Introduction to the EU Plant Variety Protection (PVP) system

Dirk THEOBALD
Senior Advisor
Community Plant Variety Office
OUTLINE

I. Introduction to the European Union Plant Variety System
II. The CPVO
III. Community Plant Variety Rights
IV. Application Procedure
V. Proceedings before the Office and appeals
VI. Enforcement
VII. Statistics
Historical Background

- **Sole and exclusive system** for the industrial property protection of plant varieties in the EU (Art. 1 BR)

- The intellectual property rights granted under this system are valid throughout the territory of the 27 Member States of the EU, encompassing over 400 million consumers

- This system was established by a Council Regulation in 1994, which is modelled on the International Convention for the Protection of New Varieties of Plants of 1991 (**1991 UPOV Act**)

- The EU became party to UPOV as inter-governmental organisation in 2005
The CPVR-system co-exists with the national systems.

Applicant’s choice: National* OR EU route (Art. 3 BR)

* 24 EU Member States are members to UPOV and have their own Plant Variety Rights’ system (all EU MS with the exception of Cyprus, Greece, Malta and Luxembourg).
I. Introduction to the European Union Plant Variety System

Legal Basis

- **Basic Regulation (BR):**
  - Council Regulation (EC) No 2100/94 on Community plant variety rights

- **Implementing Regulations (IRS):**
  - 3 Commission Regulations relating to:
    - **Regulation No. 874/2009**
      - Proceedings before the CPVO
    - **Regulation No. 1238/95**
      - Fees payable to the CPVO
    - **Regulation No. 1768/95**
      - The agricultural exemption

Seminar on Farm-Saved Seed - Tartu 4 March 2020
OUTLINE

I. Introduction to the European Union Plant Variety System

II. The CPVO

III. Community Plant Variety Protection

IV. Application Procedure

V. Proceedings before the Office and appeals

VI. Enforcement

VII. Statistics
The EU Plant Variety system is run by the Community Plant Variety Office (CPVO):

- Official Agency of the EU
- Based in Angers (France)
- Operational since 1995
- Independent legal status
- Fully self-financed
- President and Vice-President (appointed by the Council)
II. The CPVO

Mission statement

‘To deliver and promote an efficient Intellectual Property Rights system that supports the creation of new plant varieties for the benefit of Society’.
II. The CPVO

Institutional Framework

Council  Commission  Court of Justice  EU Parliament

Administrative Council  Board of Appeal

CPVO

Examination Offices
II. The CPVO

Administrative Council

- The Administrative Council (AC) is made up of representatives of the EU Member States, a representative of the European Commission and Observers.

- The Administrative Council is responsible for:
  - Monitoring the CPVO
  - Approval of the Budget
  - Approval of the Technical Protocols
  - Entrustment of Examination Offices
II. The CPVO

Funding

- Under the terms of the basic Regulation the CPVO is self-financing:
  - It must administer the system **without financial support** from the general European Union budget
  - The CPVO receives **revenue from fees**
I. Introduction to the European Union Plant Variety System

II. The CPVO

III. Community Plant Variety Rights

IV. Application Procedure

V. Proceedings before the Office and appeals

VI. Enforcement

VII. Statistics
Object of protection

- Varieties of all botanical genera and species may be protected, including, inter alia, hybrids between genera or species [Art. 5(1) BR].

- The Office has received applications for more than 2100 species.
III. Community Plant Variety Protection

Uniform Effect of the Protection

- Community plant variety rights (CPVRs) shall have uniform effect within the EU territory and may only be granted, transferred or terminated within such territory on a uniform basis (Art. 2 BR)

Duration of the Protection

- The duration of the protection of plant varieties is of (Art. 19 BR):

  - *25 years or*
  - *30 years* – for vineyards, trees and potatoes

- **Provisional Protection**: it covers the period between publication of the application for a CPVR and the grant thereof (Art. 95 BR)
The holder is entitled to carry out the following acts:

- Production or reproduction (multiplication)
- Conditioning for the purpose of propagation
- Offering for sale
- Selling or other marketing
- Exporting from/Importing to the European Union
- Stocking for any of the above mentioned purposes

For the abovementioned acts, the authorisation of the holder is required [Art. 13(2) BR]:
The main exceptions to CPVRS – restricting the breeder’s scope of rights – are:

- **The limitations of the effects of CPVRS as listed in Art. 15 BR:**
  - Acts done privately for non-commercial purposes
  - Acts done for experimental purposes
  - Acts done for the purpose of breeding, or discovering and developing new varieties (the breeder’s exemption)

- **The agricultural exemption** (Farm-saved seed) (Art. 14 BR):
  - Covering varieties belonging to a limited list of 21 agricultural crops
OUTLINE

I. Introduction to the European Union Plant Variety System
II. The CPVO
III. Community Plant Variety Rights

IV. Application Procedure

V. Proceedings before the Office and appeals
VI. Enforcement
VII. Statistics
The system is open to any natural or legal person (Art. 12 BR)

- Applicants outside the EU must appoint a procedural representative (Art. 82 BR)
- If the applicant is not the breeder of the variety, a deed of assignment must be enclosed attesting to the transfer of rights (Art. 11 BR)
The Plant Variety must comply with the following requirements (Art. 6 BR):

THE DUS CRITERIA
- D – Distinctivity
- U – Uniformity
- S – Stability

NOVELTY

VARIETY DENOMINATION
Technical Examinations

- The CPVO has **not** created its own technical infrastructure

- Technical examinations are carried out by the **Examination Offices** (EOs) entrusted by the **Administrative Council**
Network of Examination Offices in the E.U. on 31/12/2019
Technical Protocols

- Technical examinations are generally carried out according to the CPVO technical protocols [Art. 56(2) BR]. In default of these, UPOV guidelines shall serve as reference [Art. 22(3) PR].

