



Hundred years ago was the start of the roaring twenties. Even though the 1920's started right after the Spanish flu pandemic and ended with

the financial crisis, the spirit of the roaring twenties was marked by a general feeling of novelty associated with modernity and a break with tradition. New technologies such as cars, moving pictures and the radio were brought to a large part of the population. Our current decade starts with health and financial challenges, but we are now entering the twenty-twenties with enormous technological potentials in artificial intelligence and big data as well as new breeding techniques. Europe must now take a decision to embrace new techniques relying on scientifically based risk assessments. New varieties must grow well with less input under changing climatic conditions. It is important that breeders can use modern technology when facing the

challenge to deliver well performing, high quality and safe varieties to farmers. In the future, when one looks back at the twenty-twenties, I hope that it will be remembered as the roaring twenties in terms of feeding the world's population and developing greener technologies to the benefit of our climate and not only as a decade overshadowed by the COVID-19 crisis.

On a lighter note, the CPVO is being 25 years old in 2020 and I would like to thank all stakeholders who have been part of this great adventure so far. In this newsletter, you can read about some of the milestones since the CPVO was established but also about the many activities we have been involved in during the past six months.

*Martin Ekvad
President of the CPVO*

GENERAL NEWS

New European Commission as from 1 December 2019

As an outcome of the 2019 EU elections, a new European Commission led by [President Ursula von der Leyen](#) took office on 1 December 2019. The political priorities of the renewed EU political leadership include the need to address the changes in climate, technology and demography that are transforming our societies and way of life. The CPVO is looking forward to supporting the European Commission in tackling these challenges, and in particular to working closely with the new EU Commissioner for Health and Food Safety, [Stella Kyriakides](#), in order to deliver on the [EU Green Deal](#), the [EU Farm-to-Fork strategy](#) and all other policy priorities relevant to the role and missions of the CPVO. The CPVO wishes good luck and success to Commissioner Kyriakides and looks forward to welcoming her in Angers.

Application numbers slightly up second part of 2019

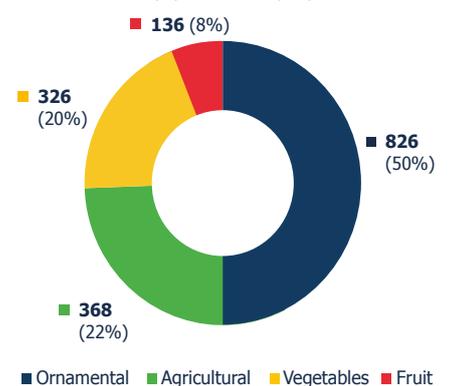
In the period from 1 August to 31 December 2019, the CPVO received 1 656 applications in total, accounting for 100 additional applications (+6.4 %) as compared to the same period of 2018. The increase was for vegetable crops with a total of 326 applications (+89; +37.5 %) and for ornamental crops with a total of 826 applications (+50; +6.4 %). By contrast, a slight decrease in application numbers was noticed in the two other crop sectors: 136 applications for fruit crops (-34; -20 %) and 368 applications (-5; -1.34 %) for agricultural crops.

As for the entire year, the CPVO received 3 525 applications, 0,8 % more than in 2018. Eventhough there is only a minor change as compared to the previous year, variations within crop sectors are important, in particular within the fruit sector with -80 applications (-24,5 %). The figures for the other crop sectors are: for ornamentals +29 applications (+1,8 %); for vegetables +23 applications (+3,4 %) and for agricultural crops -2 applications (-0,2 %).

COVID-19

At the time of publication of this newsletter, the COVID-19 pandemic has emerged. The CPVO recognises the difficult situation affecting its stakeholders and expresses its sincere compassion to all those who are directly affected by the disease. Among others, the president of the CPVO decided to extend time limits for parties to proceedings before the CPVO and the Board of Appeal. Details on the CPVO measures and decisions taken in response to COVID-19 are updated regularly and are available on [CPVO's website](#).

Share in application numbers per crop sector from 1/8/2019 to 31/12/2019



Sharing services with the European Union Agency for Railway

On 7 January 2020, Josef Doppelbauer, Executive Director of the [European Union Agency for Railways](#) (ERA), visited the CPVO. The purpose of the meeting was the signature of a Service Level Agreement between CPVO and ERA to share legal

services in the field of procurement. By doing so, CPVO and ERA contribute to the implementation of the 2019-2020 Work Program of the Heads of Agencies Network to improve efficiency gains through sharing services and capabilities.



Brexit on 31 January: what happens in 2020 ?

Since 1 February 2020, the United Kingdom has withdrawn from the EU and has become a 'third country'. The Withdrawal Agreement provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the UK.

During the transition period, it is "business as usual" for applicants and plant variety right holders in the EU. Community plant variety rights granted during the transition period will also be valid in the UK territory.

According to CPVO's information as provided

by the UK authorities, all varieties with a Community plant variety right granted by the end of the transition period will continue to be protected in the UK by giving them rights under UK legislation and no action will be required by right holders of Community plant variety rights.

Once the transition period will end, applicants and holders of Community plant variety rights established in the UK will have to designate a procedural representative domiciled or having a seat in the EU territory.

The designation agreements that the CPVO had entered into with the UK based examination offices expired on the date of the UK's departure from the EU on 31 January 2020. As a consequence, DUS (distinct, stable, uniform) reports established by the UK examination offices cannot be used anymore by the CPVO as basis for granting a Community plant variety right. For more and updated information, the CPVO has established a Brexit dedicated section on its [website](#).

CPVO Seminar on Farm-Saved-Seed, Tartu, Estonia (4 March 2020)

On 4 March, the CPVO organised a seminar dedicated to Farm Saved Seed (FSS), and in particular the functioning of the FSS system in Estonia and the neighboring countries.

The seminar took place in Tartu, Estonia, and was organised in collaboration with the Estonian Ministry of Rural Affairs and the Estonian Agricultural Board with the aim to discuss the current practices in the Baltic region and inform farmers about the practicalities and obligations of the Farm-Saved-Seed mechanism. The use of FSS is widely spread among farmers in Estonia and it looks like plant breeders have difficulties to access accurate information on the scale of the varieties and the amount of seeds from protected varieties being saved. It was therefore important

to give the opportunity to farmers and plant breeders to receive information and exchange views on the FSS concept. More than 150 persons attended the Seminar. Representatives from Sweden, Finland and Lithuania reported from experiences in their countries.

