



CPVO

Community Plant Variety Office

Annual report 2008





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1. INTRODUCTION BY BART KIEWIET, PRESIDENT OF THE CPVO

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



Bart Kiewiet

The year 2008 was a successful one for the Community plant variety protection system: some 3 012 applications for Community plant variety rights were registered, a new record. But it should be added that this number of applications is only slightly higher, in the order of 1 %, than the number of applications received in 2007. It is unclear whether the limited increase of applications is of a structural nature or due to the financial crisis, the effects of which for the European economies became visible in the second half of the report year.

Another parameter of the performance of the CPVO is the number of varieties protected. In 2008, the total number of valid Community plant variety rights has grown with more than 1 000 titles and has reached the level of 15 590.

The processing of applications, the organising of technical examinations, the decision-making process, the maintenance of the register and the management of the related financial transactions are the core business of the members of the CPVO staff. It is their challenge to improve where possible the efficiency and the effectiveness of their work.

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

1.2. Enforcement

Enforcement of Community plant variety rights is in the first place a responsibility of the right holders. This does not mean that the CPVO has no role to play in this respect. It is indeed of direct interest for the CPVO, that rights granted under the Community PVP system are enforceable and respected. The CPVO contributes to the enforceability of Community PVPs in different forms. In the first place, it is by granting rights based on comprehensive technical assessment of candidate varieties. New quality requirements for 'distinctness, uniformity and stability' (DUS) testing in the European Community to be adopted by the Administrative Council should, where possible, further improve the quality of variety testing. Furthermore, the CPVO has developed, and will continue to do so, various activities with the aim of increasing awareness of the implications of the Community PVP system of relevant target groups. Some of these activities are mentioned below.

1.2.1. Farm-saved seed

Breeders of varieties of certain agricultural species are entitled to a remuneration for the use of farm-saved seed of protected varieties. The applicable Community legislation leaves some discretion on how to organise the collection of the remuneration at a national level. In many EU Member States, the breeder's lack of knowledge of the use of farm-saved seed

of their varieties by individual farmers forms — in many cases — an impediment for the collection of this remuneration. However, in some countries, such as the Czech Republic, the Netherlands and the United Kingdom, collection systems have been developed on the basis of agreements between breeders' and farmers' organisations and/or specific national legislation.

On request, and with the financial support of the CPVO, a member of the staff of the Bundessortenamt, Dr Hans-Walter Rutz, has carried out a study on the situation of farm-saved seed in the European Community. The study was finalised in December of the report year. In the first meeting of the Administrative Council of 2009, the follow-up of the study will be discussed. A summary of the final report of this study can be found in Chapter 9.5 of this report.

1.2.2. Seminars

In January, Ciopora organised a seminar at Schiphol airport in Amsterdam for customs officers from a number of Community Member States in order to familiarise these officials with the Community PVP system. The Commission and the CPVO presented papers at this event.

In September and October, the CPVO organised seminars in Sofia and Bucharest to inform interested circles, officials, lawyers, representatives of the breeding industry and of farmers, about the Community PVP system, particularly the enforcement aspects.



Enforcement seminar in Bucharest, October 2008



1.3. International cooperation

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

Participation in the activities of the International Union for the Protection of New Varieties of Plants (UPOV) enables the CPVO staff to share knowledge and experience with colleagues



Egyptian delegation visit to CPVO, June 2008

from all over the world. The test guidelines developed in the framework of the UPOV organisation are the basis of the test protocols issued by the Administrative Council of the CPVO.

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

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

1.4. Quality audit service

As a follow-up to the strategic discussion, it was decided by the Administrative Council that a quality audit service be created within the CPVO. This service will be responsible for the auditing of examination offices that have expressed the wish to acquire the status of entrusted examination office, in respect of their compliance with the relevant quality requirements. Once a network of entrusted examination offices — new style — has been established, this service will monitor the continuing compliance of the entrusted offices with the quality requirements. In September 2008, the newly recruited head of this service started preparing to launch these audit activities. It is my aim that the system will be operational in the second half of 2009.

1.5. Cost calculation exercise

In order to be able to review the remunerations to be paid by the CPVO for DUS tests, the competent examination offices have been asked to calculate the costs of these tests for the different cost groups. On the basis of the outcome of these calculations, which were audited by the accountancy firm Ernst & Young, the CPVO has proposed new remuneration levels. After a round of negotiations, an agreement with all the examination offices has been reached about the remuneration levels for the coming three years. The agreed remunerations have been laid down in new designation agreements between the CPVO and the individual examination offices.

1.6. EU Commissioner for Health visit to CPVO



Commissioner Vassiliou and Mrs Testori Coggi visiting the CPVO, September 2008

On 8 September the CPVO had the honour to receive the Commissioner responsible for Health, Mrs Vassiliou, and the Deputy Director-General of the Health and Consumers DG, Mrs Testori Coggi. After a presentation of the Community plant variety protection system, the Commissioner toured the CPVO premises and spoke with staff members at their work stations. The visit was concluded with a cocktail where the guests from the Commission had the occasion to meet the CPVO staff in an informal setting. Mr Robert Tessier participated in this event as representative of the Administrative Council.



1.7. Corporate identity

Although certainly not confronted with an identity crisis — we know who we are and what we do — it was considered opportune to refresh and harmonise our corporate identity. On the basis of a call for tender, a Brussels-based firm has been hired to review the material used by the CPVO in its communication with its stakeholders and other external contacts, such as letter headings, business cards, the CPVO website, the annual report, publicity material, PowerPoint presentations and the CPVO stand used at fairs. Last but not least, the CPVO logo has been revised. The new identity was presented to the members of the Administrative Council at the occasion of its October meeting.

Angers, 5 February 2009

Bart Kiewiet

President of the CPVO



New CPVO corporate ID presentation, October 2008

2. FOREWORD BY JOŽE ILERŠIČ, CHAIRMAN OF THE ADMINISTRATIVE COUNCIL

2.1. Introduction



Jože Ileršič

It is with pleasure that I have established that the annual number of applications for Community plant variety rights has surpassed the threshold of 3 000. It is not currently possible to make a forecast of the effects of the economic crisis on the Community PVP system, but it seems realistic to assume that the number of applications will not increase further in 2009. Fortunately, the financial situation of the CPVO is sound. With a free reserve of around EUR 5 million, the CPVO is able to survive even a possible decrease of applications without the need for drastic organisational measures.

