) L.	90
	<i>Prunus domestica</i> L.	83

## 10.3. Technical examinations

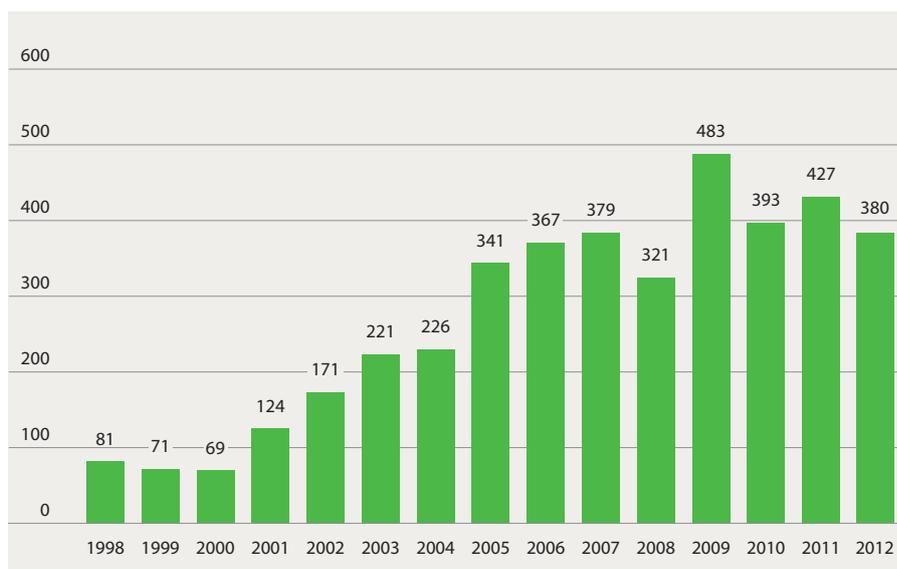
In 2012, the CPVO initiated 1 793 technical examinations, 223 less than in 2011. The decrease is linked to a decreasing number of applications. For vegetable and agricultural crops, a large number of technical examinations have already been carried out under the framework of the national listing procedure. If such a technical examination has been carried out by an entrusted examination office, the CPVO can base its decision to grant Community plant variety rights on a technical examination which has been carried out in the framework of a national application.

### 10.3.1. Sales of reports

National authorities from all over the world 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 the Office has made available to national authorities.

**Graph 8**

Evolution of the number of DUS testing reports made available to other PVR authorities (1998–2012)



By the end of 2012, the Office had sold 4 054 technical reports to 51 countries. During that year, South America continued to be the region from which most requests emanated (Table 5). In general, most requests concern ornamental sector varieties.

The Office has set up a flexible approach in respect of the agreed UPOV fee for making reports available: requesting countries can pay this fee directly to the CPVO, but they can also opt for the alternative, according to which the Office sends the invoice to the breeder. The report is always provided to the national authorities.

**Table 5:** The 10 countries that have bought the most DUS technical reports from the CPVO (1998–2012)

Country	Number of reports bought
Israel	545
Brazil	423
Ecuador	380
Colombia	365
Switzerland	322
Kenya	248
Norway	230
Canada	228
New Zealand	199
France	177

### 10.3.2. Relations with examination offices

#### 10.3.2.1. Sixteenth annual meeting with the examination offices

In December 2012, the CPVO held its 16th annual meeting with its examination offices, which is also attended by representatives from the European Commission, the UPOV office and the breeders' organisations, Ciopora, ESA and Plantum. The main subjects of discussion were:

- status of plant material submitted for reference collections;
- CPVO S2 gazette informing about closing dates for applications and requirements for the submission of plant material;
- access to DUS trials;
- interpretation of the wording 'testing period' — 'period of observation' in the final report and variety description;
- reporting on technical verifications;
- the new explanatory notes to the AC guidelines on the suitability of variety denominations;



Annual meeting with the examination offices, December 2012, Angers.



Annual meeting with the examination offices, December 2012, Angers

- the cooperation with OHIM;
- the Variety Finder database and the cooperation in variety denomination testing;
- various legal matters, such as aspects on the 'one key, several doors' principle according to which one DUS examination would be sufficient for the official variety listing as well as for the granting of plant variety rights, reporting on cases decided by the Court of Justice of the European Union.

Furthermore, the participants were informed with regard to the electronic exchange of documents with examination offices, on the first cycle of audits (2010–12) of examination offices and on research and development projects.

#### **10.3.2.2. Preparation of CPVO protocols**

In 2012, experts from the Member States' examination offices were invited to participate in elaborating or revising technical protocols for DUS testing, which either were subsequently approved by the Administrative Council or can be expected to be approved in 2013. The following meetings were held.

- Agricultural experts: the revised protocol of oilseed rape had been adopted in November 2011; the revised protocols for barley and rice have been adopted in March 2012. The discussion on protocols continued for the species barley and was newly taken up for the revision of the protocols of durum wheat, linseed/flax and for hemp.
- Fruit experts: discussion on the revision of the technical protocols for peach, Japanese plum, strawberry, kiwifruit, honeyberry, gooseberry, red/white currant and on the new technical protocols for almond and for olive, all of which were approved by the AC in 2012.
- Vegetable experts: the approval in 2012 of the revision of the technical protocols for tomato and spinach. Discussion at the end of 2012 on the revision of the artichoke/cardoon, parsnip and radish/black radish, and partial revision of the tomato, French bean and spinach protocols. These are all expected to be approved in 2013 and will be the first CPVO technical protocols to use the new 'template' for technical protocols.
- Ornamentals experts: new technical protocols were adopted for Echinacea and Heuchera. Furthermore, the technical protocol for Lilium and New Guinea Impatiens were revised.



Ornamental experts meeting, September 2012, Angers



Fruit experts meeting, October 2012, Angers



Agricultural experts meeting, October 2012, Angers



Vegetable experts meeting, December 2012, Angers

### 10.3.2.3. Crop experts meetings

Two meetings with agricultural experts were held in 2012. The first was held in the Netherlands in order to visit the ring test of potatoes which was conducted by nine entrusted examination offices during 2012.

The second meeting took place in October and prepared the revisions of the technical protocols for barley, durum wheat, linseed/flax and hemp.

Further subjects of a continued discussion were the questions on how to consider the segregation of characteristics of three-way hybrids in the technical protocol for barley and the uniformity standard to be used for male sterile parental crosses in three-way hybrids. The discussion continued also for spring barley varieties where it is difficult to establish distinctness: examination offices shared their experience on new characteristics which could help to overcome this problem.

The discussion was continued, from 2011, as regards the testing of parental lines in oilseed rape when the subject of the application is a hybrid variety. It was agreed that for hybrid varieties, according to the technical protocol, parental lines must be tested in the same way as any other variety.

The examination offices that participated in the ring test of rice for the revision of the technical protocol presented the report; the results are reflected in the revised protocol that had been presented to the Administrative Council for adoption in March 2012.



Ring test potato experts meeting, July 2012, the Netherlands

The experts group got a short presentation summarising the actual state of play of all ongoing R & D projects and more detailed information concerning the projects for roses and for potatoes. The potato project has similarity to the rose project as regards the DNA sample taking and profiling of candidate varieties.

Based on the assumption that an endophyte infection may impact upon the expression of characteristics of varieties in grasses, the experts were informed about the R & D project which would start at the end of 2012 in order to answer that question.

A meeting of fruit experts was held in October to discuss: new and revised TPs in the fruit sector; phytosanitary documentation, further harmonization of submission requirements for peach and grapevine; continuing discussions on the feasibility of the reduction in duration/costs of fruit technical examinations; distinctness and minimum distances for apple mutations; and the results and conclusions of the R & D project 'Management of peach tree reference collections'.

A meeting of ornamental experts was held in September. Important items of discussion were: changing of the closing date for applications and the time of plant submission of varieties of garden roses, the possible centralisation of DUS testing of so-called small species, additional testing period in case not all characteristics have been observed during the foreseen number of cycles, the interpretation of the wording 'testing period' (Final report) — 'period of observation' (variety description), the development of a CPVO technical questionnaire based on national protocols and the S2 publication for minor species.

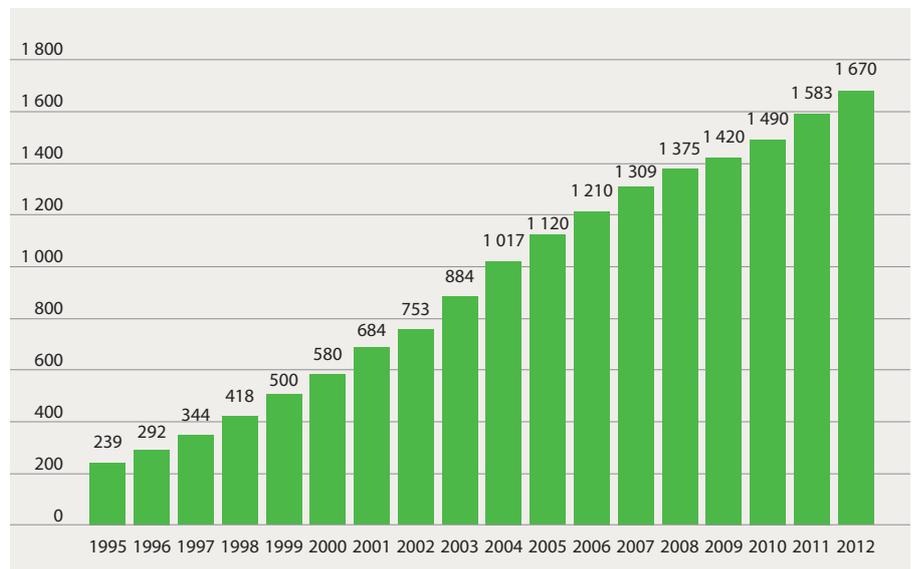
A meeting of vegetable experts was held in December to discuss the protocols mentioned above; working rules on two 'parallel' growing periods for DUS testing in vegetables; disease resistances testing issues; differences between responses in the technical questionnaire and observed characteristics of submitted plant material; greater cooperation between entrusted examination offices and possibilities for a new R & D project on the effect of seed priming treatments on the DUS test of candidate varieties.