The CPVO emphasized that FSS is a legal provision enshrined in the basic regulation on Community plant variety rights and the implementing rules on the agricultural exemption. To be workable and serve its purpose, the FSS mechanism requires trust and mutual understanding from both the farming community and the breeders and it is important to raise awareness and clarify how FSS works. Litigation can only be considered as a last resort.

Experience shows that across Europe FSS works well whenever there is clarity on the FSS mechanism and when its benefits are well understood: on the one hand, farmers get more value for using varieties which are of better yield, performance and quality; on the other hand, breeders get equitable remuneration for their innovation.

The CPVO will continue its efforts to contribute to clarify the FSS concept throughout the EU and to encourage cooperation between farmers and breeders on the implementation of the right for information with the view to exercise compliance with the FSS mechanism.

Agenda of the seminar and presentations are available on the [CPVO website](#).



Bilateral meetings with examination offices and breeders/producers' organisations

> Bilateral meeting with OEVV (2 October 2019)

At the occasion of their annual bilateral meeting, the [Oficina Española de Variedades Vegetales](#) (OEVV) and CPVO made an in depth analysis of their cooperation and agreed on certain measures in order to make the cooperation even more efficient. Furthermore aspects related to ongoing and planned R&D projects, IT matters, the new species procedure, the harmonization of submission requirements, cost calculation aspects as well as national guidelines to be made available on the CPVO website were issues of discussion.

> Bilateral meeting with ECO-PB (7 October 2019)

[ECO-PB](#) attends the CPVO technical meetings in the agricultural and vegetable sector as well as the annual meeting with the examination offices as observer. As with other observer organisations the CPVO met with ECO-PB within a formal bilateral meeting in October 2019. The CPVO received an update on developments in the [EU Liveseed project](#). An exchange of views on a potential development of technical protocols for adjusted DUS testing for organic bred varieties took place and ECO-PB explained the needs of the organic breeders. Furthermore the possibility to collect information of protected varieties with respect to breeding techniques were discussed. The CPVO provided amongst others an update in respect of the duration of terms of protection of CPVRs, the CPVO cooperation with the [European Patent Office](#) and gave information on some CPVO Administrative Council conclusions.

> Euroseeds annual meeting, Stockholm, Sweden (14 to 16 October 2019)

The CPVO attended the [Euroseeds](#) annual meeting in Stockholm on 14 to 16 October 2019. The President of the CPVO participated in a panel debate on challenges in the seed sector and made a presentation on the right to access to documents held by the CPVO. Attending Euroseeds annual meetings is an excellent way to learn about successes and challenges from an industry that is a major user of the EU plant variety right system.

> Bilateral meeting with AIPH (30 October 2019)

Within its annual bilateral meeting with the International Association of Horticultural Producers [AIPH](#) the CPVO provided a debrief on the last CPVO Administrative Council meeting. In return the CPVO delegation received an update of AIPH activities of interest for the CPVO. AIPH emphasized in particular aspects related to patents, essentially derived varieties, minimum distances, the Nagoya protocol and their activities in China. Furthermore new breeding techniques and the consequence of the related Court decision are of concern for AIPH.

> Ciopora Deutschland annual assembly, Dresden Pillnitz, Germany (27-28 February 2020)

The CPVO was invited to [Ciopora](#) Deutschland's annual assembly and was asked to provide a presentation on "labeling requirements" related to protected varieties. In addition it was a good occasion for the CPVO to exchange with German breeders in the ornamental and fruit sector.

Focus on...

1995-2020 - 25 years of the CPVR system

The CPVO celebrates its 25th anniversary in 2020. The CPVO staff members feel privileged to contribute to the development of a fascinating sector, working with breeders and farmers who are passionate about new plant varieties, with experts from national public authorities and with innovative leaders from the industry.

But the CPVO is above all a success story for all plant breeders who are granted, with one single application, a Community Plant Variety Right (CPVR) that protects them everywhere in the European Union. Let us not forget that, at the beginning of the 1990s, breeders had to file individual applications in every European country which provided for protection and where they wanted protection. Today, the CPVO manages the largest regional system of plant variety rights, based on the 1991 Act of the UPOV Convention, in the world.

Since the creation of the CPVO in 1995, the CPVO has received more than 68 000 applications and granted over 53 000 PVR titles. At the beginning of 2020, there were almost 30 000 CPVR in force and the CPVO granted more than 3 000 titles in one calendar year for the first time ever in 2019 — with almost half of those being for ornamentals (46,6%), more than a quarter for agricultural crops (27,6%) and the rest for vegetables (18,7%) and fruits (6%).

Two conclusions can be drawn out of this. First, through the creation of a uniform and harmonized system in 1995, equally applicable in all EU Member States, legal certainty was improved and barriers to entry within the internal market reduced. Second, the CPVO has become the natural choice to plant breeders looking for plant variety protection in the EU.

More key figures about "Protecting New Plant Varieties in Europe since 1995" are available on the [CPVO website](#) together with [some portraits and testimonials from CPVO's staff members](#).



INTERNATIONAL COOPERATION

Cooperation with the International Union for the Protection of New Varieties of Plants (UPOV)

> UPOV Seminar on EDVs, Geneva, Switzerland (30 October 2019)

A CPVO delegation attended a “Seminar on the Impact of Policy on Essentially Derived Varieties (EDVs) on Breeding Strategy” which was organized by the UPOV office and attended by more than 150 participants. The purpose of the seminar was to consider the impact of an EDVs policy on breeding strategies and the consequences for the development of new, improved plant varieties. Various [presentations](#) from breeders of all crop sectors were given. The outcome of the seminar did provide relevant information to the Administrative and Legal Committee (CAJ) in its review of the guidance on EDVs provided in the [UPOV Explanatory notes on EDVs](#). In particular the seminar showed evidence that the current UPOV guidance does not reflect the practice amongst breeders in the understanding of essentially derived varieties and that the evolution of breeding technologies has created new and rapid opportunities for predominantly deriving varieties from initial varieties. The seminar provided a clear indication that the understanding and implementation of the EDVs concept influences breeding strategy and that is therefore important that UPOV guidance is adapted accordingly.



> UPOV week of meetings, Geneva, Switzerland (28 October to 1 November 2019)

The CPVO attended as part of the EU delegation the UPOV Technical Committee, the Legal and Administrative Council (CAJ), the Consultative Committee as well as the Council.