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

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

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

The President of the Community Plant Variety Office presented the annual activity report for the year 2008 to the Administrative Council at its meeting in Brussels on 10 and 11 March 2009.

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

The system continued its growth although at a reduced pace.

The free reserve was reduced to an amount slightly under EUR 5 million, which was the target value of a deliberate strategy for the reduction of accumulated surpluses. From now onwards, budgets should be balanced without further reduction of the reserve. The Administrative Council is satisfied with the results of the internal audit. It takes note of the identified risks and of the recommendations made by the internal auditor and looks forward to the follow-up of these recommendations within the best term. The Administrative Council takes note of the information on *ex post* verifications, negotiated procedures and the confirmation of instructions. Concerning *ex post* controls, it is looking forward to the actions taken to improve the present situation.

The Administrative Council took note of 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 was satisfied that the President of the CPVO is unaware of any matter not reported which could harm the interests of the CPVO.

Jože Ilersič

Chairman of the Administrative Council

3. THE COMMUNITY PLANT VARIETY RIGHTS SYSTEM



The introduction of a Community plant variety system in 1995 has proved to be a successful initiative that has been welcomed by the business community seeking intellectual property protection for new plant varieties. As mentioned in the introduction of this annual report, the number of applications has increased over the years and the Community Plant Variety Office ('the Office') has adapted its size and organisation to meet the increased demand.

The recent enlargements of the Community make the titles valid in 27 Member States. The fact that protection, guaranteeing exclusive exploitation rights for a plant variety, is acquired in 27 countries through a single application to the Office, makes the Community system for protecting new varieties very attractive.

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

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

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

Except in two specific instances where a direct action against a decision of the Office may be brought before the Court of Justice, a right of appeal against such a decision lies with a Board of Appeal consisting of a chairman, appointed by the Administrative Council and two other members selected by the chairman from a list compiled by the Administrative Council. The addressee of a decision, or another person who is directly and individually concerned by the decision, may appeal against it. After examining the appeal, the Board

may exercise any power within the competence of the Office or remit the case to the Office which is bound by the Board's decision. Actions may be brought before the Court of First Instance in Luxembourg against decisions of the Board. Decisions of the Board of Appeal and the Court are published on the Office's website.

The table in Chapter 15 shows the number of notices of appeal lodged with the CPVO and the decisions reached by the Board of Appeal.

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

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

4. THE ADMINISTRATIVE COUNCIL

The CPVO is supervised by an Administrative Council comprising one representative of each Member State, one representative of the European Commission and their alternates.

The Administrative Council monitors the activities of the Office. In particular, it is responsible for examining the annual report of the President, adopting the Office's budget, and granting discharge to the President in respect of its implementation. In addition, it can provide advice, 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 three times in 2008, on 21 February, on 12 and 13 March and on 15 and 16 October.

The extraordinary meeting in Brussels on 21 February only dealt with one confidential item on the agenda, the complaint of a CPVO staff member.

At the meeting on **12 and 13 March in Angers**, the provisional accounts and financial analysis for the 2007 financial year were presented together with the preliminary draft budget for 2009. The members of the Administrative Council also adopted:

- the discharge of the President for implementation of the 2006 budget;
- the report of the Authorising Officer which, in accordance with Article 39(2) of the financial regulation, has been sent to the Court of Auditors and included in the 2007 annual report;
- the rules for implementing Regulation (EC) No 45/2001 of the European Parliament and of the Council 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.

Most of the Administrative Council members also supported the proposal concerning cooperation between the UPOV and the CPVO in gathering data for the database of plant variety denominations as well as the CPVO proposal on the functioning of the Advisory Group for Research and Development Projects.

The members also took note of:

- the internal audit report, in compliance with an obligation in the financial regulation;
- the experts' group report on the possible extension of the CPVO's activities in the seed marketing sector;
- the entry into force, on 31 January 2008, of the amendment of Article 12 of the basic regulation allowing applicants from all over the world to file an application for a Community plant variety right;
- the report on the cases of the Board of Appeal and the further appeal lodged to the Court of First Instance of the European Communities in 2008 (four appeals) as well as the rulings by the Court (two judgments) — further information in Chapter 15;
- the experts' group report on electronic data exchange;
- progress in the farm-saved seed project.

They also discussed several other important matters, including:

- the strategic debate on the future of DUS testing;
- the 'one key, several doors' principle. In this respect, they made comments on the findings of the questionnaire sent by the CPVO. The members agreed on the principle in general.

Finally, the new webpage for the Administrative Council was presented to members who agreed to add it to the CPVO website subject to the names of the members appearing in the public area without any detail.

At the meeting on **15 and 16 October in Berlin**, the members of the Administrative Council took note of the financial position of the CPVO for the 2008 financial year and adopted by unanimous vote of the members present having voting rights or voting by proxy:

- the draft budget for 2009;
- the budgetary transfers proposed by the CPVO in respect of the 2008 budget;
- the appointment of a new accountant for the CPVO, Mr James Moran;
- the CPVO's staff policy plan for 2009–11.

They also decided:

- to create a consultative group charged with determining the scope of the next assessment of the CPVO which is an obligation of the financial regulation and which is due to take place in 2009;
- to split the draft in two and to adopt two draft decisions for the evaluation of the President and of the Vice-President with a specific reference, in the decision relating to the Vice-President, to an obligation to consult the President of the CPVO in the course of the assessment of the Vice-President;
- on the possibility to apply, under precise conditions and on a case-by-case basis, the new technical protocols adopted by the Administrative Council after the date of submission for a given species.



Administrative Council meeting, Berlin, October 2008

Moreover, the members of the Administrative Council gave a favourable opinion:

- to the proposal for amending the rules of procedure of the Administrative Council providing for the possibility of notification, convocation and communication by electronic means between the CPVO and the members of the Administrative Council as well as providing for a reduction of the Administrative Council's consultation deadline to 15 days when using the written procedure specified in Article 9 of the rules of procedure in cases of urgency;
- to the proposal of amendment to Article 15§4 of Commission Regulation (EC) No 1239/95, relating to the payment scales for examination offices;
- to the proposal for cooperation between Member State authorities and the CPVO in testing of plant variety denominations.