#### 10.3.2.4. New species

In 2012, the Administrative Council of the CPVO entrusted examination offices for a number of botanical taxa resulting from the so-called new species inventories. It should be noted in this context that, as a consequence of the introduction of the new quality audit system, the examination offices indicate to the CPVO that they fulfil the quality requirements for a given 'new species'. Consequently, the CPVO does not undertake a selection of examination offices when preparing a proposal for entrustment by the Administrative Council. The following table states the taxa for which new examination offices have been entrusted in 2012 to conduct the technical examination. Graph 9 shows the evolution of the number of taxa for which the Office has received applications for Community plant variety protection.

**Graph 9**

Evolution of the number of botanical taxa for which the CPVO received applications (1995–2012)



Botanical taxon	Entrusted examination office
<i>Abelmoschus manihot</i> (L.) Medik.	Naktuinbouw / NL NIAB / UK
<i>Acer rubrum</i> L.	Bundessortenamt / DE Naktuinbouw / NL Coboru / PL NIAB / UK
<i>Actaea pachypoda</i> Elliott	Naktuinbouw / NL NIAB / UK
<i>Agaricus bisporus</i> (Lange) Imbach	Central Agricultural Office / HU
<i>Agaricus subrufescens</i> Peck	National Food Chain Safety Office / HU
<i>Aglaonema commutatum</i> Schott × <i>Aglaonema philippinense</i> Engl. var. <i>stenophyllum</i> (Merr.) R. N. Jervis (syn. <i>Aglaonema stenophyllum</i> Merr.)	Naktuinbouw / NL
<i>Aglaonema commutatum</i> Schott var. <i>elegans</i> (Engl.) Nicolson × <i>Aglaonema crispum</i> (Pitcher & R. F. Manda) Nicolson	Naktuinbouw / NL
<i>Aloe aristata</i> Haw. × <i>Haworthia margaritifera</i> (L.) Haw	Naktuinbouw / NL
<i>Aspidistra elatior</i> Blume	Naktuinbouw / NL
<i>Aspidistra montevicensis</i> (Spreng.) Kuntze	Bundessortenamt / DE Naktuinbouw / NL NIAB / UK
<i>Baptisia tinctoria</i> (L.) R. Br.	Bundessortenamt / DE
<i>Brassica oleracea</i> L. convar. <i>capitata</i> (L.) Alef. var. <i>alba</i> DC. × <i>Brassica oleracea</i> L. convar. <i>capitata</i> (L.) Alef. var. <i>rubra</i> (L.) Thell.	UKZUZ / CZ GEVES / FR Naktuinbouw / NL
<i>Buddleja crispa</i> Benth. × <i>Buddleja marrubiifolia</i> Benth.	GEVES / FR
<i>Carex laxiculmis</i> Schwein.	University of Aarhus / DK Naktuinbouw / NL NIAB / UK
<i>Cercidiphyllum japonicum</i> Siebold & Zucc.	Naktuinbouw / NL
<i>Cordyline banksii</i> Hook. f. × <i>Cordyline pumilio</i> Hook. f.	Naktuinbouw / NL NIAB / UK
<i>Corydalis elata</i> Bureau et Franch. × <i>C. flexuosa</i> Franch.	Naktuinbouw / NL NIAB / UK
<i>Dianthus chinensis</i> L.	Naktuinbouw / NL
<i>Digitalis purpurea</i> L. × <i>Isoplexis canariensis</i> (L.) Lindl.	Naktuinbouw / NL NIAB / UK
<i>Disporum cantoniense</i> (Lour.) Merr.	Naktuinbouw / NL NIAB / UK
<i>Dracaena concinna</i> Kunth.	Naktuinbouw / NL
<i>Echeveria agavoides</i> Lem.	Naktuinbouw / NL
<i>Echeveria</i> DC. × <i>Graptopetalum bellum</i> (Moran & J. Meyrán) D. R. Hunt (syn. <i>Tacitus bellus</i> Moran & J. Meyrán)	Naktuinbouw / NL
<i>Echeveria elegans</i> Rose × <i>E. pulidonis</i> E. Walther	Naktuinbouw / NL
<i>Echeveria lilacina</i> Kimnach & R. C. Moran × <i>E. pulidonis</i> E. Walther	Naktuinbouw / NL
<i>Ficus americana</i> Aubl. subsp. <i>guianensis</i> (Ham.) C. C. Berg	Naktuinbouw / NL
<i>Gazania maritima</i> Levyns × <i>Gazania rigens</i> (L.) Gaertn.	Bundessortenamt / DE Naktuinbouw / NL NIAB / UK
<i>Hippeastrum yungacense</i> (Cárdenas & I. S. Nelson) Meerow	Naktuinbouw / NL
<i>Hypericum</i> × <i>moserianum</i> André	Naktuinbouw / NL
<i>Lampranthus bicolor</i> (L.) N. E. Br. × <i>L. pocockiae</i> N. E. Br.	Bundessortenamt / DE Naktuinbouw / NL
<i>Ligustrum ovalifolium</i> Hassk.	Bundessortenamt / DE Naktuinbouw / NL NIAB / UK
<i>Lobelia alsinoides</i> Lam. (syn. <i>Lobelia trigona</i> Roxb.) × <i>Lobelia erinus</i> L.	Bundessortenamt / DE Naktuinbouw / NL

<i>Lycium barbarum</i> L.	Bundessortenamt / DE
<i>Mecardonia acuminata</i> (Walter) Small	Bundessortenamt / DE Naktuinbouw / NL NIAB / UK
<i>Medinilla</i> Gaudich.	Naktuinbouw / NL
<i>Mimulus</i> × <i>hybridus</i> hort. ex Voss (syn: <i>Mimulus tigrinus</i> hort. M. <i>guttatus</i> × M. <i>luteus</i> )	Naktuinbouw / NL NIAB / UK
<i>Nepenthes ampullaria</i> Jack × <i>Nepenthes ventricosa</i> Blanco	Naktuinbouw / NL
<i>Otomeria oculata</i> S. Moore	Bundessortenamt / DE Naktuinbouw / NL
<i>Pachyphytum hookeri</i> (Salm-Dyck) A. Berger (syn. <i>Echeveria hookeri</i> (Salm-Dyck) Lem.) × <i>Echeveria agavoides</i> Lem.	Naktuinbouw / NL
<i>Paphiopedilum</i> Pfitzer	Naktuinbouw / NL
<i>Peperomia marmorata</i> Hook. f. × <i>Peperomia metallica</i> L. Linden & Rodigas	Naktuinbouw / NL
<i>Pieris formosa</i> (Wall.) D. Don × <i>Pieris japonica</i> (Thunb.) D. Don ex G. Don	Bundessortenamt / DE Naktuinbouw / NL
<i>Platyterium ridleyi</i> Christ	Naktuinbouw / NL
<i>Prunus cerasus</i> L. × ( <i>Prunus avium</i> (L.) L. × <i>Prunus canescens</i> Bois)	Bundessortenamt / DE GEVES / FR Coboru / PL
<i>Prunus cerasus</i> L. × <i>Prunus avium</i> (L.) L.	Bundessortenamt / DE GEVES / FR Coboru / PL
<i>Prunus incisa</i> Thunb.	Naktuinbouw / NL NIAB / UK
<i>Pyrus</i> × <i>bretschneideri</i> Rehder × <i>P. pyrifolia</i> (Burm. f.) Nakai	GEVES / FR CRA-FRU / IT
<i>Quercus palustris</i> Münchh.	Bundessortenamt / DE Coboru / PL
<i>Rhipsalis baccifera</i> (J. S. Muell.) Stearn <i>subsp. baccifera</i>	Naktuinbouw / NL
<i>Ricinus communis</i> L.	GEVES / FR
<i>Robinia</i> × <i>margaretta</i> Ashe	NIAB / UK
<i>Rubus chamaemorus</i> L.	Naktuinbouw / NL
<i>Rudbeckia subtomentosa</i> Pursh	Naktuinbouw / NL NIAB / UK
<i>Sarcococca hookeriana</i> Baill.	Naktuinbouw / NL NIAB / UK
<i>Solanum torvum</i> Sw.	GEVES / FR Naktuinbouw / NL
<i>Solidago canadensis</i> L.	Naktuinbouw / NL
<i>Strobilanthes anisophylla</i> (Lodd. et al.) T. Anderson	Naktuinbouw / NL NIAB / UK
<i>Styrax japonicus</i> Siebold & Zucc.	Naktuinbouw / NL
<i>Vicia villosa</i> Roth	GEVES / FR
× <i>Burrageara</i> hort.	Naktuinbouw / NL

## 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.

- 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 details of 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 designated expert.
- 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 who are 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 include:
  - 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.
- 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 (as of 31 December 2012) is as follows.