Discussions of particular interest for the CPVO related to:

- [UPOV PRISMA](#), being an on-line, multi-lingual tool for making plant breeders rights' applications in participating UPOV members. The UPOV Council agreed to introduce a fee of 90 Swiss francs per PVP application made using UPOV PRISMA starting from January 2020.

- The PLUTO database where the UPOV Council agreed to distinguish as from November 2020 a free use option for all users without a facility to download search results or data from the [PLUTO database](#), and a premium option for which users will have to pay a fee of 750 Swiss francs in order to access all PLUTO database features.

- The revision of the FAQs on the benefits of new varieties of plants for society.

- A number of important documents which were adopted by the UPOV Council amongst others the revision of TGP/7 for the development of test guidelines, TGP/8 on trial design and techniques used in the

examination of DUS, TGP/10 on examining uniformity as well as TGP/15 on guidance on the use of biochemical and molecular markers in the examination of DUS.

- The revision of document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention”.

- The outcome of the EDVs seminar where the CAJ agreed to open up the “Explanatory notes on Essentially Derived Varieties under the 1991 Act of the UPOV Convention for revision.

- The adoption of a number of new and revised Test Guidelines by the Technical Committee.

Cooperation with third countries within IP Key projects

The IP Key international cooperation projects are directed by the European Commission and implemented in collaboration with the European Union Intellectual Property Office (EUIPO) to strengthen IP protection in China, Latin America and [ASEAN](#) countries. Find more information on the IP Key projects [here](#).

IP Key China

Several training activities for Chinese examiners have been organised in the period September – November 2019 in GEVES, Naktuinbouw and Budessortenamt.

In addition, an evaluation team formed by the CPVO Quality Audit Service (QAS) team leader and Henk de Greef (Naktuinbouw) spent one week in China together with

representatives of the Chinese authorities to provide training on quality auditing specific to DUS testing. A detailed overview can be consulted under the IP Key China [webpage](#).

IP Key South-East Asia

On 23-27 September 2019 an high-level study visit on plant variety protection and UPOV 1991 convention took place in France, the Netherlands

and Belgium. Representatives from Malaysia, Thailand, Indonesia and Viet Nam participated in the activity. A description of the activity can

be consulted under the IP Key South-East Asia [webpage](#).

IP Key Latin America

On 13-15 November 2019 a regional workshop on cooperation in examination of plant variety protection (PVP) was organized in Peru. The aim was to enhance cooperation among examination offices in the region (Argentina, Brazil, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Peru and Uruguay) with the aim of encouraging PVP offices to discuss the use of molecular markers techniques in DUS examination and to consider the mutual recognition of DUS

test reports. A description of the activity with presentations can be consulted under the IP Key Latin America [webpage](#).

On 6-13 February 2020 a number of activities were organized in Quito (Ecuador) such as a workshop on the drafting of an online course on licensing practices ‘PVP Licensing Laboratory’, a regional seminar on enforcement of plant variety rights (participating countries from Argentina, Brazil, Ecuador, Mexico, Peru,

and Uruguay), a training on plant variety rights for officials of the EU delegations in Latin American countries, a workshop for technical experts from participating countries of Latin America (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Paraguay, Peru and Uruguay) on the use of the GAIA software. Further information can be consulted under the following IP Key Latin America [webpage](#).

CarIPI project

As from 1 November 2019, the [carIPI](#) project started for an initial duration of four years. The carIPI project is funded by the EU under the 11th European Development Fund and implemented by the European Union Intellectual Property Office (EUIPO). Its specific objective is to strengthen the Intellectual Property Rights environment in the [Cariforum](#)

area as a means to foster trade and investment and stimulate innovation and competitiveness of the private sector. Activities related to Plant variety rights integrate the project. During 2020, the CPVO will contribute to the project's objectives, especially concerning awareness raising and capacity building activities.



Cooperation with the African Intellectual Property Organisation (OAPI)

At the end of November 2019 and beginning of February 2020, an evaluation team formed by the CPVO QAS team leader and Georges Sicard ([GEVES](#)) spent two week-long periods together with OAPI representatives to analyse the DUS testing capabilities of four OAPI-designated examination offices in West Africa. The first mission was spent at the headquarters and a field testing station of the 'Institut de recherche agricole pour le développement'

([IRAD](#)) in Cameroon, and at the headquarters and a field testing station of the 'Institut sénégalais de recherches agricoles' ([ISRA](#)) in Senegal. The second mission was spent at the headquarters and a field testing station of the 'Centre national de recherches agronomiques' ([CNRA](#)) in the Ivory Coast, and at the headquarters and a field testing station of the 'Institut de l'environnement et recherches agricoles' ([INERA](#)) in Burkina Faso.

The evaluation team presented its reports on the four assessments to OAPI, together with capacity building recommendations on ways to improve the performance of DUS testing in all the aforesaid institutes in order to achieve an increase of applications of PVR for new improved varieties to the benefit of society in the West Africa region.

COST PlantEd : first conference in Novi Sad, Serbia (5 to 7 November 2019)

The COST PlantEd is the first European network dedicated to Plant Genome Editing (GE). It benefits from the support of the European Commission for 4 years to establish durable collaborations between the scientific and legal experts

of the domain. Up to now, it gathers 290 participants coming from 36 EU countries and 10 NNC (Near Neighbour Countries, e.g. Tunisia, Russia) + IPC (International Partner Countries, e.g. USA, Canada). This first conference was

the opportunity for them to review the ongoing research programs and to start setting up common tasks for the assessment of the innovation potential and the impact of plant genome editing on agriculture.

Delegation of visitors from the Korea Seed Variety Service, Angers, France (November 2019)

Two experts involved in DUS activities for the [Korea Seed Variety Service](#) visited the CPVO and the GEVES at the end of November. They learned about the European PVP system and the cooperation between the CPVO and its examination offices. The visit focused on apple DUS testing and a breeder was visited in the area of Angers.