The members of the Administrative Council took note:

- of the foreseen revision of the current levels of examination office fees;
- of the state of progress of work on the building at 9, boulevard Foch, which started in June 2007;
- of the CPVO work plan for 2009;
- of the results of the study on farm-saved seed done by a consultant specialised in the domain;
- that the restricted experimental phase of online applications will start in April/May 2009. The system will be widely open to all at the end of 2009.

Finally, the members of the Administrative Council took note of the new graphical chart of the CPVO.



Renovation work on new building, Angers, France



Chairman of the Administrative Council

Mr J. Ileršič

Vice-Chairman of the Administrative Council

Mr U. von Kröcher

Members of the Administrative Council

Belgium	<i>Ms C. Vanslebrouck</i> <i>Ms M. Petit (alternate)</i>
Bulgaria	<i>Mrs N. Ivanova</i> <i>Mrs B. Pavlovska (alternate)</i>
Czech Republic	<i>Mr J. Staňa</i> <i>Mr D. Jurecka (alternate)</i>
Denmark	<i>Ms H. Elberling</i> <i>Mrs B. Lund (alternate)</i>
Germany	<i>Mr U. von Kröcher (Vice-Chairman)</i> <i>Mrs B. Ruecker (alternate)</i>
Estonia	<i>Mrs P. Ardel</i> <i>Alternate vacant</i>
Ireland	<i>Mr N. Mc Gill</i> <i>Mr D. Mc Gilloway (alternate)</i>
Greece	<i>Mr E. Zangilis</i> <i>Mr K. Michos (alternate)</i>
Spain	<i>Mr E. Rios López</i> <i>Mr L. Salaices Sánchez (alternate)</i>
France	<i>Mr R. Tessier</i> <i>Ms N. Bustin (alternate)</i>
Italy	<i>Mrs I. Pugliese</i> <i>Alternate vacant</i>
Cyprus	<i>Mr A. Kyratzis</i> <i>Mr C. Nicolau (alternate)</i>
Latvia	<i>Mrs S. Kalinina</i> <i>Alternate vacant</i>
Lithuania	<i>Ms S. Juciuvienė</i> <i>Alternate vacant</i>
Luxembourg	<i>Mr M. Weyland</i> <i>Mr F. Kraus (alternate)</i>

Hungary	<i>Mrs A. Szenci</i> <i>Mrs M. Posteiner Toldi (alternate)</i>
Malta	<i>Ms M. Delia</i> <i>Mr M. Sciberras (alternate)</i>
Netherlands	<i>Mr C. Van Winden</i> <i>Mr K. Fikkert (alternate)</i>
Austria	<i>Mr H-P. Zach</i> <i>Mr L. Girsch (alternate)</i>
Poland	<i>Mr E. Gacek</i> <i>Mrs J. Borys (alternate)</i>
Portugal	<i>Mr J. de Carvalho</i> <i>Mrs A. Rocha (alternate)</i>
Romania	<i>Mr A. Strenc</i> <i>Mrs A. Ivascu (alternate)</i>
Slovenia	<i>Mr J. Ileršič (Chairman)</i> <i>Mr P. Grižon (alternate)</i>
Slovakia	<i>Mrs B. Bátorová</i> <i>Ms M. Andrašková (alternate)</i>
Finland	<i>Mr M. Puolimatka</i> <i>Alternate vacant</i>
Sweden	<i>Mrs A. Sjöström</i> <i>Mrs M. Sjöblom (alternate)</i>
United Kingdom	<i>Mr M. Wray</i> <i>Mrs. E. Nicol (alternate)</i>
European Commission	<i>Mrs P. Testori Coggi</i> <i>Mr J. Gennatas (alternate)</i>

5. ORGANISATION OF THE CPVO

In December 2008, the staff of the Office comprised 12 officials and 33 temporary agents. Thirteen nationalities from the European Union's Member States were represented. One seconded national expert from the Netherlands was present.

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

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

The Administrative and Financial Unit is active in two areas:

- Administrative Section: public procurement; organisation of Office's publications; administration, management and monitoring of 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 budgetary and general accounts and preparation of budgets and financial documents; management of fees system.

The Legal support service provides legal advice to the President and other members of the Office staff, in principle on matters related to the Community plant variety rights



CPVO headquarters, Angers, France



CPVO staff

system, but also on questions of an administrative nature; provides legal interpretations and opinions and also draws up draft legislation; participates in various CPVO committees, thus ensuring that Community procedures and legislation are respected; manages the administration of objections to applicants for CPVRs and provides the Secretariat of the Office's Board of Appeal.