- The CPVO technical protocols contain a compulsory list of characteristics to be met by the varieties.

- The CPVO protocols are:
  - Based on the relevant UPOV guidelines
  - Elaborated together with national crop experts
  - Formally adopted by the CPVO’s Administrative Council
**Grant of the CPVR**

- If the Office considers that the examination findings are sufficient and there are **no** impediments, it shall **grant the CPVR** and the decision shall include an **official description** of the variety (Art. 62 BR)

- If a CPVR requirement is **not** fulfilled, the application is **rejected** (Art. 61 BR)
OUTLINE

I. Introduction to the European Union Plant Variety System
II. The CPVO
III. Community Plant Variety Rights
IV. Application Procedure
V. Proceedings before the Office and appeals
VI. Enforcement
VII. Statistics
V. Proceedings before the Office and appeals

**Objection**

- **Any person may** lodge with the CPVO a written objection to the grant of a CPVR (Art. 59 BR)

- **Objections may be based only on the grounds of:**
  - Conditions laid down in Articles 7 to 11 BR
    - *The objection may be lodged at any time after the application and prior to a grant/refusal decision*
  - An impediment to a proposed variety denomination
    - *The objection shall be lodged within 3 months of the publication of the proposed variety denomination*
V. Proceedings before the Office and appeals

- Any natural or legal person may appeal against a decision addressed to that person or against a decision of direct and individual concern (Art. 68 BR)

- The appeal has a suspensory effect on the contested decision [Art. 67(2) BR]

- The Board of Appeal is responsible for deciding on appeals
OUTLINE

I. Introduction to the European Union Plant Variety System
II. The CPVO
III. Community Plant Variety Rights
IV. Application Procedure
V. Proceedings before the Office

VI. Enforcement

VII. Statistics
The CPVR holders can enforce their rights on the grounds of infringing acts in relation to the variety or to the variety denomination.

At the moment there are no specialised courts on PVRs.

National courts are competent to hear infringement cases.
OUTLINE

I. Introduction to the European Union Plant Variety System
II. The CPVO
III. Community Plant Variety Rights
IV. Application Procedure
V. Proceedings before the Office and appeals
VI. Enforcement
VII. Statistics
CPVO - Key Statistics

53,900 titles granted
28,200 active titles
69,200 applications received
2,200 different species
Applications

Year |
--- |
2007 | 2,998 |
2008 | 3,007 |
2009 | 2,768 |
2010 | 2,886 |
2011 | 3,184 |
2012 | 2,868 |
2013 | 3,297 |
2014 | 3,626 |
2015 | 3,111 |
2016 | 3,299 |
2017 | 3,422 |
2018 | 3,555 |
2019 | 3,525 |
Applications by crop

- Vegetable: 9,779 (14.3%)
- Agricultural: 17,116 (25.0%)
- Ornamental: 37,158 (54.2%)
- Fruit: 4,525 (6.6%)
Evolution of botanical taxa
Applications EU : 1995-Present

<table>
<thead>
<tr>
<th>Country</th>
<th>Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands</td>
<td>22,914</td>
</tr>
<tr>
<td>France</td>
<td>8,925</td>
</tr>
<tr>
<td>Germany</td>
<td>8,445</td>
</tr>
<tr>
<td>Denmark</td>
<td>2,673</td>
</tr>
<tr>
<td>Italy</td>
<td>1,654</td>
</tr>
<tr>
<td>Spain</td>
<td>1,457</td>
</tr>
<tr>
<td>Belgium</td>
<td>1,321</td>
</tr>
<tr>
<td>Sweden</td>
<td>293</td>
</tr>
<tr>
<td>Austria</td>
<td>248</td>
</tr>
<tr>
<td>Poland</td>
<td>246</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>215</td>
</tr>
<tr>
<td>Hungary</td>
<td>124</td>
</tr>
<tr>
<td>Ireland</td>
<td>90</td>
</tr>
<tr>
<td>Greece</td>
<td>31</td>
</tr>
<tr>
<td>Slovenia</td>
<td>26</td>
</tr>
<tr>
<td>Cyprus</td>
<td>21</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>20</td>
</tr>
<tr>
<td>Finland</td>
<td>16</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>11</td>
</tr>
<tr>
<td>Portugal</td>
<td>9</td>
</tr>
<tr>
<td>Latvia</td>
<td>6</td>
</tr>
<tr>
<td>Estonia</td>
<td>5</td>
</tr>
<tr>
<td>Croatia</td>
<td>2</td>
</tr>
<tr>
<td>Malta</td>
<td>1</td>
</tr>
<tr>
<td>Romania</td>
<td>1</td>
</tr>
</tbody>
</table>