OECD Technical Working group, Milan, Italy (30-31 January 2020)

The CPVO attended the TWG meeting as member of the EU delegation. Of particular interest were discussions related to the [OECD](#) work on food systems and potential input from the Seed Schemes. For that, the OECD-Secretariat had circulated a survey to all delegates for voluntary feedback and the CPVO expressed an interest in contributing to the work. Furthermore the discussions related to the role of biochemical and molecular techniques in describing/

identifying varieties and the draft procedure for updating the list of Biochemical and Molecular Techniques (BMT) in use in participating countries were of interest for the CPVO. It was noted that the International Seed Testing Association ([ISTA](#)) will provide a wording for the endorsement of a nationally recognised BMT by an international organisation. Participants to the meeting were also provided with an update on the joint works with UPOV, ISTA and the Association of Official Seed Analysts ([AOSA](#)) on biochemical and

molecular techniques. The participants noted the updates from [UPOV](#), ISTA, and from the OECD-Secretariat and welcomed the cooperation between the organisations. Other topics of CPVO interest were discussions on the authorisation of varietal mixtures of certified seed under the [OECD Seed Schemes](#), the certification of hemp seed as well as digital technologies for trade, traceability and certification.



LEGAL AFFAIRS

Decision reached by the CPVO Board of Appeal (BoA) and judgments by the Court of Justice of the EU on 2nd semester 2019 (the full texts are available in the [PVR case-law database](#))

Decision of 17 January 2020 of the BoA in Appeal Case A004/2016 ('Gala Perathoner')

The Appellant appealed against a refusal decision of the CPVO based on lack of distinctness of the candidate variety. The Appellant called into question the location of the testing site for Gala mutants, as its climate conditions allegedly did not allow the candidate variety to fully develop its characteristics. The Appellant also argued that the examination was not conducted appropriately, especially due to the incorrect assessment of the time of fruit maturity, as well as by reason of the rootstock used and of the difference in the age of the trees of the variety compared.

The BoA concluded that the testing location was correctly assigned to the French examination office and that the examination was conducted according to the applicable guidelines, which were interpreted correctly, especially with regard to the optimum fruit picking time. Finally, the BoA established that the difference in rootstock and age of trees examined was not likely to affect the coloration (the controversial characteristic) of the varieties compared. The BoA thus dismissed the appeal.

Decision of 24 January 2020 of the BoA in Appeal Case A008/2018 ('Stark Gigger').

The Appellant appealed against a refusal decision of the CPVO based on lack of distinctness. The Appellant called into question the impact of pruning method used by the examination office on the assessment of the distinctness and the appropriateness of the testing site, as the candidate variety had been developed in a different climatic area. The BoA concluded that it was not the location of the site nor the pruning method that prevented distinguishing the candidate variety 'Stark Gigger' from the variety of common knowledge 'Jeromine' (both derived from the same mutant 'Red Delicious'). The CPVO had no reasons nor obligation to apply the pruning method suggested by the Appellant. The CPVO did not have any obligation to initiate the DUS testing in a location different to the one identified by the CPVO Administrative Council either. The BoA thus dismissed the appeal.

Judgement of the Court of Justice of 18 June 2019 in the case C-444/19 P, ('Pinova'), Kiku vs CPVO and Sächsisches Landesamt für Umwelt, Landwirtschaft und Geologie.

The applicant sought the annulment of the judgment of the General Court of the European Union of 11 April 2019, Kiku GmbH vs CPVO (case No T-765/17), by which the General Court dismissed its action for annulment of the decision of the BoA of 16 August 2017. Pursuant to Article 58a of the Statute of the Court of Justice of the EU, the appeal is subject to a prior admissibility assessment, as it has to raise important questions on the unity, consistency or development of EU law (Art. 170 ter of the Rules of procedure of the Court of Justice).

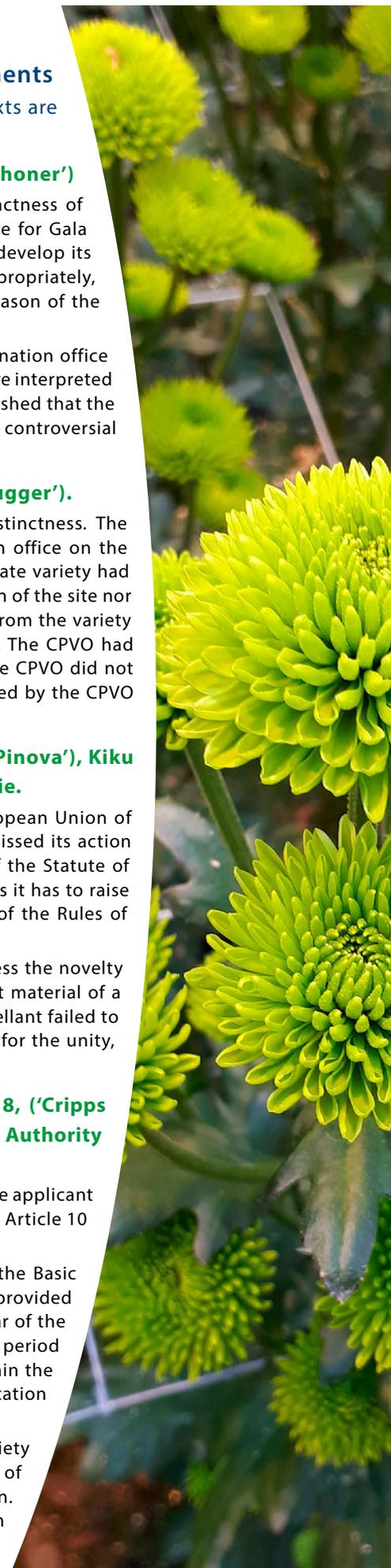
The questions raised by the appellant concerned the extent to which the CPVO may assess the novelty in the context of invalidity proceedings, and whether the transfer by the holder of plant material of a protected variety for testing purposes affects novelty. The Court considered that the appellant failed to provide convincing arguments and reasons as to why such questions are of importance for the unity, consistency or development of EU law. Therefore, the appeal was dismissed.

Judgement of the General Court of 24 September 2019 in the case T-112/18, ('Cripps Pink') Pink Lady America LLC vs CPVO and Western Australian Agriculture Authority (WAAA).

By judgement of 24 September 2019, the General Court dismissed the action brought by the applicant in its entirety providing guidance on how to assess the evidence of lack of novelty (under Article 10 of the Basic Regulation), and the late submission of evidentiary element.

The Court established that the BoA provided a correct interpretation of Article 116 of the Basic Regulation on the transitional regime concerning the extension of the grace periods provided by Article 10 of Basic Regulation. As the application for CPVR was submitted within 1 year of the entry into force of the Basic Regulation, the following grace periods were applicable: (i) a period of 6 years before the entry into force of the Basic Regulation for sales and disposals within the territory of the European Union and, (ii) a period of 6 years before the filing of the application for sales or disposals outside that territory.