John Austin	Executive Agency of Variety Testing Ministry of Agriculture and Food Field Inspection and Seed Control Bulgaria
Bronislava Bátorová	UKSUP Central Controlling and Testing Institute in Agriculture Variety Testing Department Slovakia
Dimitrios Batzios	Ministry of Rural Development and Food Variety Research Institute of Cultivated Plants Greece
John Claffey	Department of Agriculture, Food and the Marine Office of the Controller of Plant Breeders' Rights Ireland
Elena Craita Checiu	State Office for Inventions and Trademarks Romania
Ana Paula Cruz de Carvalho	DGADR Direcção-Geral de Agricultura e Desenvolvimento Rural Divisão de Sementes, Variedades e Recursos Genéticos Portugal
Maureen Delia	Seeds and Other Propagation Material Unit Plant Health Directorate Agriculture and Fisheries Regulation Division Ministry for Resources and Rural Affairs Malta
Gerhard Deneken	Ministry of Food, Agriculture and Fisheries Danish AgriFish Agency Department of Variety Testing Denmark
Kees van Ettehoven	Naktuinbouw The Netherlands
Barbara Fűrnweger	Bundesamt für Ernährungssicherheit Austria
Zsuzanna Füstös	Central Agricultural Office Hungary
Primoz Grižon	Ministry of Agriculture, Forestry and Food Phytopsanitary Administration of the Republic of Slovenia Slovenia
Joël Guiard	GEVES Groupe d'étude et de contrôle des variétés et des semences France
Sigita Juciuvienė	Ministry of Agriculture Lithuanian State Plant Service Lithuania
Sofija Kalinina	Ministry of Agriculture of the Republic of Latvia State Plant Protection Service Latvia

Marcin Król	Coboru Centralny Ośrodek Badania Odmian Roślin Uprawnych Poland
Paivi Mannerkopi	European Commission Directorate-General for Health and Consumers Unit E.2 — Plant health Belgium
Kyriacos Mina	Ministry of Agriculture, Natural Resources and Environment Agricultural Research Institute Cyprus
Kaarina Paavilainen	Finnish Food Safety Authority Evira Finland
Laima Puur	Agricultural Board Estonia
Mara Ramans	Food and Environment Research Agency (FERA) United Kingdom
Beate Rücker	BSA Bundessortenamt Germany
Radmila Safarikova	UKZUZ Central Institute for Supervising and Testing in Agriculture Czech Republic
Luis Salaices Sánchez	OEVV Oficina Española de Variedades Vegetales Ministerio de Medio Ambiente y Medio Rural y Marino Spain
Françoise De Schutter	OPRI Office de la propriété intellectuelle Belgium
Karin Sperlingsson	Statens Jordbruksverk Sweden
Domenico Strazzulla	Ministero delle Politiche Agricole Alimentari e Forestali Dipartimento della Politiche Competitive del Mondo Rurale e della Qualità Italy
Marc Weyland	Administration des services techniques de l'agriculture Service de la production végétale Luxembourg

# 11. VARIETY DENOMINATIONS



DUS trials on *Lavendula L.*, France

## 11.1. New explanatory notes to the AC guidelines on variety denominations

On various occasions, the CPVO has received feedback from some of its stakeholders stating that the CPVO's interpretation of the rules for suitability of variety denominations is perceived to be too strict or not very clear. For this reason, the Office proposed in 2011 the organisation of a working group to help inform stakeholders which considerations are taken into account by the Office when interpreting the applicable rules. The European Commission, seven Member States and all breeders' associations observers in the AC were represented in this group.

Exchanges of views took place, concrete proposals were made and it turned out that most of them concerned the explanatory notes to the guidelines rather than the guidelines themselves. These explanatory notes are a tool to help with interpreting the guidelines that have been drafted by the CPVO, based on the jurisprudence and case-law as developed by the internal committee of the Office. Their aim is to help applicants formulate a denomination proposal suitable according to Article 63 of Council Regulation (EC) No 2100/94 and to make it easier for national authorities to analyse the suitability of proposals for denominations according to the rules.

The working group also made some proposals to amend the guidelines themselves. In order to have equivalent rules on denominations for the purpose of listing, amendments of the guidelines should only be made if a modification of Commission Regulation (EC) No 637/2009 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species is also made.

In November 2012, the Administrative Council took note of the new version of the explanatory notes, added a few comments, requested the Commission to implement the amendments proposed to the guidelines in Regulation (EC) No 637/2009 and asked the Office to modify the guidelines accordingly with effect from the date that the changes in the regulation will enter into force. The Commission announced that discussions in view of amending the guidelines in Regulation (EC) No 637/2009 would take place in the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry as from 2013.

The new version of the explanatory notes has been published on the CPVO website.

## 11.2. The CPVO Variety Finder: latest developments

The CPVO Variety Finder is a web-based database developed by the Office in 2005 for the purpose of testing variety denominations proposals in the procedure of assessment of their suitability. It contains national data on varieties applied for and on varieties granted plant variety rights, national listings of agricultural and vegetable species and some commercial registers. In total, more than 780 000 denominations originating from EU and UPOV Member States have been included so far.

The system includes a search tool with the purpose of testing proposed denominations for similarity. A retrieval tool allows more general searches for details of varieties or species present in the database. This retrieval tool was developed in 2012, making more information available for each variety and allowing users to export the desired information to an excel sheet.

A key issue in a database is keeping the information it contains up to date. The Office regularly receives contributions directly from EU countries in respect of official and commercial registers, and via UPOV for most non-EU countries. There has been a steady increase in the number of contributions submitted per year since 2007, as illustrated in Graph 10. This increase continued in 2012, with noticeably more contributions from non-EU Member States. Most of these contributions are provided by UPOV in the frame of a Memorandum of Understanding, but also collected by the CPVO in the case of EU neighbouring countries participating in the multi-beneficiary programme (see Chapter 4.2.).

**Graph 10**

Evolution of the number of contributions (EU, non-EU) included in the Variety Finder and the number of organisations contributing to the Variety Finder

■ EU contributions  
■ Non-EU contributions  
— Organisations

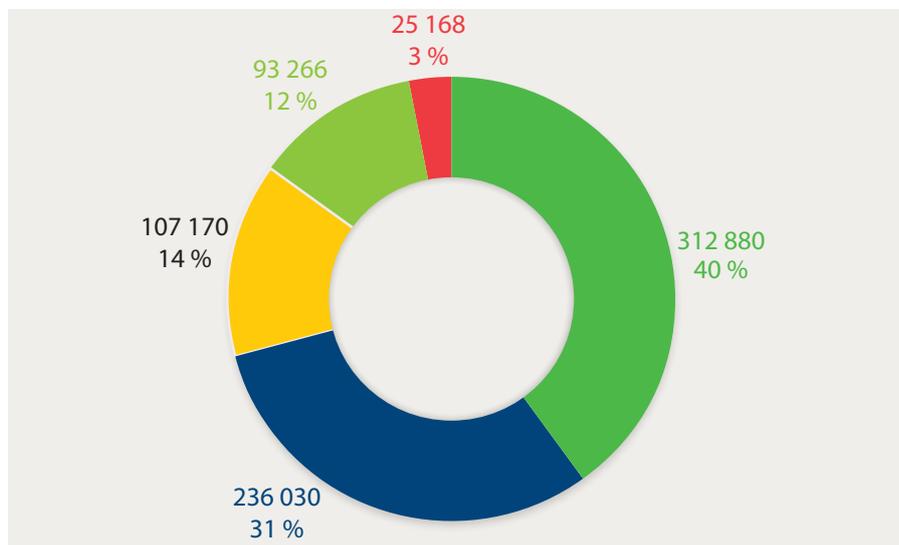


Once their relevance has been checked, the Office also regularly includes new registers in the Variety Finder. Some commercial registers are included, mainly for ornamental species. Graph 11 illustrates the nature of the various registers included in the Variety Finder.

**Graph 11**

Number of records per type of register

- NLI (national listing)
- PBR (plant breeder's rights)
- COM (commercial registers)
- Other registers
- PLP (plant patents)



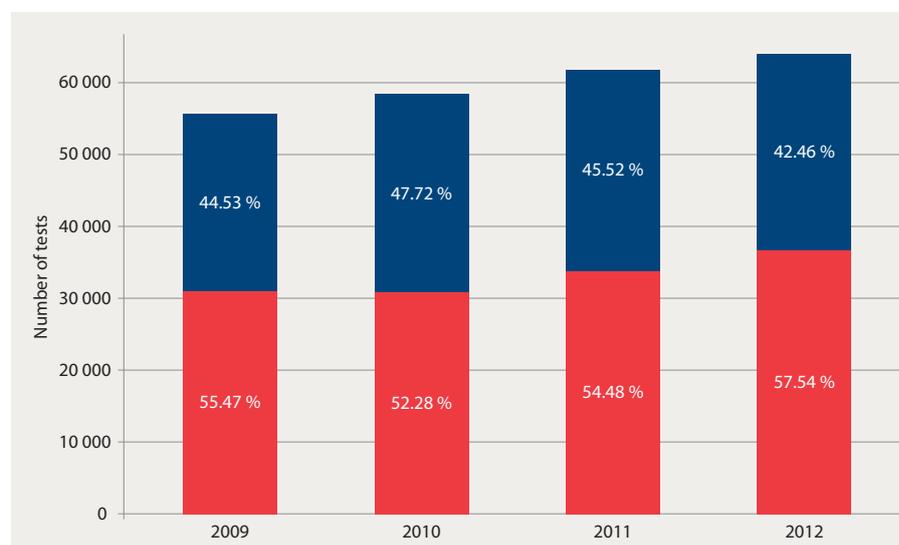
Since November 2011, the database has been freely available under the 'Databases' heading of the CPVO website. Identification is still necessary, with a login and password. In 2012, the attribution of the login and password was computerised and is immediate provided the user registers some information for identification purposes.