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

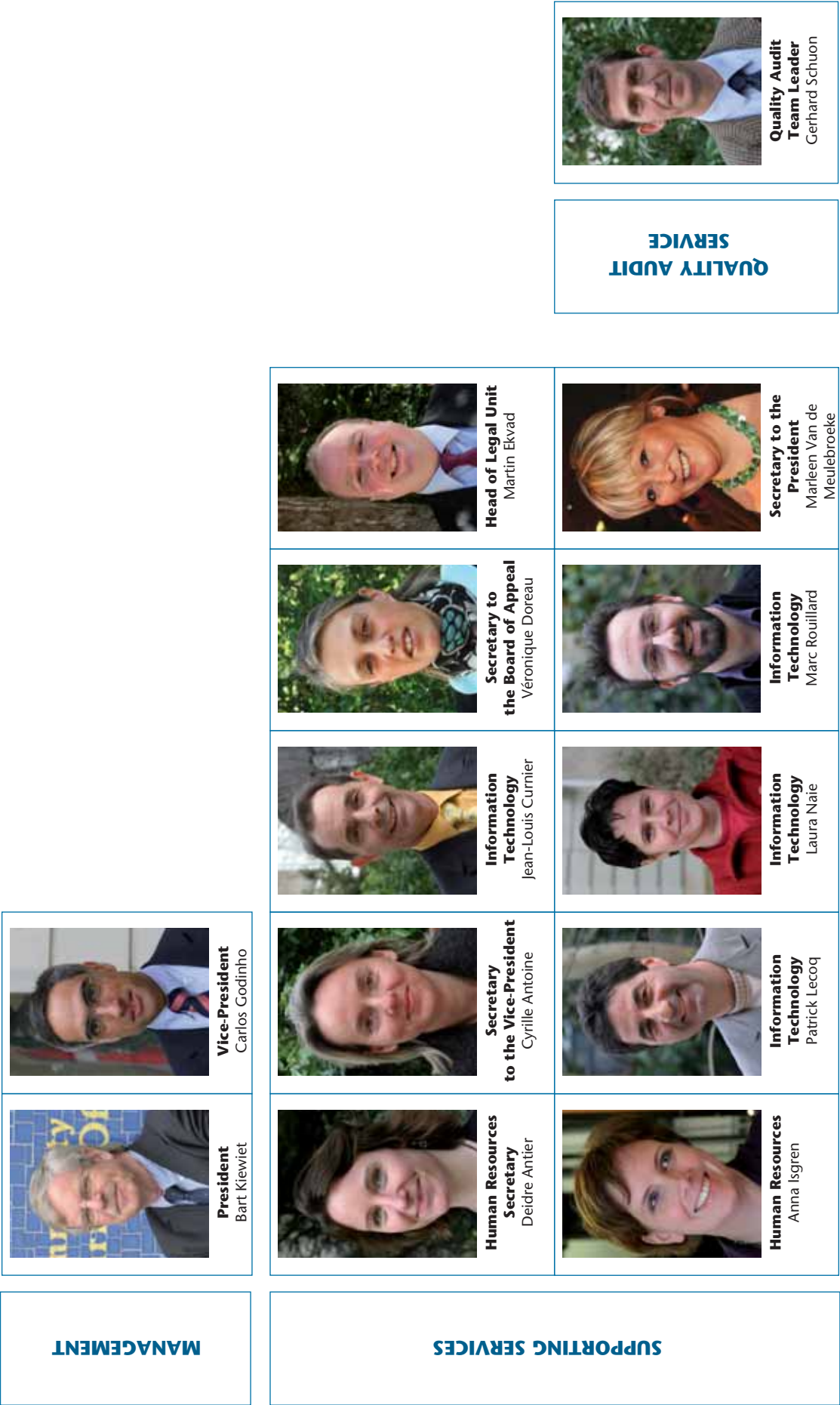
The IT service ensures that the Office runs smoothly in computing terms. Its tasks include: analysis of the Office's hardware and software requirements; design, development and installation of new programs specific to the Office; development and maintenance of the websites of the Office; installation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

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

















In 2008, the CPVO prepared a social report with information concerning the turnover, work environment and social aspects of the CPVO. The different headings treated in the report were employment (staff members, recruitment procedure, staff joining or leaving the CPVO, promotions, absenteeism, gender balance), working conditions (hours worked, part time, parental leave), training (language training, IT training, other training) and professional relations (Staff Committee).

The CPVO Social Reports 2006, 2007 and 2008 can be consulted on the CPVO website under the heading 'Annual reports'.









ORGANISATIONAL CHART OF THE CPVO



ADMINISTRATIVE AND FINANCIAL UNIT (AFU)

	Filing Clerk Sharmila Assane Ali		Reception Secretary Isabelle Auger		General Services Thierry Cluzeau		Secretary Valérie De Caestecker		Evaluation Internal Audit & Control Roseline Fagel		Deputy Accountant Anne-Marie Fernandez		Secretary to the Head of Unit Béatrice Hodet		Reception Daniëlle Leenaarts
	Secretary Bénédicte Legrand		Finances Ekaterina Mantziaris		Accountant James Moran		Administration Gil Oliveira		Public Relations & Training Fabienne Santoire		Filing Clerk Manuel Teixeira		Secretary Laurence Verger		Head of AFU Thomas Wollersen

TECHNICAL UNIT (TU)

	Database Manager Carole Bonneau		Ornamental species Urszula Braun-Modecka		Denominations Rudi Caes		Register Pierre-Emmanuel Fouillé		Registrar Anne Gardener		Register Nadège Grantham		Secretary Ghislaine Guilbert		Ornamental species Ton Kwakkenbos
	Register Eugenio Maiorini		Deputy Head of Unit Jean Maison		Secretary to the Head of Unit Aline Noguès		Fruit and Vegetable species Sergio Semon		Head of TU Dirk Theobald		Secretary Laurence Théodore		Ornamental species Jens Wegner		Agricultural species Anne Weitz

NB: The above organisational chart comprises those members of the CPVO employed as Officials and Temporary Agents on 31 December 2008.

6. THE MULTI-BENEFICIARY PROGRAMME ON THE PARTICIPATION OF TURKEY, CROATIA AND THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA IN THE COMMUNITY PLANT VARIETY RIGHTS SYSTEM

In 2008, the programme also covered the former Yugoslav Republic of Macedonia. By this extension, all three candidate countries were able to benefit from the programme. An external national expert was hired to manage the programme.

The general objectives of the programme remained unchanged. The target was to inform competent bodies and stakeholders about technical, administrative and procedural aspects of the CPVR system as well as the legal impacts of the extension of the CPVR system to the territory of the candidate countries after accession. Furthermore, the competent authorities were prepared to participate in future in the system.

A detailed work programme subdivided in individual parts for the three candidate countries was developed in close cooperation with the partners. During the running of the programme some adaptations were necessary to make changes depending on the different preconditions in the three candidate countries.

The work programme comprised in total 34 activities, 12 for both the former Yugoslav Republic of Macedonia and Turkey and 10 for Croatia. For different reasons, some experts from the former Yugoslav Republic of Macedonia and from Turkey could not participate in some activities as provided in the original programme. But nevertheless the established benchmarks for the activities could be fulfilled.

For the conduct of the programme, 152 activity days and 97 travelling days were necessary. The subdivision of the days needed is given in the following table.

Activity and travelling days spent during the programme

	CPVO experts		External experts		Candidate country experts	
	Activity days	Travelling days	Activity days	Travelling days	Activity days	Travelling days
Former Yugoslav Republic of Macedonia	7	10	6	7	33	15
Turkey	7	13	1	2	47	20
Croatia	6	6			45	24
Total	20	29	7	9	125	59

In the former Yugoslav Republic of Macedonia, with the support of the programme, a new draft of a national plant variety protection act was elaborated. In autumn 2008, the UPOV Council took a positive decision on the conformity of the draft with the provisions of the UPOV Act 1991. The national authorities are becoming familiar with the administrative and technical rules and procedures to grant breeders' rights. To facilitate this process, the programme has given assistance through workshops and lessons on the CPVR system and by participation of former Yugoslav Republic of Macedonia experts in different seminars and courses. Facilities for conducting DUS trials do not yet exist.