The Court dismissed the argument concerning the lack of novelty of the 'Cripps Pink' variety insofar as the applicant submitted no evidence that the variety had been sold or disposed of to third parties by the breeder or with his consent for purposes of commercial exploitation. The Court considered the elements provided by the applicant not conclusive to establish that a "novelty-destroying" act took place before the said grace periods.



Judgement of the General Court of 17 October 2019 in Case C-239/18, preliminary ruling under Article 267 TFEU, Saatgut-Treuhandverwaltungs GmbH vs Freistaat Thüringen.

By this preliminary ruling, the referring Court asked the Court of Justice whether a right to information from official bodies under Article 11(1) of Regulation (EC) No 1768/95 (Implementing rules on the agricultural exemption to CPVRs) exists in a situation where a request relates solely to information concerning species of plants, without the request for information also seeking information on a protected variety.

Art. 14 of the Basic Regulation authorises farmers to use for propagating purposes in the field on their own holdings the product of the harvest which they have obtained by planting, on their own holding, propagating material of a protected variety. Farmers shall be required to pay an equitable remuneration (sensibly lower than the

amount charged as a royalty fee) to the holder of the right. Small farmers are exempted from this obligation.

The Court observed that, under Article 11 of Regulation 1768/1995, the holder of a CPVR has the right to request information to official bodies on the actual use of the protected variety. The right of information of the holder has the objective to ensure the compliance by farmers of their obligation to pay an equitable remuneration. The Court concluded that Article 11(1) of Regulation 1768/1995 shall be interpreted as limited to requiring the specific designation of protected plant varieties in information requests to be lodged with official bodies.



Judgement of the General Court of 19 December 2019 in Case C-176/18, preliminary ruling under Article 267 TFEU, Club de Variedades Vegetales Protegidas Vs Adolfo Juan Martínez Sanchís.

By preliminary ruling of 19 December 2019, the Court clarified the scope of protection of Community Plant Variety Rights (PVR), namely to what extent acts relating to harvested material of protected varieties constitute a PVR infringement. The judgement clarifies the distinction between the primary protection afforded to variety constituents and the secondary protection on harvested material, which has subsidiary nature. Indeed, pursuant to Article Art. 13(3) of the Basic Regulation, the sale of harvested material could only be considered an infringing act if said material was obtained through unauthorised use of the variety constituents.

The Court also referred to the protection provided to right holders during the period of provisional protection (i.e. after publication of the PVR application but prior to its grant) in relation to the purchase and cultivation of infringing material. Article 94 of the Basic Regulation provides the CPVR holder with exclusive rights regarding the acts listed under Article 13 of the same Regulation. On the other hand, under Article 95 of the Basic Regulation when those infringing acts are carried out during the provisional protection period, the title holder can request a reasonable compensation. The compensation scheme does not fully correspond to the protection scheme provided following the grant of the right.

Indeed, the rule does not make reference to the authorisation to be requested to the holder. Therefore, during the provision period the holder cannot prohibit any of the acts listed in Article 13 of the Basic Regulation as infringing acts but he/she will only be able to request a reasonable compensation after the PVR is granted. The concept of "unauthorized use" can only relate to use that could have been authorized or prohibited by the holder. Consequently, in the case at hand, the use of the harvest material by the alleged infringer was not unauthorised since there was no obligation to ask for authorisation to the holder.

In view of the foregoing, the mandarin fruits harvested after the grant of the title did not come from an unauthorised use of the variety constituents as the multiplication and sale took place during the provisional protection period, thus the secondary protection regime could not be applied to said conduct. On the contrary, in case of unauthorised multiplication and sale of the variety constituents after the grant of the title, the holder could invoke secondary protection also on the product of the harvest, provided that he/she did not have the opportunity to exercise his/her right (this issue was to be ascertained by the national Court).

Participation in forthcoming events*

> **7 and 8 May 2020**

DPO-EDPS meetings, Alicante, Spain

> **11 to 13 May 2020**

PVR module at the Magister Lucentinus, Alicante, Spain

> **11 to 15 May 2020**

UPOV TWV, Brasilia, Brazil

> **1 to 3 June 2020**

EUIPO Management Board and budgetary committee, Alicante, Spain

> **8 to 12 June 2020**

UPOV TWO, Roelofarendsveen, the Netherlands

> **16 to 19 June 2020**

OECD Seed scheme annual meeting Sofia, Bulgaria

> **22 to 26 June 2020**

UPOV TWA, Saskatoon, Canada

> **6 to 10 July 2020**

UPOV TWF, Nimes, France

> **21 to 25 September 2020**

UPOV TWC and UPOV BMT, Alexandria, USA

> **25 to 30 October 2020**

UPOV week of meetings, Geneva, Switzerland

**Due to the COVID-19 pandemic situation, the meetings on the list may be organised by video conference, postponed, or cancelled.*

Insight on public access to document

All citizens and residents of the EU have the right to access the documents of the EU institutions, bodies and agencies, in view of their commitment to transparency and accountability. The CPVO has always adopted a policy of full transparency providing breeders and the public access to documents whilst at the same time safeguarding interests where confidentiality must be taken into account.

The legal basis for the right of access to documents is established by [Regulation No 1049/2001](#) regarding public access to the EU institutions' documents, adopted on 30 May 2001.

Entrustment requirements in the course organised by OEVV on DUS test for fruit species, Zaragoza, Spain (12-13 September 2019)

On 12 and 13 September 2019 the CPVO attended the course on DUS test for fruit species organized by [Oficina Española de Variedades Vegetales](#) (OEVV) in Zaragoza, Spain. During this course, representatives of ten examination centers in Spain in charge of the DUS test of multiple fruit species made a presentation of their center, sharing their experience on DUS testing and, in particular, explaining the

WCO Counterfeiting and Piracy (CAP) Group Annual meeting, Brussels, Belgium (30 September - 1 October 2019)

On 30 September 2019, the CPVO attended the World Custom Organization ([WCO](#)) Counterfeiting and Piracy (CAP) Group Annual meeting in Brussels. The aim of the meeting was to increase awareness on PVRs and foster the cooperation between the private sector and custom authorities. The presentations

Participation at the DPO-EDPS meeting in Florence, Italy (6-7 November 2019)

On 6 and 7 November 2019, the CPVO attended the 46th Data Protection Officers (DPOs) and European Data Protection Supervisor (EDPS) meeting. The participants were DPOs and assistants to DPOs of the EU Institutions, including the Council, Parliament and Commission as well as other bodies such as OLAF. The meeting was hosted in Villa Salviati, in Florence, where the [historical archives of the EU](#) are located.