With more than 60 000 tests performed in 2012, the database is a widely used tool, especially for testing the suitability of variety denominations. It is utilised by all stakeholders in similar proportions, as shown in Graph 12. The increase of the number of tests performed in 2012 is largely due to CPVO clients, although a rather limited number of companies make use of this service: 191 clients used the CPVO Variety Finder in 2012, to be considered in perspective with the 703 applicants and procedural representatives who filed an application for Community plant variety rights in 2012.

**Graph 12**

Number of tests for similarity performed in the Variety Finder by CPVO clients (including applicants, breeders and procedural representatives) and by national and international authorities (including the CPVO, examination offices and the European Commission)

- CPVO clients
- National or international authorities



### 11.3. An increased utilisation of the service of cooperation with Member States

The purpose of this activity is to harmonise the decisions as to the suitability of proposals for variety denominations in procedures for national plant variety rights, for national listing and at the level of the CPVO.

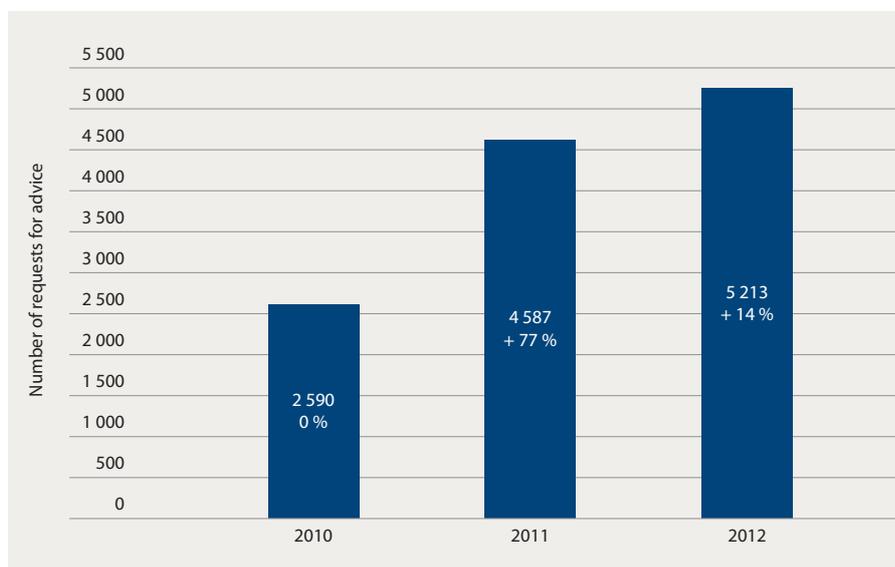
As a matter of fact, the marketing directives relevant for the commercialisation of agricultural and vegetable varieties in the EU contain a cross reference to Article 63 of Regulation (EC) No 2100/94 on Community plant variety rights. Article 63 lays down the criteria for the suitability of variety denomination proposals. The legal basis in respect of the suitability of variety denominations is thus unique.

In March 2010, the CPVO put in place a web-based system whereby EU Member States can request advice from the CPVO before publishing an official proposal for denomination in the plant variety rights or listing procedure. In the case of controversial opinions, exchanges of view can take place, but the decision remains in the hands of the authority where the application for registration of the variety has been made.

In 2012, the service recorded more than 5 200 requests for advice, representing an increase of 14 % in comparison with 2011.

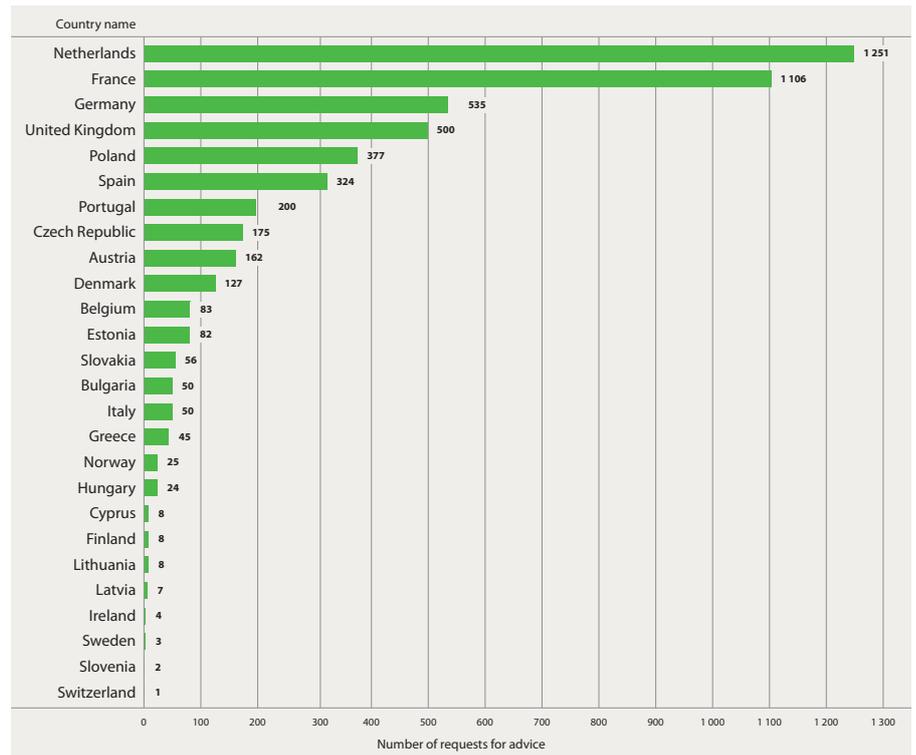
**Graph 13**

Evolution of the yearly number of requests for advice (2010–2012)



Graph 14 gives an overview of the number of requests for advice in 2012 by Member State participating in the project. The Office accepted to render advice to a few non-EU countries which share the rules for commercialisation of agricultural and vegetable species.

**Graph 14**  
Number of requests for advice received per country in 2012



Last year, 26 countries benefited from the service but there are indications that not all EU Member States made use of it. This produced as a consequence some practical problems in 2012. Several times, a denomination was accepted by a Member State which did not ask for the advice of the Office and this denomination was found to be not suitable for the same variety when another Member State asked for advice. A few letters explaining the situation were sent to the relevant non-participating countries. At its annual meeting with examination offices, the Office strongly encouraged Member States to make use of the service on a regular basis and to contribute to the system.

In 2012, 92.5 % of the requests for advice received an answer within 5 working days, with an average processing time of 1.27 days.

In order to face the increasing number of requests for advice and to keep the delay of answer as short as possible, the Office improved its online service in September 2012, giving to Member States the possibility to provide additional information when submitting their proposals with the aim of improving the accuracy of the advice and avoiding that CPVO raises unnecessary observations.

**Graph 15**

Yearly processing time and average analysis days (2010–2012)

- Total analysis within 24 hours
- Total analysis between 2 and 5 working days
- Total analysis between 6 and 10 working days
- Total analysis between 11 and 15 working days
- Total analysis more than 16 working days
- Yearly average processing time (in days)



## 11.4. Community trade marks will be considered in the assessment of variety denominations

In 2012, the Office reinforced its cooperation with the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) in Alicante. During the first quarter of the year, a CPVO delegation visited OHIM, where it had the opportunity to explain in detail how variety denominations are assessed. An OHIM delegation visited the CPVO in return, and explained their procedures concerning the registration of a Community trade mark. It was underlined in particular that the denomination of varieties granted Community or national plant variety rights or listed in the EU common catalogue were not considered to amount to an absolute ground to refuse the registration of a trade mark in class 31. This exchange triggered investigations and, in September 2012, the Office was informed that OHIM would change its practice in the sense that OHIM will accept the principle that denominations of varieties granted EU or national plant variety rights and varieties registered in the common catalogue should constitute an impediment for the registration of Community trade marks. This will be implemented in 2013. The Office intends to include the relevant Community trade marks, mainly registered in class 31, in its Variety Finder, accessible to national authorities and breeders. Community trade marks will be taken into account by the Office when analysing proposals for variety denominations.

# 12. IT DEVELOPMENTS

During 2012, the CPVO set out its vision for IT developments for the coming years. This vision covers four overarching programmes which are considered crucial to the continuing development of the CPVO.

## 12.1. E-services

The e-services programme encompasses all of the various projects which will ensure that CPVO dealings with external stakeholders (clients, examination offices and partners such as OHIM and UPOV, etc.) shall be online, transparent, paperless and, to the extent possible, minimise manual intervention in the procedures. Ongoing and proposed projects in the e-services programme include amongst others: sharing online applications (extending the successful online application system to Member States), electronic exchanges of business documents with examination offices and electronic exchanges of all documents with clients.