Turkey became a UPOV member in November 2007. A growing number of applications for the granting of national plant breeders' rights can be observed. In the second year of the programme, the activities conducted concerned mainly legal subjects, the farm-saved seed systems in the EU, the introduction to some chosen chapters of the administrative and procedural steps of the CPVR system and the participation of Turkish experts in CPVO meetings and a PVR course.

In Croatia, the existing Plant Variety Protection Act was amended. Some rules were adapted to EU regulations. An easier procedure to enlarge the list of 'protectable' species was introduced. The use of farm-saved seed is still not possible. The activities conducted concerned mainly legal subjects, technical training and the introduction to administrative and procedural steps of the CPVR system. Furthermore, Croatian experts participated in different meetings and seminars of the CPVO and in a PVR course.

The Commission has adopted a new multi-beneficiary programme for the years 2009 and 2010. This programme will also cover Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo under UNSC Resolution 1244/99. A draft programme will be passed to the Commission for approval.



Turkish and Croatian delegation visit to CPVO, September 2008

7. RESEARCH AND DEVELOPMENT

Following the rules established by the Administrative Council in 2002 for financially supporting projects of interest for the Community plant variety rights system, the Office received several applications for co-financing R & D projects. The following projects received financial support from the CPVO in 2008.



Roses

European variety collection of rose varieties: This is a project coordinated by Plant Research International (PRI) and carried out by the Bundessortenamt, NIAB and PRI/Naktuinbouw. It aims at the compilation of key morphological characteristics, pictures and DNA fingerprints eventually facilitating a (cost-) efficient management of reference collections. Work started in 2005 and was concluded at the end of 2006. In 2007, the results were presented to breeders and to the UPOV-BMT working group. The knowledge gained can serve as a basis to attach DNA fingerprints to variety description thus supporting breeders in their struggle to enforce their Community plant variety rights. In 2008, the Office began investigating the breeders' interest in receiving an official DNA fingerprint of their varieties.

Management of winter oilseed rape reference collections: This NIAB project, in cooperation with GEVES, DIAS (Danish Institute of Agriculture and Science) and the Bundessortenamt, tries to establish the use of DNA markers as a tool for an efficient management of the reference collection. The project started in 2005 and the final results were received in early 2008. The project revealed that a straightforward approach of the so-called 'option 2' cannot be followed as there is practically no relation between molecular and morphological data. However, interesting perspectives can be envisaged by considering the initial results which were investigated for the application of independently applied thresholds coming from molecular data on the one hand and from morphological data on the other. A follow-up will be discussed with the project partners.

Development and evaluation of molecular markers linked to disease-resistance genes for tomato DUS testing (option 1a): The project was concluded at the end of 2007 and a final report subsequently submitted to the CPVO. The final report of the project expressed a very positive outcome, with molecular markers showing a very close correlation to physiological tests for all the asterisked disease-resistance characteristics included in the study. The report's conclusions were first discussed at the CPVO vegetable experts meeting in January 2008, where it was agreed that the project partners (Spain, France, the Netherlands) would carry out a ring trial with a set of reference and candidate tomato varieties during 2008 to look in particular at the reliability of the biomolecular tests in relation to the uniformity criteria, and a possible future implementation of such tests for DUS testing in this crop. The results and conclusions of the project were also presented at the UPOV TWV/42 session in Krakow in June 2008 and at the UPOV BMT/11 session in Madrid in September 2008, as well as at the vegetable open day at Naktuinbouw in October 2008, where breeders had the opportunity to express their opinion on the possibilities of the findings in relation to the DUS testing of tomato and the implications on their breeding work. By the time the project was discussed again at the CPVO vegetable experts meeting in December 2008, it had become evident that the disease resistances which showed most promises for the possible use of biomolecular markers were those for *Meloidogyne incognita* (nematodes) and tomato mosaic virus. The first results of the ring trials between the three project partners were also presented at this meeting, but there was no opportunity to

analyse these. Therefore, the three project partners will now analyse the results of the ring trial in detail and decide whether to have a meeting between themselves (and the CPVO) in order to provide a common report together with a cost analysis. Based on the common report, the project partners will state whether or not biomolecular markers could practically be used as part of the DUS examination for disease-resistance testing on candidate tomato varieties.

Potatoes: This project started in April 2006. The final report was received in spring 2008. The partners involved are Germany, the Netherlands, Poland and the United Kingdom. The project delivered a database including marker profiles of potato varieties, key morphological characteristics and a photo library with light sprout pictures. The aim is to rapidly identify plant material of a vegetatively propagated crop where reference material has to be submitted every year and to ease the management of the reference collection. A follow-up meeting is foreseen in spring 2009.

Management of peach tree reference collections: This is a collaborative three-year venture project between the CPVO's four examination offices for this species (Spain, France, Italy, Hungary), which aims to create and manage a peach tree database, via the establishment of an EU *Prunus persica* tree collection structured in varietal groups, using a common database containing phenotypic, visual and molecular descriptions. The project began in 2008 and is expected to conclude in 2010. A first meeting took place between the project partners in Paris in April 2008. A proposal was adopted at the meeting on the taking of pictures for peach within the programme (e.g. box of peach fruit). The maize database was taken as a model for the build-up of a similar database for the peach reference collections. SSR markers were chosen on which to run the molecular markers during the coming year. The next meeting will take place in Zaragoza in 2009. Ultimately, the project aimed to completely renew the reference collection in each of the peach examination offices. There was common agreement on the way to observe each characteristic in the CPVO protocol (recommendation made to measure each characteristic). Spain was also given responsibility for the low chilling varieties. Italy was given responsibility for the variability of older peach varieties. Hungary was given responsibility for the more continental-type varieties. France is utilising its experience of managing a large peach reference collection. An off-spin of the project is the assessment of the phytosanitary status of the peach varieties grown in the Mediterranean area.