The first day was the DPOs meeting organized by the "Quartet", which is composed by the DPOs from the main three EU Institutions plus an elected representative from an agency, in

An application for public access can be submitted by anyone on the [dedicated area](#) of the CPVO website by filling the form provided. The request does not need to be motivated and it can concern any document produced by or in possession of the CPVO.

The Registrar of the CPVO provides a prompt acknowledgment of receipt and ensures that the requested documents are released (except in case of confidentiality exceptions provided by legal provisions, e.g. in the case of hybrids) in the shortest delay possible and, in any case, within the term of fifteen working days from the date of registration of the request.

problems that they face in performing said tests. On the second day, the CPVO made a presentation on the entrustment requirement, which raised the interest of the participants. The presentation was followed by a visit of the tests fields at the Agrifood Research and Technology Centre of Aragón ([CITA](#)), where the DUS test of almond and peach is done.

delivered by the three breeders' associations invited, [Euroseeds](#), [Plantum](#) and [Ciopora](#) were well received and the event is expected to be a starting point for the development of a comprehensive and consistent approach to enforcement of PVRs at customs.

this case EUIPO. The "Quartet" planned a very busy agenda, consisting of a presentation of the results achieved by the working groups on topics such as international transfer of personal data, access to data or Cloud systems and Office 365. There were also presentations on personal data retention and archiving, on the implementation of Regulation No 2018/1725 and on procurement procedures and data protection.

The second day the meeting was led by the [EDPS](#). Discussions were organized around four case studies concerning the consent, mobile apps, archives and contracts with software providers.



CPVO agenda*

> 29 April 2020

Cost calculation working group, Brussels, Belgium

> 30 April 2020

Bilateral meeting with Euroseeds, Brussels, Belgium

> 7 May 2020

Bilateral meeting with Naktuinbouw, Roelofarendsveen, the Netherlands

> 7 May 2020

Bilateral meeting with Plantum, Roelofarendsveen, the Netherlands

> 28 May 2020

Bilateral meeting with CIOFORA, Hanover, Germany

> 29 May 2020

Bilateral meeting with Bundessortenamt, Hanover, Germany

> 22 to 25 September 2020

Agricultural experts meeting & Technical workshop on maize, Krakow and Przeclaw, Poland

> 30 September 2020

Administrative Council meeting, Angers, France

> 8 October 2020

Ornamental experts meeting, Hannover, Germany

> 3 and 4 November 2020

Fruit experts meeting, Angers, France

> 5 November 2020

Apple Open day, Angers, France

> 2 and 3 December 2020

Examination offices annual meeting, Angers, France

**Due to the COVID-19 pandemic situation, the meetings on the list may be organised by video conference, postponed, or cancelled.*



TECHNICAL NEWS

CPVO crop experts meetings review

Fruit experts meeting and strawberry ring test, Leipzig/Wurzen, Germany (24-25 September 2019)

Fruit experts working for the CPVO network of examination offices met on 24-25 September in Leipzig, Germany, after the invitation from Bundessortenamt. Various matters of relevance for the DUS testing were discussed, this was also the

opportunity to visit the fruit DUS trial from in Wurzen. A meeting concluded on the CPVO financed strawberry ring test project with very useful information in view of the revision of the UPOV guideline for strawberry.



Apple field examiner day, Wurzen, Germany (26 September 2019)

The CPVO organised in cooperation with the Bundessortenamt an apple field examiner day in Wurzen, Germany, on 26 September 2019. Field experts of

all CPVO entrusted examination offices for apple confronted their views on the assessment of characteristics of the CPVO DUS testing protocol in front of plant

material. This was the opportunity to identify points for improvement in the current protocol in view of a discussion of the apple UPOV guideline.

Agricultural experts meeting, Angers, France (8-9 October 2019)

This year, the agricultural experts group met in Angers. As usual, the experts' input was requested for the elaboration, or revision of CPVO technical protocols. The species oilseed rape, oats, cocksfoot and lucerne were subject matters of discussion.

An interesting presentation was made by the CPVO Legal Unit to the experts, focusing on the legal requirements as regards characteristics which are visually observed on a group of plants and the difference between notes to establish a clear difference between a given variety pair. A presentation from [Euroseeds](#) provided details on how the new Plant Health [Regulation \(EU\) 2016/2031](#) impacts the submission of plant material for DUS testing.

Half a day was spent to get an update on R&D projects related to agricultural species. The Polish examination office [Coboru](#) invited the agricultural experts to hold the meeting in 2020 in Poland, together with the technical experts training for maize. The CPVO is very grateful for this invitation since discussions on the spot do greatly contribute to the quality of the results.

Another matter was the discussion on the results of a survey on cyclic planting in grasses. The group agreed that open questions should be summarized in a document and be discussed at the next UPOV-TWC meeting.

Ornamental experts meeting, Angers, France (14 November 2019)

Ornamental experts working for the CPVO network of examination offices met on 14 November 2019 in Angers. Various

matters of relevance for the DUS testing were discussed, especially challenges in obtaining reference varieties for DUS

testing or the newly required information on Plant passport/Phytosanitary certificate in relation to ornamental crops.

Vegetable experts meeting, Angers, France (2-3 December 2019)

The CPVO held its annual meeting with EU vegetables experts in Angers on 2-3 December 2019. The meeting was attended by 18 experts from 12 examination offices, three representatives of [Euroseeds](#) and two of [ECO-PB](#). The group revised the CPVO technical protocols (TP) for melon, pea, pepper, artichoke, broccoli, spinach, tomato and tomato rootstocks. In several of these TP the results of the Harmores 3 R&D project, co-funded by the CPVO and aiming at improving the resistance test protocols

to several diseases, were included since the project took end in June 2019 (for the melon, pea and tomato TPs). These eight TPs are all expected to be approved by the CPVO Administrative Council in 2020. In addition, the group discussed numerous other items on DUS matters: particularly the group discussed the results of a survey regarding the number of observations done by each examination offices on a regular basis during multi-annual testing (for a list of characteristics from 13 species). The group also exchanged from a legal perspectives on how to

better document evidences for varieties where the distinctness decision is based on a characteristic which are visually observed on a group of plants. A working group has been set up in order to discuss the harmonisation of the national and CPVO technical questionnaires, the group will first start to work on the lettuce technical questionnaire. Finally, the group received short updates on the current and future R&D projects: Melon database, Tomato SNP project and Harmorescoll.