The pilot project for an exchange platform, which began in 2011 and should be completed in 2013, will be the cornerstone of these developments.

## 12.2. Operational improvements

The day-to-day tasks of the CPVO require robust applications, in particular, to manage operational, documentation and financial needs. While existing applications currently meet the requirements of the Office, future developments should allow for further integration of applications with the web and also allow improved performance in terms of speed and ease of use. For this reason, a number of developments can be expected in the coming years.

## 12.3. Communication tools

Communication, both internally and with external stakeholders is key to the efficient functioning of the Office. Significant advances have been made in the past years and these can be further enhanced in future. In particular, a number of projects are foreseen in the short-term including: implementation of Sharepoint for a coherent management of the CPVO intranet, optimisation of hosting for all sites (intranet and extranet) as well as the ongoing maintenance and development of websites for stakeholders.

## 12.4. Infrastructure development

All of the preceding programmes require a coherent modern IT infrastructure (networks, servers, PCs, mobile devices). The infrastructure development covers such projects as server virtualisation, access to EU Commission sites, mobile technology, back-up and data recovery procedures, etc. designed to effectively support the applications of the Office.

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



*Linum L.*

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 had one meeting on 16 May 2012 to approve a few amendments to the fees regulation, namely the reduction of the application fees from EUR 900 to EUR 650 with effect from 1 January 2013.

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

This committee met four times during 2012 in Brussels and staff members of the CPVO attended two meetings.

Of particular interest for the CPVO throughout 2012 were the following items:

- the Commission's updates and the related discussions on the review of the legislation related to seed and plant material;
- the 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 Directives 2002/53/EC and 2002/55/EC respectively as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant and vegetable species;
- the discussions on the Commission working programme for 2012 as discussed in February 2012 as well as the work programme for 2013 as discussed in October 2012.

## 13.3. Standing Committee on Propagating Material of Ornamental Plants

This Committee did not meet in 2012.

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

Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production was adopted on 29 September 2008 and needs to be implemented by the Commission.

One major issue in this directive is the obligation of official listing of varieties of fruit plants for their commercialisation in the EU as of 1 October 2012. The directive also establishes that fruit varieties granted Community plant variety rights will automatically be authorised for marketing within the EU without any further need of registration. Implementing rules could unfortunately not be agreed upon by 1 October 2012 and the Commission intends to have them adopted in 2013 for implementation in the beginning of 2015.

The CPVO participated in most of the standing committee and working group meetings organised by the Commission on this subject. It assisted the Commission in drafting working group minutes and followed the development of discussions closely, especially on aspects related to the DUS examination and the suitability of proposed variety denominations. The Office regularly communicated its views to the Commission in this respect.

## **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 the following Council working parties:

- coordination of UPOV meetings (Council, Consultative Committee, Technical Committee and Administrative and Legal Committee);
- agricultural questions;
- coordination of OECD meetings on seed schemes (Annual meeting and Technical Working Groups).

# 14. CONTACTS WITH EXTERNAL ORGANISATIONS

## 14.1. Contacts with breeders' organisations

The CPVO has regular contacts with the breeders' organisations, in particular with those that represent the main users of the EU system: the Organisation of Breeders of Asexually Reproduced Ornamental and Fruit Plants (Ciopora); the European Seed Association (ESA), which, on a European level, organises breeders of agricultural and vegetable varieties; and Plantum, an association for the plant reproduction material sector. Representatives of these three organisations participate in the CPVO Administrative Council as observers, and in all relevant meetings of technical experts organised by the Office. The organisations take an active part in and contribute to seminars and workshops organised by the CPVO to spread information on all aspects of the Community plant variety protection system.

In the report year, the CPVO attended the annual meetings of Ciopora and ESA, respectively in Miami (United States) and in Brussels (Belgium). The CPVO also participated in the annual meeting of Ciopora Deutschland.

## 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 2012, as members of the EU delegation, CPVO officials participated in the activities of UPOV and attended the meetings of the following bodies and committees of the International Union:

- UPOV Council;
- Legal and Administrative Committee;
- Technical Committee;
- Consultative Committee;
- technical working parties (agricultural crops, vegetables crops, fruit crops, ornamental plants and forest trees, automation and computer programs and the Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular (BMT));
- Advisory Group of the Legal and Administrative Committee;
- ad hoc working group on the development of a prototype electronic application form.

On 2 November 2012, the President of the CPVO participated in the UPOV symposium on the benefits of PVP for farmers and growers, in Geneva (Switzerland). The aim was to provide illustrations of how plant variety protection can improve incomes for farmers and growers by supporting the development and supply of new, improved varieties that are suited to their needs. The symposium also provided examples of how farmers and growers can use plant variety protection as breeders.

The CPVO also collaborated in the training course for Latin American countries on protection of plant variety rights, organised by UPOV, the World Intellectual Property Organisation (WIPO), the Spanish authorities and the US Patent Office (USPTO), in Montevideo (Uruguay) in December.

Senior officials of the UPOV office regularly attend meetings of experts or working groups organised by the CPVO dealing with technical and legal issues of common interest.

The CPVO signed a memorandum of understanding with UPOV in October 2004 for a programme of cooperation. Within the framework of this cooperation, the CPVO exchanged information with UPOV during the development of its CPVO Variety Finder in order to ensure compatibility with the existing UPOV plant variety database (PLUTO database and UPOV-ROM). Both databases contain data on plant varieties for which protection 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 Variety Finder 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 have 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 names of varieties of the PLUTO database and UPOV-ROM. In 2012, the CPVO visited the UPOV Office in order to exchange information in respect of the most recent developments of the project. Discussions focused on the different principles of management of the respective databases which result in a slightly different content. Details were given to UPOV about the Variety Finder search tool which is now available in the PLUTO website.

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 in knowing the details, accumulated 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.



European Patent Office visit to the CPVO, April 2012

### **14.3. Contacts with the Organisation for Economic Cooperation and Development (OECD)**

In January 2012, the Vice-President of the CPVO attended the meeting of the Working Group on Bio-molecular Techniques in Paris and, in July, the annual meeting of the OECD seed schemes in Helsinki (Finland).

### **14.4. Contacts with the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) and the European Patent Office (EPO)**

In 2012, the Office reinforced its cooperation with OHIM in Alicante. During the first quarter of the year, a CPVO delegation visited OHIM to discuss issues of common interest. An OHIM delegation headed by the Vice-President of OHIM, Mr Christian Archambeau, visited the Office in return in June 2012. As a follow-up of these contacts, a closer cooperation between the two agencies was initiated in areas such as: variety denominations, information and technology, and the European Observatory on Infringements of Intellectual Property Rights.

Mrs Yeats, Director of Biotechnology at the European Patent Office, visited the Office and gave a presentation on details on the procedure to acquire a patent and what subject matter in relation to plant material that can be patented.



OHIM visit to the CPVO, June 2012

## 14.5. Other contacts

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

- the Commission Directorate-General for Human Resources and Security: implementation matters regarding staff regulations;
- the Commission Directorate-General for the Budget: implementation of the new financial regulation and the internal audit function.

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

- the relevant standing committees of the European Commission;
- 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;
- the meetings of the data protection officers of the EU agencies as well as other working groups established under the umbrella of the coordination of 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 <sup>(1)</sup>. In order for these rules to apply also to documents held by the Office, a new article, Article 33a, was introduced into the basic regulation in 2003 by the adoption of Council Regulation (EC) No 1650/2003 <sup>(2)</sup>.

Article 33a 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. These 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 and 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/photo/ assignment not sent	1 (unsuccessful)
2009	54	28 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent/ photos not available	2 (successful)
2010	63	29 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	1 (unsuccessful)
2011	71	27 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	2 (1 unsuccessful and 1 successful)
2012	88	57 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	8 (3 unsuccessful and 5 successful)

<sup>(1)</sup> 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 L 145, 31.5.2001, p. 43).

<sup>(2)</sup> Council Regulation (EC) No 1650/2003 of 18 June 2003 amending Regulation (EC) No 2100/94 on Community plant variety rights (OJ L 245, 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 individuals 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 EU 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 EU institutions and bodies who should ensure, in an independent manner, the internal application of the provisions in the regulation.

The main task of the DPO is to ensure, in an independent manner, the internal application of the provisions of Regulation (EC) No 45/2001 in the CPVO. The DPO is also required to keep a register of all of the processing operations involving personal data carried out by the CPVO. This register, which must contain information explaining the purpose and conditions of the processing operations, is accessible to any interested person in the DPO intranet webpages.

By decision of the CPVO President of 24 April 2009, the acting part-time DPO was reappointed for a term of three more years.



*Clematis* L.



Reference collection of tulips, the Netherlands

## **16.3. Follow-up of the visit to the CPVO by a delegation from the Office of the European Data Protection Supervisor**

A delegation of three members of the Office of the EDPS visited the CPVO on 15 February 2011 to understand and discuss the level of compliance of the CPVO with Regulation (EC) No 45/2001. This visit was one of the EDPS compliance tools described in the policy paper *Monitoring and ensuring compliance with Regulation (EC) No 45/2001* adopted by the EDPS on 13 December 2010.