Tomato DUS trials, the Netherlands

8. BUDGET AND FINANCE

8.1. 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 2008 was EUR 10.6 million.

The principal types of revenue collected in 2008 are broken down as follows:

	Var. (%)	2008	2007
Fees	7.2	9.65	9.0
Bank interest	50.0	0.75	0.5
Other revenue	150.0	0.25	0.1
Total revenue	10.4	10.6	9.6

Fees

Fees received in 2008 totalled EUR 9.6 million. This amount was composed of EUR 2.7 million for application fees, EUR 3.1 million for examination fees, EUR 0.3 million for report fees, EUR 3.4 million for annual fees and EUR 0.1 million for other fee-related sales.

Interest on bank accounts

The Office's treasury investments yielded an interest of EUR 0.75 million.

Other revenue

The Office received further revenue through sales of the *Official Gazette of the CPVO*, administrative operations and grants for the multi-beneficiary programme. The total for these receipts was EUR 0.25 million in 2008.

8.2. Expenditure

The total amount for recorded expenditure and commitments carried over was EUR 1.7 million, compared with EUR 12.2 million in 2007. The decrease of total expenditure by 4.1 % is mainly due to a significantly higher level of renovation of the CPVO building in 2007 as compared to 2008 and a lower level of examination costs.

	Var. (%)	2008	2007
Staff expenditure	4.3	4.8	4.6
Administrative expenditure	– 16.0	2.1	2.5
Operational expenditure	– 5.9	4.8	5.1
Total expenditure	– 4.1	11.7	12.2

Staff expenditure

The total amount of staff expenditure was EUR 4.8 million. Almost 100 % of the appropriations for wages were used in 2008.

Expenditure on buildings and movable property and miscellaneous administrative expenditure

The total amount for this expenditure committed was EUR 2.1 million, comprising EUR 1.1 million disbursed during the year and EUR 1.0 million to be disbursed in 2009.

Operational expenditure

The total amount for this expenditure committed was EUR 5.4 million while EUR 4.8 million was paid during the year. The total of outstanding commitments to be disbursed in subsequent years was EUR 9.6 million at the end of 2008.

8.3. Outturn for the financial year and accumulated reserve fund

The net outturn for the year is the difference between revenue and expenditure, including carryovers of commitments to subsequent years and commitments carried over from the previous year that were not used and therefore cancelled.

	Million EUR
Budgetary outcome of the financial year (a)	- 1.1
Non-budgetary expenses (b)	0.0
Non-budgetary income (c)	0.4
Net outcome of the financial year (=a-b+c)	- 0.7
Cumulated outcome carried over from the previous financial year	12.0
Outcome to be carried over	11.3

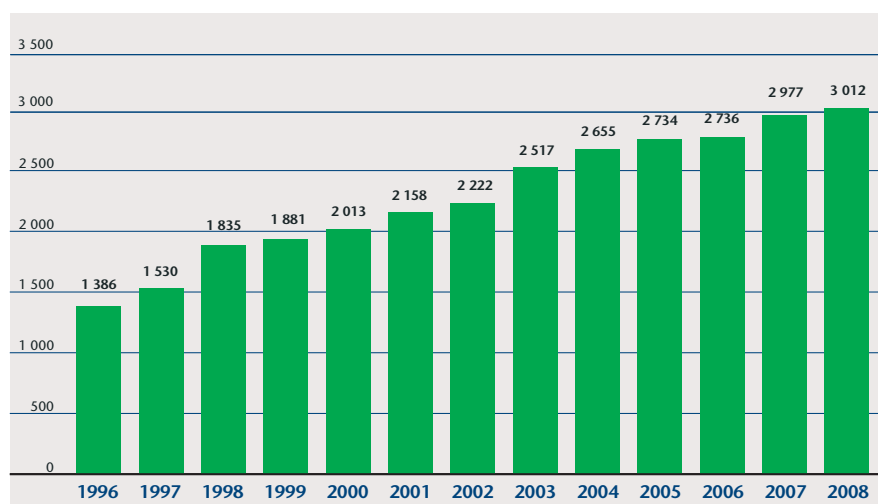
9. DEVELOPMENTS IN THE COMMUNITY SYSTEM

9.1. Applications for Community plant variety protection

In 2008, the Office received 3 012 applications for Community plant variety protection. As illustrated in Graph 1, this represents an increase of 1.2 % compared with the previous year.

Graph 1

Evolution of the annual number of applications for Community plant variety protection (1996–2008)

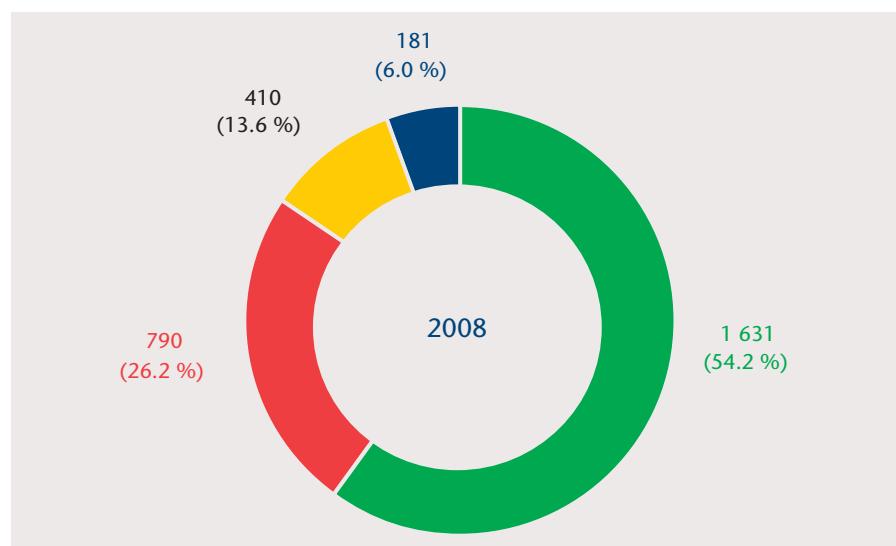


The graph below represents shares of the crop sectors in number of applications received in 2008.