23rd annual meeting with examination offices, Angers, France (4-5 December 2019)

On 4 and 5 December 2019 the CPVO held its 23rd annual meeting with its examination offices, which was also attended by representatives from the European Commission, the UPOV office and the breeders' organisations, [Ciopora](#), [Euroseeds](#), [Plantum](#) and [ECO-PB](#), as well as by representatives from the non-EU PVR authorities from Switzerland. The main subjects of discussion were the following.

- Access to DUS trials for inspection and sample taking;
- Costs associated with a "split sample" for the long-term storage of seed of a recently registered variety in the variety collection;
- New Phytosanitary Regulation;
- Obtaining reference varieties for DUS testing and the revision of the Technical

Verification procedure;

- Acceptance of certain seed treatments in the submission of seed of candidate varieties for DUS testing;
- Organisation of field experts' meetings;
- Closing date;
- Situation of characteristics observed only once for species with multi-annual testing – e.g. bolting for vegetables.

Furthermore, the participants were informed of the state of play of R&D and IT projects. They received an information on the feedback on upfront payment pilot project, new expert reimbursement rules for experts travelling on behalf of the CPVO and on the establishment of the working group for cost calculation.

UPOV Technical Working Parties meetings review

UPOV TWA, Montevideo, Uruguay (16 to 20 September 2019)

Besides the documents presented by [UPOV](#), a particular working session took place in order to enhance cooperation on Biochemical and Molecular Techniques (BMTs) (per crop). That exercise allowed to get an overview on the techniques used in the different Member States. In that context, the presentation of the CPVO on the use of BMTs in DUS testing was particularly well received by newcomers as a useful overview from the historical use of BMT up to today.

The group agreed on the following final versions of UPOV technical guidelines (TGs) for adoption: Ginseng, Red Clover and Triticale. The following TGs will be discussed at the next [TWA](#) in 2020: Japanese lawn grass, Potato, Rape Seed, Rice, Rye, Soya Bean, Sugarcane, Sunflower, Tea and Timothy. The next TWA will take place in June 2020 in Saskatoon, Canada.

UPOV BMT WG, Hangzhou, China (16 to 18 October 2019)

For its 18th session, the UPOV working group on Biomolecular techniques ([BMT](#)) was hosted by the Chinese Ministry of Agriculture and Rural Affairs in Hangzhou (China). Contributions focused on new tools developed for the production and the storage of molecular data (e.g. Multiple Nucleotide Polymorphism markers) and on their application to the management of reference

collections. This year, the meeting was organized back-to-back with the 37th UPOV-TWC meeting to enhance cooperation between the two groups. For the next meeting of the BMT in Alexandria (USA) in September 2020, and from now on, the meetings of the two groups will be partly merged to avoid redundant activities and allow closer interaction between experts.

Monitoring visit of examination offices (2nd Semester 2019)

CPVO technical experts visit regularly entrusted examination offices. Visits are timed in a way that experts can have discussions with examiners on particular files and topics while plant material is available in the trials. These discussions are mutually beneficial for the particular cases at hand but also to contribute to further discussions held during expert meetings. For the CPVO experts this is a unique occasion to stay in touch with the practical aspects of DUS testing work. A further purpose is to complement the many exchanges with examination office experts with hands-on learning and to extend experience to crops and issues that are relevant when they have to replace their colleagues during absences. Also examination office staff appreciate to present their work, to exchange with colleagues and to explore issues from different angles. For new staff, both at examination offices and at the CPVO, the visits are an integral part of the 'on the job' training.

- > [GEVES](#), France (Beaucouzé in September, Brion in October)
- > [Naktuinbouw](#), the Netherlands (September and November)
- > [CREA-VE](#), Italy (Conegliano in September)
- > [CREA-OFA](#), Italy (Rome in October)





NEW RESEARCH & DEVELOPMENT PROJECTS

Update on existing R&D projects

Kick-off meeting InnoVar, Belfast, United Kingdom (16-18 October 2019)

The CPVO attended the kick-off meeting of the [Horizon 2020](#) funded project InnoVar. The project coordinator [AFBI](#) hosted the meeting at its premises in Belfast. [InnoVar](#) aims at improving the variety testing and decision making using an integrated approach

incorporating genomics, phenomics and machine learning. The project focuses on wheat initially before extending to other crops. The CPVO attended as stakeholder and provided a presentation focusing on its expectations from the project.

INVITE - Workshop on Organic varieties, Brussels, Belgium (04 February 2020)

The partners of the Horizon 2020 project [INVITE](#) (INnovations in plant Variety Testing in Europe) continued to progress in the organization of their collaborative work and initiated many tasks in the different workpackages. In the framework of INVITE WP5 "Implementation of new methods and tools" (and of [LIVSEED](#)), the CPVO organised, with the [FiBL](#) (Switzerland), a stakeholder workshop on 4 February 2020 in Brussels on the impacts of the new organic

[Regulation \(EU\) 2018/848](#) on variety testing in the EU. Options to adjust DUS and VCU (Value for Cultivation and Use) testing for organic bred varieties were presented and discussed with a broad audience of stakeholders and policy makers. The intention was to prepare the work of the ad hoc group set up by the Commission to define the objectives of the next temporary experiment for the implementation of the new regulation on organic farming.

New R&D projects

Two new projects have been positively evaluated by the R&D advisory group and the CPVO President decided to provide co-funding.

One project relates to *Cannabis sativa* L. and the project aims at the "Development of a SNP marker set in cannabis to support DUS testing". The project is a consequence of a strong increase of applications for *Cannabis sativa* L. in particular for those varieties bred for pharmaceutical use. This creates complications to import plant material combined with a reluctance of titleholders to submit reference varieties. The project is coordinated by [Naktuinbouw](#) and the planned duration is 24 months.

A second project aims at facilitating access to reference material for performing disease tests within DUS examinations for vegetables. The project covers disease resistances which are part of the CPVO vegetable DUS protocols. It is based on a collaborative work between examination offices and seed companies with [Euroseeds](#) membership. The project is coordinated by [GEVES](#) and Naktuinbouw and scheduled for 3 years.