This visit was a good opportunity to reinforce the cooperation between the CPVO and the office of the EDPS as well as a tool for enhancing compliance with the regulation. The visit resulted in an important exchange of views about the specific problems encountered by small agencies such as the CPVO. The visit was positive in terms of good cooperation and raising awareness on data protection compliance. The visit was also the opportunity to increase the local support to the DPO. Subsequently, the DPO updated the EDPS on the CPVO's progress towards achieving compliance, notably on the inventory, register and prior checking notifications, and presented the DPO intranet. Certain items of current follow-up to EDPS prior checking opinions were also discussed.

During the closing meeting, a supervision roadmap (including specific deadlines) was agreed by the CPVO. This roadmap was finalised by the CPVO in 2012 and a final report was sent to the EDPS mid-2012.

## **16.4. Report of the CPVO Data Protection Officer for 2012**

### **16.4.1. Register of data processing operations**

The DPO created a register of data protection operations in the form of a database, available from the CPVO intranet, under the DPO intranet site. This register contains notifications (Article 25) received from the controllers, as well as prior checking operations (Article 27) sent to the EDPS for an opinion.

This register contained, as at the end of 2012, 54 entries composed of 35 notifications and 19 prior checking operations, all with an opinion from the EDPS.

### **16.4.2. Inventory of data processing operations**

An inventory was first drafted by the DPO when appointed and is regularly updated with new processing operations within the CPVO. This inventory contained, as at the end of 2012, 54 processing operations, of which four still need to be notified to the DPO and finalised in the register.

### **16.4.3. Thematic guidelines of the EDPS**

The EDPS issues guidelines on specific themes in order to provide guidance for EU institutions and bodies in certain fields relevant for them, such as recruitment, processing of disciplinary data and video surveillance.

These guidelines also facilitate the prior checking by the EDPS of processing operations in the EU agencies as they served as a reference document against which agencies could measure their current practices.

The EDPS adopted thematic guidelines concerning the processing of personal data in the area of leave and flexitime in December 2012. The DPO did not submit any prior checking notifications to the EDPS in 2012 since the CPVO procedures did not present specific risks.

### **16.4.4. Information provided to data subjects**

The staff members of the CPVO are informed about data protection issues through the DPO website, which is updated on a regular basis. It contains the principles of data protection, the subjects' rights, the controller's obligations, the regulation, some documents and decisions of the President relating to data protection issues, data protection notices and privacy statements, the register, the forms for notifications to the DPO and a contact e-mail address.

In September 2012, the staff members were presented with the data protection policy of the CPVO and the progress made therewith during the General Assembly of members of the staff.

### **16.4.5. Meetings of the DPO network in 2012**

As a function common to all EU institutions and bodies, DPOs are now well established and regularly meet within a network of DPOs once or twice a year in order to share know-how and best practices and exchange with the EDPS.

The DPO of the CPVO participated in two meetings of the DPO network, in Helsinki (February 2012) and in Hamburg (November 2012).

# 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 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, was renewed for a term of 5 years as Chairman of the Board of Appeal of the CPVO by Council Decision of 4 December 2012 (OJ C 378, 8.12.2012, p. 2). His alternate, Ms Sari Haukka, was appointed by Council Decision of 12 July 2011 (OJ C 209, 15.7.2011, p. 17). Her mandate runs from 15 October 2011 until 14 October 2016.

### 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 16 February 2011, adopted the following list of 19 qualified members of the Board of Appeal for a period of 5 years starting on 23 February 2011 (21 members were appointed but two members resigned, on 24 November 2011 and on 12 November 2012).

#### List of qualified members 2011–16

- |                                      |   |
|--------------------------------------|---|
| 1. Barendrecht, Cornelis Joost       | 11. Köller, Michaël                         |
| 2. Bianchi, Pier Giacomo             | 12. Pinheiro de Carvalho, Miguel Angelo     |
| 3. Bianchi, Richard                  | 13. Reheul, Dirk                            |
| 4. Boenisch, Beatrix                 | 14. Riechenberg, Kurt                       |
| 5. Brand, Richard                    | 15. Roberts, Timothy Wace                   |
| 6. Csurös, Zoltán                    | 16. Scott, Elizabeth                        |
| 7. Fikkert, Krieno Adriaan           | 17. Ullrich, Hanns                          |
| 8. Ghijssen, Huibert Cornelis Helmer | 18. Van Marrewijk, Nicolaas Petrus Antonius |
| 9. Guiard, Joël                      | 19. Van Wijk, Arnold Jan Piet               |
| 10. Johnson, Helen                   |   |

## 17.2. Decisions of the Board of Appeal in 2012

The Board of Appeal met once on 17 January 2012 in Appeal Case A009/2011 ('Rogbret') and took a decision on 17 March 2012, which dismissed the appeal and rejected the request for a new DUS examination.

On 10 October 2012, after the appellant waived its right to be heard, the Board held in another decision that the publication of the termination of the Community plant variety certificate was correct and rejected the appeal (Case A001/2012 'RYN200574').

### **17.2.1. Appeal Case A009/2011 — ‘Rogbret’**

On 2 July 2008, the Office received an application, No 2008/1535, for the Daphne variety ‘Rogbret’.

On 8 August 2008, the National Institute of Agricultural Botany (NIAB), in the United Kingdom, acknowledged receipt of the CPVO’s request to carry out the test for distinctness, uniformity and stability.

On 2 June 2010, the NIAB informed the CPVO that only six out of the 15 plants submitted for trial had produced flowers. The NIAB indicated that it was thus impossible to assess the uniformity of the variety for this characteristic. The Office then sent a letter to the applicant on 4 June 2010 to forward the information imparted by the NIAB and to invite him to visit the trials or contact the NIAB for further information. On 21 June 2010, the applicant responded to the CPVO, putting the NIAB in copy, giving advice on how to obtain flowering and explaining that he had submitted young plants.

On 10 August 2010, the CPVO informed the applicant by mail that the NIAB had found that three plants were showing margins of variegation too narrow and invited him to visit the trials or contact the examiner.

The applicant received from the CPVO a copy of the negative final report, inviting him to send written comments to the CPVO by 22 December 2010. The applicant replied by a letter dated 13 December 2010.

The applicant received Decision No R1062 dated 21 February 2011 rejecting the application for lack of uniformity. On 21 April, he lodged an appeal against the decision of the CPVO to reject the application for the Daphne ‘Rogbret’ due to lack of uniformity. The rectification committee of the CPVO decided on 20 July 2011 that the Office acted correctly in rejecting the application for ‘Rogbret’ and remitted the case to the Board of Appeal of the CPVO.

#### **Arguments raised by the Parties:**

At the hearing on 17 January 2012 before the Board of Appeal of the CPVO, the appellant submitted that the differences observed in the expression of the variegation in the plants were due to growing conditions. He confirmed that the candidate variety had indeed showed some susceptibility to reverse mutation but to a far lesser degree than what was observed during the DUS examination and concluded that customers were satisfied with the variety. He requested that another DUS testing be organised.

The CPVO stated that the examination was conducted in accordance with the technical rules of the CPVO and that the reverse mutations observed had persisted in off-type plants in 2011.

### **Decision of the Board of Appeal:**

In a decision dated 17 January 2012, the Board of Appeal concluded that the requirement of uniformity was not satisfied, that the variation in the expression observed in the three off-type plants was linked to the genetic set-up of the variety and not to the environment. Finally, as soon as one of the three DUS requirements is not fulfilled, there is no obligation to carry out the tests on the other criteria. The lack of uniformity observed in 2010 was sufficient to decide that the requirement of uniformity was not fulfilled. Thus, a continuation of the uniformity test was not necessary. On those grounds, the Board of Appeal dismissed the appeal and rejected the request for a new DUS examination.

### **17.2.2. Appeal Case A001/2012 — ‘RYN200574’**

On 1 July 2011 the CPVO was informed that Rijn Plant BV (hereafter: the Appellant) wished to surrender its Community Plant Variety Right (CPVR) No EU 28247 (variety denomination ‘RYN200574’, file No 2008/2561).

On 27 July 2011, the Office sent a confirmation letter to the Appellant indicating that the surrender had been registered on 2 July 2011 and that it would be published in the *Official Gazette of the Community Plant Variety Office* No 5/2011 of 15 October 2011.

On 27 October 2011, the Appellant informed the Office that it wanted to cancel the surrender request made on 1 July 2011 since that request was due to a mistake on its side. The Office understood this message to be a notice of appeal.

In an e-mail of 22 December 2011, the Appellant again explained the cause of the mistake referred to above. The original appeal form reached the Office on 9 February 2012.

The Appellant explained that its employee who deals with CPVRs intended to write down the commercial name of a variety which is not in production any more. However, the decision to terminate the variety’s CPVR was based on the wrong commercial name. The employee discovered her mistake much later and realised that she had terminated the CPVR of one of the main varieties which was never meant to be terminated.

Pursuant to Article 19(3) of Regulation (EC) No 2100/94, a request to surrender shall have effect following the day on which the request is received by the Office. It took the appellant a very long time to inform the Office about the mistake and once the Office was informed by the Appellant, the public had already been informed about the surrender through the publication.

Taking these factors into account in his decision of 29 February 2012, the President saw no grounds for the Office to rectify the contested publication and to reinstate CPVR EU 28247. The case was therefore remitted to the Board of Appeal.

The Appellant waived its right to be heard pursuant to Article 71(2) of Regulation (EC) No 2100/94 and thus agreed to a written decision of the Board of Appeal without oral proceedings taking place.