Graph 2

Shares in application numbers per crop sector

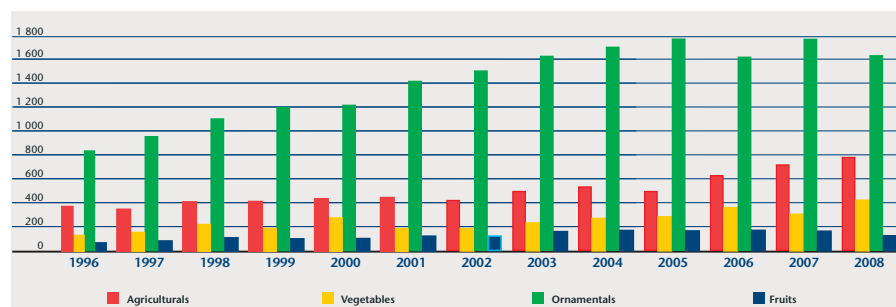
- Ornamentals
- Agriculturals
- Vegetables
- Fruits



Vegetable species, as illustrated in Graph 3, represent, with + 39 %, the highest increase in application numbers compared with the rest of the species. Also for fruit (+ 8.9 %) and agricultural species (+ 7.9 %), increasing numbers of applications were recorded. By contrast, in 2008, decreasing application numbers were noticed for ornamental species (– 8.6 %).

Graph 3

Evolution of application numbers
per crop sector (1996–2008)



9.1.1. Ornamentals

With 54.2 % of the applications received in 2008, 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 in all years. The total of 1 635 applications for 2008 (–153 applications compared with the previous year) are close to the level of 2006 with 1 616 applications.

The fact that ornamentals have the greatest share within the European plant variety protection system may be explained by the following.

- Ornamental varieties subject to applications for Community plant variety rights are almost exclusively vegetatively propagated. Their easy reproducibility triggers the demand for protection against unauthorised propagation (both within and outside the European Union).
- The breeding of vegetatively propagated varieties is often less time-consuming than the breeding of seed-propagated varieties whose characteristics need to be fixed through many propagating generations. This feature, combined with a market characterised by a quick evolution of consumer taste and cultivation techniques, is certainly a major reason for the dynamic breeding activities.

However, it seems that the number of applications in this sector was particularly influenced by the economic environment in 2008. Many ornamentals are grown in greenhouses and growers were confronted during the first half of the year with a dramatic increase in the



Anthurium selection greenhouse, the Netherlands



Chrysanthemum DUS trials, United Kingdom



Phalaenopsis DUS trials, the Netherlands



Production of a protected variety of Bougainvillea, the Netherlands

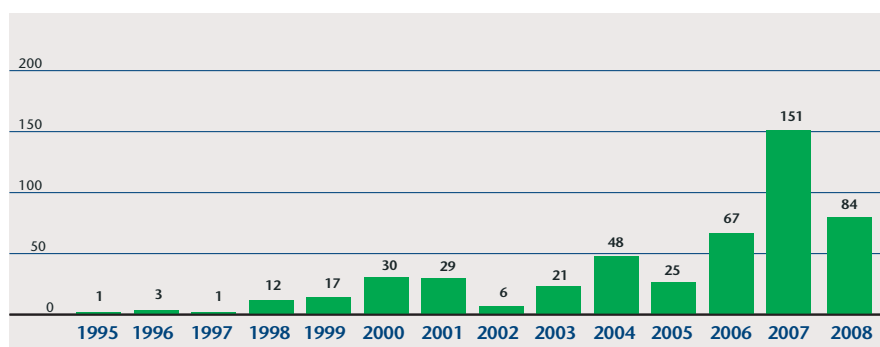
costs of energy. During the second half of the year, the economic crisis also affected the sales of ornamental products. These factors certainly contributed to the decrease in the number of applications for ornamentals in 2008.

Rosa and *Chrysanthemum* have always been the most important species in the ornamental sector as regards the number of applications since the beginning of the Office, followed by *Pelargonium*, *Lily* and *Gerbera* in various order according to the year. Orchids and especially *Phalaenopsis* have reached the status of one of the most important species in recent years and it is particularly interesting to follow the fluctuations in the number of applications associated with the introduction of new genera and new clients entering the Community system.

The total number of applications for orchids received in 1995–2008 was 486, ranging from only 1 in 1995 and 1997 to 151 in 2007 (Graph 4). Over 62 % of these applications were received in the last three years.

Graph 4

Evolution of the annual number of applications for Community plant variety protection for orchids (1995–2008)



In the years 1995–2001, applications were received only for three genera, i.e. *Phalaenopsis*, *Spathoglottis* and *Dendrobium*. As from 2002, a continuous increase in the number of genera has been noted, reaching 21 in 2008. The number includes 11 intergeneric hybrids with one or two applications only except for *x Doritaenopsis* (Graph 5). In 1995–2008, most of the applications were received for *Phalaenopsis* (71 %), followed by *x Doritaenopsis* (10 %), *Dendrobium* (8 %) and *Cymbidium* (4 %).

The following table gives the number of applications received for different orchid genera.

ORCHID	NUMBER OF APPLICATIONS (1995-2008)
<i>Phalaenopsis</i>	346
<i>xDoritaenopsis</i>	47
<i>Dendrobium</i>	37
<i>Cymbidium</i>	20
<i>Ludisia discolor</i>	9
<i>Vanda</i>	8
<i>xColmanara</i>	2
<i>Miltonia</i>	2
<i>Oncidium</i>	2
<i>Zygopetalum</i>	2
<i>xBratonia</i>	1
<i>Cypripedium</i>	1
<i>xlonocidium</i>	1
<i>xlwanagara</i>	1
<i>xMiltonidium</i>	1
<i>xOdontonia</i>	1
<i>Spathoglottis</i>	1
<i>xVuystekeara</i>	1
<i>xZelglossoda</i>	1
<i>xGoodaleara</i>	1
<i>xOdontocidium</i>	1

Until 2003, the applications originated from four countries: Belgium, Germany, Japan and the Netherlands. In the last five years, new applications also arrived from seven other countries (China, Chinese Taipei, Denmark, France, Italy, Thailand and the United States).