QUALITY AUDIT NEWS

Appointment of six substitute QAS team leaders

Following the recommendations of an internal audit to ensure continuity of service in case the CPVO Quality Audit Service (QAS) team leader suddenly became indisposed, the Administrative Council approved in September 2019 the appointment of six substitute QAS team leaders from its current pool of experienced

QAS technical experts. The appointees are the following: Alexandra Chatzigeorgiou (Greece), Henk de Greef (the Netherlands), Antonio Escolano Garcia (Spain), Szani Zsolt (Hungary), Jutta Taferner-Kriegl (Austria), Ivan Rukavina (Croatia). All six substitutes will undergo specialized training regarding this role during the course of 2020.

Launching of revision of entrustment requirements

During the training session for all the QAS technical experts and CPVO technical experts in Spring 2019, some grey areas were highlighted in the current version of the entrustment requirements. Following consultation with its stakeholders at the

examination offices meeting in December 2019, the green light was given to launch a revision of the entrustment requirements in 2020. This year-long exercise will involve the CPVO, the QAS team, examination offices, and breeders' organisations with



the aim to get the revised entrustment requirements approved by the CPVO Administrative Council in Spring 2021 so that it can be implemented for the 2022-2024 assessment cycle.

EXTERNAL COMMUNICATION NEWS

European Communication Correspondent Network (CoCoNet) meeting, November 2019

On 4 November 2019, the CPVO participated for the first time in the CoCoNet bi-annual meeting in Paris, France. CoCoNet is an European-wide network managed by the [EUIPO](#) and the

[EPO](#). The network gathers circa 30 Heads of communication of national IP and trademark offices with the view to build cooperation on policy cooperation or communication campaign of common

interest. The CPVO Communication Officer presented the CPVO missions and new communication strategy at the meeting. The CPVO has now been granted the "observer" status in the CoCoNet network.

HUMAN RESOURCES NEWS

Welcome to ...

The CPVO is pleased to welcome Ms. Bronislava Batorova, who started as seconded national expert (SNE) at the CPVO on 15 January 2020 for a duration of 18 months. This is possible thanks to the Administrative Council Decision implementing the staff regulations giving a scheme to the secondment of experts to foster the exchange of professional experience and knowledge between the CPVO and the administrations of the Member States.



"Being the long-term representative of Slovakia and the examination office (UKSUP) I have been cooperating with CPVO in several areas: technical, administrative and legislative. This partnership has brought me many benefits at both professional and personal level. I got to know the great professionalism of my colleagues in their work, but also their helpfulness and openness on a personal level. With this in mind, I started working in CPVO as a SNE, and my expectations were fully fulfilled. I would like to thank everyone for their very nice welcome and help in all areas. It is my goal to be an asset to the CPVO and to help fulfill its tasks."

We wish her the best of luck and success in her new functions at the CPVO.

Goodbye to...

- > Patrick Lecoq, IT project leader, who retired in December 2019 after 21,5 years of service.
- > Mathilde Saint-Jean, Registry assistant, who left the CPVO in December 2019 to start a new career.

On behalf of the CPVO, we wish both of them the best for the future.

- > Trainees : Alina Ceban, Hipatia Donoso, Lucie Kircher, Jared Onsando, Mathéo Paucet, Kristina Saprykinaite, Juan Antonio Vives Vallés, Agathe Vrignaud.

We hope they enjoyed their experience at the CPVO !

WEBINARS ON LINE !

- > Webinar on [Variety denominations in the CPVR](#) by Benedicte Legrand (2018)
- > Webinar on [Technical examination on Seed propagated species](#) by Anne Weitz (14/11/2019)
- > Webinar on [Technical examination on Vegetatively propagated species](#) by Jens Wegner (15/11/2019)
- > Webinar on [A guide to Plant Variety denominations, Trademarks and Geographical Indications](#) by Orsola Lamberti (13/12/2019)

PUBLICATIONS

> The Official Gazette of the CPVO 1.2020, the S2 Gazette and the Annex to the Annual Report 2019 have been published and are available for free in electronic format only (PDF). You may download both gazettes from the [Gazette page](#), the annex to the Annual Report from the [Annual Reports page](#).

> CPVO President, Martin Ekvad, [speaks](#) about the major successes and challenges of the CPVO.

> Article on "Essentially derived Variety in the EU" by Martin Ekvad ([Europeansseed - 17 september 2019](#)).

> Article on "The Judgment of the CJEU of 25 July 2018 on Mutagenesis: Interpretation and Interim Legislative Proposal" by Cécile Collonnier and Juan Antonio Vives-Vallés just published ([Frontiers in plant science – Plant breeding](#) - 3 March 2020).

> Curious about what the CPVO does in the field of Implementing molecular tools in plant variety testing? Watch this [interview](#) of Cécile Collonnier.



Congratulations to...

CPVO colleagues Valérie de Caestecker, Anne-Marie Fernandez, James Moran, Aline Noguès and Anne Weitz for completing 20 years of service at the EU.

Traineeship recruitment procedure

As part of the traineeship procedure, the CPVO hosted 8 trainees between September 2019 and February 2020: two "Blue Book" trainees at the Legal Unit for 1 year, and six shorter traineeships (in the Legal Unit, the IT service, the Human Resources and the Communication sectors).

More advertisements will be published on the CPVO website in April for traineeships at the Legal Unit and at the Administration Unit, starting on 1 October 2020.

For further information on traineeships, please contact :

HR-CPVO@cpvo.europa.eu

TO BE NOTED

> The [CPVO Notes for Applicants](#) have been updated to reflect the changes which happened at the beginning of 2020.

> What will change regarding fees as of 1 April 2020 ? Read [all about](#) it on the CPVO website.

> Fee adjustment for the testing of pharmaceutical *Cannabis sativa* L. varieties (PCS) as from 1 January 2020 ([note](#)).

> In October 2016, the European Parliament and the Council adopted Regulation (EU) 2016/2031 on protective measures against plant pests ("Plant Health Law"). On 13 December 2016, the Regulation entered into force and is applicable from 14 December 2019. These rules constitute the EU Plant Health Regime.

More on [Europa.eu](#)



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Special thanks

from the President to the contributors and the editorial team of this newsletter for their valuable work.



INTERNATIONAL YEAR OF
PLANT HEALTH
2020