#### **Decision of the Board of Appeal:**

The Appellant does not claim that the Office has made a mistake or that false statements have been included in the register.

The register is kept by the Office only (Article 87 of Regulation (EC) No 2100/94) and is open to public inspection (Article 88 of Regulation (EC) No 2100/94).

This gives everybody the possibility to acquire knowledge about protected varieties. This knowledge offers a reliable basis for decisions to be taken by competitors and other persons involved in plant breeding.

There is a strict administrative procedure for entries into the register. In addition, there was an exchange of correspondence between the Office and the Appellant. Thus, the mistake could have been recognised within the correspondence.

The termination of a CPVR might cause economic difficulties to a company. However, the public interest in a reliable register deserves higher priority.

In a decision dated 10 October 2012, the Board of Appeal therefore held that the publication of the termination of the CPVR was correct and could not be altered any more and rejected the appeal.

### **17.2.3. Appeal cases A006-A007-A008/2011 — ‘Pink Sachsenstern’ and ‘Fluostern’**

Appeal Cases A006-A007-A008/2011 are handled jointly and deal with disputes on entitlement.

By letter dated 13 July 2012, the Parties informed the Board of Appeal that they had reached a settlement. In relation to appeals A006/2011 and A008/2011, the Parties agreed to withdraw their appeals respectively against the CPVO decision to reject the application for ‘Fluostern’ and against the CPVO decision to reject the objection against the application for ‘Fluostern’ (as the application was rejected, the CPVO had found the objection against the said application to be without object).

These two withdrawals were published in the *Official Gazette of the Community Plant Variety Office* dated 15 October 2012.

By the same letter, the two Parties have requested the Board of Appeal in Appeal A007/2011 to either grant the Community plant variety rights for the application for ‘Pink

Sachsentern', recognised as being the same variety as 'Fluostern', or to refer the case back to the CPVO, without any apportionment of costs.

Appeal A007/2011 is thus still ongoing.

## **17.3 Further appeals to the Court of Justice of the European Union in 2012**

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

### **17.3.1. New further appeals in 2012**

In 2012, no further appeals were lodged with the General Court.

One further appeal No C-546/12 P was lodged with the Court of Justice of the European Union in 2012 on 28 November 2012 against the decision of the General Court in Case T-242/09 ('Lemon Symphony').

### **17.3.2. Rulings by the General Court in 2012**

#### **Decision of the General Court, delivered on 18 September 2012 (Case T-242/09 'Lemon Symphony')**

The Court dismissed the action brought against the decision of the Board of Appeal of the CPVO of 23 January 2009 (Case T-242/09 against decision in appeal A010/2007) concerning an application for annulment of the Community plant variety right granted for the variety 'Lemon Symphony'.

The Court held that the findings made in that regard by the Board of Appeal are based on complex assessments of a scientific or technical nature, the judicial review of which must be restricted to a review as to manifest errors of assessment.

Having regard to the CPVO's wide discretion with regard to complex botanical assessments, the arguments put forward by the applicant failed to show that there was a manifest error vitiating those findings and assessments.

#### **Decision of the General Court in Cases T-133/08, T-134/08, T-177/08**

The Court held that the three cases were linked to Case T-242/09 (proceedings for annulment of 'Lemon Symphony') by a relationship of dependence, since the outcome of that case will be decisive for the outcome of the other cases.

The plea alleging, in the three cases, infringement of the provision on summons and of the right to be heard was found well founded and such as to lead to the annulment of the three contested decisions.

The General Court concluded that it was not possible to establish that the applicant had agreed to a shorter notice period than the minimum period of 1 month provided for in Article 59(1) of the implementing regulation. In the absence of compliance with that minimum period of notice, it was to be held that the applicant was not properly summoned to the oral proceedings before the Board of Appeal. It follows from Article 59(2) of the implementing regulation that the proceedings can be continued *in absentia* only if a party who has been 'duly' summoned does not appear.

Thus, the Court set aside the decision of the Board of Appeal of the CPVO of 4 December 2007 (Case A007/2007) concerning a challenge to the decision by the CPVO to adapt, of its own motion, the official description of the variety 'Lemon Symphony' in the Register of Community Plant Variety Rights. The Court however dismissed the remainder of the action brought against that decision ('the power of the General Court to alter decisions does not have the effect of conferring on that Court the power to substitute its own reasoning for that of a Board of Appeal or to carry out an assessment on which that Board of Appeal has not yet adopted a position').

The Court set aside the decisions of the Board of Appeal of the CPVO of 4 December 2007 in Case A006/2007 concerning an application for revocation of the CPVR granted for the variety 'Lemon Symphony' and in case A005/2007 concerning an application for the grant of a CPVR for the variety 'Sumost 01' and ordered each party to bear its own respective costs.

### **17.3.3. Rulings of the Court of Justice of the European Union in 2012**

#### **Decision delivered on 19 December 2012 (Case C-534/10 'Schniga GmbH')**

Brookfield New Zealand Limited and Elaris SNC asked the Court of Justice to set aside the judgment in Case T-135/08 Schniga v CPVO — Elaris and Brookfield New Zealand (Gala Schnitzer), by which the General Court annulled the decision of 21 November 2007 of the Board of Appeal of the CPVO granting a Community plant variety right for the 'Gala Schnitzer' apple variety (Cases A003/2007 and A004/2007).

The appeal essentially raises the question whether the General Court correctly construed the scope of the discretion conferred upon the CPVO in holding that the CPVO had the power, under the application procedure for the grant of a plant variety right, to allow the submission of new plant material for the technical examination.

### **Background:**

The Community Plant Variety Office received on 18 January 1999 an application from Schniga GmbH regarding the apple variety Gala Schnitzer. The CPVO requested the applicant to submit the necessary plant material and stated that the applicant was responsible for complying with all phytosanitary and customs requirements. The applicant submitted the material and provided a so-called European plant passport claiming that it served as a phytosanitary certificate. The centre responsible for the technical examination recognised the European plant passport as sufficient for the purpose of carrying out the technical examination. Additionally to that, the centre requested a copy of an official certificate confirming that the material sent was virus-free. The applicant informed the centre that it could not provide the requested official certificate because it emerged that the material sent to the centre was infected by latent viruses. The examination centre suggested that the CPVO requests the applicant to submit the new virus-free material for the technical examination. The CPVO agreed insofar as in the initial request for material the CPVO did not state that the material must be virus-free but just that it had to comply with the European plant passport.

The results of the second examination proved that the variety was distinct from the closest reference variety, the Baigent variety, on the basis of the additional characteristic 'fruit: width of stripes'.

Elaris SNC and Brookfield New Zealand Ltd, licensee and holder respectively of the plant variety right of the Baigent variety, lodged with the CPVO objections to the grant of a right for the Gala Schnitzer variety, pursuant to Article 59 of Regulation (EC) No 2100/94. The pleas in law were based firstly on Article 61(1)(b) to the effect that the CPVO should have refused the application on the ground that the applicant failed to comply with the requirements for submitting material for the technical examination, secondly on Article 7 of the regulation stating that the Gala Schnitzer variety is not distinct from the Baigent variety.

The President of the CPVO approved in December 2006 the use of the additional characteristic 'fruit: width and stripes' for establishing the distinctness of the Gala Schnitzer variety. The committee of the CPVO rejected the interveners' objections and granted a Community plant variety right for the Gala Schnitzer variety on 26 February 2007.

On 11 April 2007, Elaris and Brookfield filed notice of appeal with the Board of Appeal of the CPVO under Articles 67 to 72 of Regulation (EC) No 2100/94, against the decisions of the committee of the CPVO.

In its decision delivered on 21 November 2007, the Board of Appeal annulled the decisions taken by the committee and refused the application concerning the Gala Schnitzer variety. The Board of Appeal based its decision on Article 61(1)(b) reasoning that the CPVO was not allowed to request a submission of new plant material from the applicant if the latter did not comply with a request in an individual case as provided for in Article 55(4) to provide a phytosanitary certificate confirming that the material submitted was virus-free.

### **Action before the General Court (GC):**

The Court stated that the Board of Appeal erred in law in finding that it would be compulsory to withdraw the application because the applicant did not comply with phytosanitary requirements considering the correspondence at the beginning of the application procedure. Additionally, the Court found that the Board of Appeal misconstrued the scope of the discretion conferred on the CPVO by Article 55(4) of Regulation (EC) No 2100/94.

### **Appeal to the CJEU:**

The appellants, Elaris and Brookfield, claim that the Court should set aside the judgment under appeal and refer the case back to the General Court for judgment or, in the alternative, by way of final judgment, dismiss Schniga's action, thereby confirming the contested decision of the Board of Appeal. They claim, furthermore, that the Court should order the respondents to reimburse the costs of the proceedings.

The CPVO and Schniga contend that the Court should dismiss the appeal and order the appellants to pay the costs of the proceedings.

In the decision issued on 19 December 2012, the CJEU held that the General Court may carry out a full review of the legality of decisions of the Board of Appeal of the CPVO, if necessary examining whether the Board of Appeal concerned made a correct legal characterisation of the facts in dispute or whether its appraisal of the facts placed before it was flawed (Case C-38/09 P Schröder v. CPVO).

On the second ground, the CPVO could not refuse the application for a Community plant variety right submitted by Konsortium Südtiroler Baumschuler (KSB), legal predecessor of Schniga GmbH, without erring in law insofar as the CPVO took the view that KSB was unable to comply with the initial request in an individual case because of a lack of precision of the request.

The CJEU dismissed the appeal and ordered the appellant to pay the costs.

### 17.3.4. State of affairs of the further appeals lodged with the Court of Justice of the European Union (CJEU)

Case No before the GC	Contested Board of Appeal Decision No	Variety denomination	Date of GC ruling	Date of further appeal to the CJEU	Case No before the CJEU	Date of CJEU ruling
T-95/06	A001/2005	Nadorcott	31.1.2008	N/A	N/A	N/A
T-187/06	A003/2004	Sumcol 01	19.11.2008	29.1.2009	C-38/09 P	15.4.2010
T-133/08	A007/2007	Lemon Symphony	18.9.2012	N/A	N/A	N/A
T-134/08	A006/2007	Lemon Symphony	18.9.2012	N/A	N/A	N/A
T-135/08	A003/2007 and A004/2007	Gala Schnitzer	13.9.2010	15.11.2010	C-534/10 P	19.12.2012
T-177/08	A005/2007	Sumost 01	18.9.2012	28.11.2012	C-546/12 P	Pending
T-242/09	A010/2007	Lemon Symphony	18.9.2012			
T-367/11	A007/2010	Southern Splendour				Pending

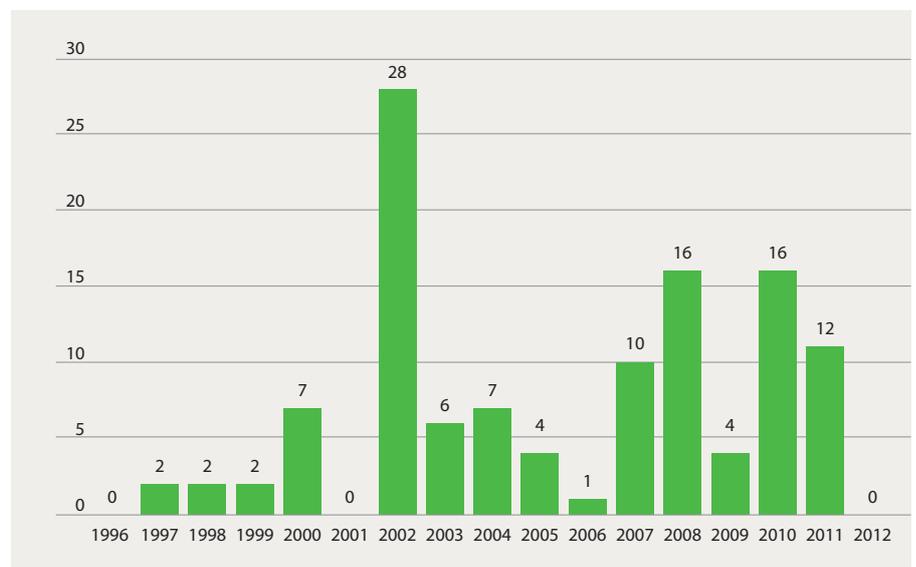
## 17.4. Appeals received by the CPVO and decisions reached by the Board of Appeal since its inception (statistics)

### 17.4.1. Number of appeals lodged per year between 1996 and 2012

One hundred and seventeen appeals have been lodged with the CPVO since the opening of the Office. These are distributed as shown in Graph 16.

**Graph 16**

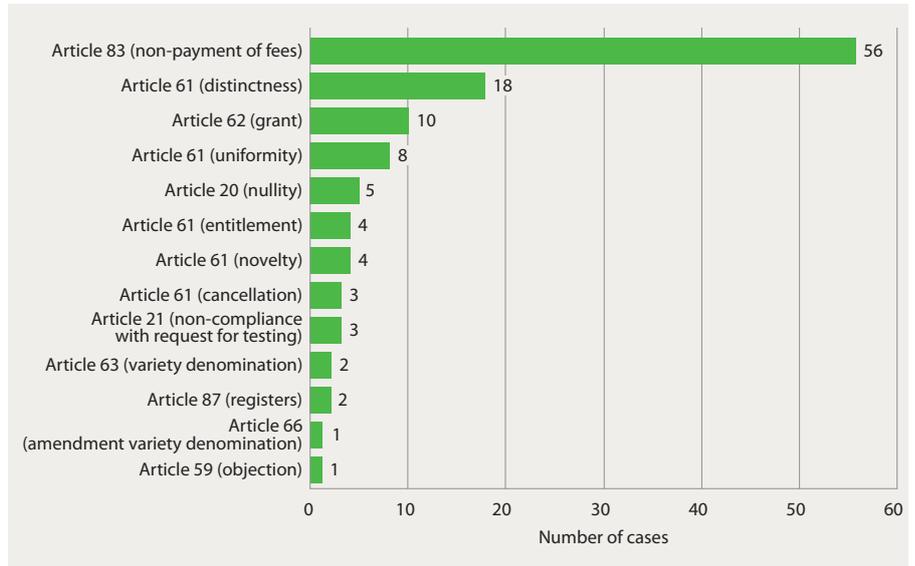
Number of appeal cases lodged per year with the CPVO since 1996



### 17.4.2. Legal basis of the appeals lodged since 1996 (with reference to Council Regulation (EC) No 2100/94)

**Graph 17**

Legal basis of the appeal cases lodged with the CPVO since 1996

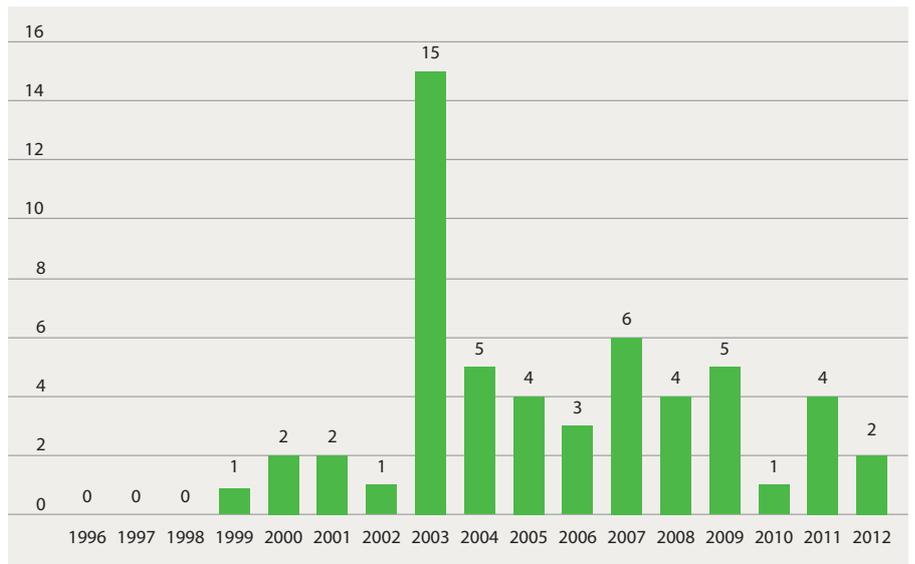


### 17.4.3. Decisions of the Board of Appeal of the CPVO per year

A total of 55 decisions have been taken by the Board of Appeal of the CPVO since 1996 which are distributed as detailed in Graph 18.

**Graph 18**

Number of decisions reached by the Board of Appeal per year since 1996



The references of the decisions taken by the Board of Appeal are given in the following table.

<b>YEAR</b>	<b>Appeal case number and date of decision of the Board of Appeal</b>
<b>1999</b>	A002/1998 of 14.9.1999
<b>2000</b>	A001/1999 of 25.1.2000 A002/1999 of 19.5.2000
<b>2001</b>	A002/2000 of 27.3.2001 A004/2000 of 6.12.2001
<b>2002</b>	A005/2000 of 28.5.2002
<b>2003</b>	A005/2002 of 2.4.2003 A001/2002, A002/2002 and A003/2002 of 1.4.2003 A018/2002 of 14.5.2003 A008/2002, A009/2002, A010/2002, A011/2002, A012/2002 and A013/2002 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
<b>2004</b>	A003/2003 and A004/2003 of 4.6.2004 A005/2003 and A006/2003 of 28.9.2004 A001/2004 of 16.12.2004
<b>2005</b>	A006/2004 of 15.6.2005 A005/2004 of 16.6.2005 A004/2004 of 18.7.2005 A001/2005 of 8.11.2005
<b>2006</b>	A003/2004 of 2.5.2006 A004/2005 of 13.10.2006 A007/2005 of 7.7.2006
<b>2007</b>	A001/2007 of 11.9.2007 A003/2007 and A004/2007 of 21.11.2007 A005/2007, A006/2007 and A007/2007 of 4.12.2007
<b>2008</b>	A011/2007 of 9.9.2008 A009/2008 of 2.12.2008 A001/2008 and A002/2008 of 4.12.2008
<b>2009</b>	A010/2007 of 23.1.2009 A004/2008 and A005/2008 of 21.4.2009 A010/2008 and A011/2008 of 8.10.2009
<b>2010</b>	A018/2008 of 15.3.2010
<b>2011</b>	A001/2010, A005/2010, A006/2010 and A007/2010 of 18.2.2011
<b>2012</b>	A009/2011 of 17.1.2012 A001/2012 of 10.10.2012

The detailed decisions of the Board of Appeal are available in the PVR case-law database of the CPVO website.

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