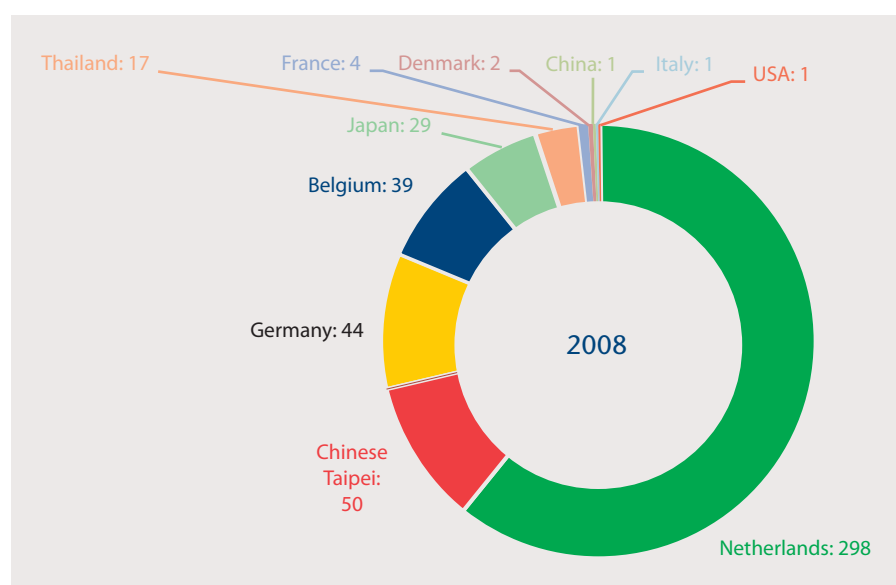
Although the Netherlands leads in the figures (61 % of the total number of applications) as illustrated in Graph 5, it is worth pointing out that Chinese Taipei, with its first application received only in 2005, is in second place (over 10 % of the total number of applications).

Graph 5

Number of applications received from different countries

(1995–2008)

- Netherlands
- Chinese Taipei
- Germany
- Belgium
- Japan
- Thailand
- France
- Denmark
- China
- Italy
- USA





Grass DUS trials, Germany

The increasing number of applications for orchids originating from countries which are not UPOV members was one of the factors inducing the amendment of Article 12 of Council Regulation (EC) No 2100/94 concerning the entitlement to file an application for a Community plant variety right. The new amended regulation seems to be of great importance to breeders from Asian countries aiming at protecting their varieties within the European Community.

9.1.2. Agricultural species

The year 2008 confirmed the trend in agriculture by an increase of 8 % in the number of applications, although the increase was less important than in 2007 where the number of applications increased by 20 % and in 2006 by 22 %.

The 10 most important species in the agricultural sector are the same as in the previous years: maize at the top again, followed by wheat and potato. There was a slight change at the bottom of this list: rye grass became more important than durum wheat and sugar beet components. The most important developments can be observed for potato, barley

Table 1: Number of applications of the 10 most important agricultural species

Species	2002	2003	2004	2005	2006	2007	2008	Total
<i>Zea mays</i> L.	143	184	169	181	212	248	222	1 359
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	61	42	75	54	76	85	87	480
<i>Solanum tuberosum</i> L.	44	66	50	34	84	50	94	422
<i>Hordeum vulgare</i> L. sensu lato	40	52	52	44	45	46	69	348
<i>Brassica napus</i> L. emend. Metzg.	29	40	41	29	44	67	85	335
<i>Helianthus annuus</i> L.	14	28	27	40	30	37	49	225
<i>Pisum sativum</i> L. sensu lato	12	9	11	21	11	13	14	91
<i>Lolium perenne</i> L.	3	4	6	16	20	16	26	91
<i>Triticum durum</i> Desf.	7	13	13	13	8	13	13	80
<i>Beta vulgaris</i> L. ssp. vulgaris var. altissima Döll	12	5	6	3	8	17	3	54
Total	365	443	450	435	538	592	662	3 485

As a comparison, the following table shows the number of applications received per year over all agricultural species:

All agricultural species	2002	2003	2004	2005	2006	2007	2008	Total
Total	417	495	536	499	610	732	790	4 079



Sunflower DUS trials, Bulgaria

and oilseed rape applications. The table below shows the number of applications for the 10 most important agricultural species for the last seven years.

Today, the agricultural sector covers 70 species, amongst which are 18 species with only one application. These are species such as *Phacelia tanacetifolia*, *Cathamus tinctorius*, *Agrostis stolonifera* or *Lotus corniculatus*.

With regard to the technical examination of candidate varieties, in many cases the DUS test has been carried out already in the framework of the procedure for national listing, or is in the process of being carried out at the moment of the application. The DUS report can be taken over from the entrusted examination office, according to Article 27 of the implementing rules (Commission Regulation (EC) No 1239/95), if it constitutes a sufficient basis for a decision.

The overall relation for agricultural species between technical examinations organised on behalf of the Office and takeover has remained fairly stable during the past years. On average, 80 % of the reports can be taken over from examination offices.

Generally, the number of technical examinations on behalf of the Office is more important for varieties of species with inbred lines, such as maize, sunflower and sugar beet components.

‘New species’ in the agricultural sector

For the following species, an application for a Community plant variety right for a variety was filed in 2008 for the first time at the Office:

- *Hordeum chilense* x *Triticum turgidum* — Tritordeum;
- *Brassica oleracea* L. convar. *acephala* (DC.) Alef. — Forage kale;
- *Triticum monococcum* — Einkorn.



Wheat DUS trials, Bulgaria



Pepper DUS trials, Spain



9.1.3. Vegetable species

After the dip in vegetable CPVR applications witnessed in 2007 (–15 % compared with 2006), the number of yearly applications in this sector in 2008 shot up by 39 % to an all-time high of 410. By comparison, vegetable applications for national listing in individual Member States in 2008 were either stable or slightly on the increase compared with the previous year. The great increase in vegetable CPVR applications can mostly be attributed to a doubling of applications for parent line varieties (particularly in greenhouse crops). These totalled 138 applications in 2008 compared with just 69 a year earlier. CPVR applications for vegetable hybrid varieties remained stable though at 66. This shift towards protecting parent lines once again reflects a certain confidence by vegetable seed companies in utilising Community rights as an ‘insurance’ policy against possible infringers.

It also appears that an added incentive for protecting vegetable varieties is that, as from 2008, a change in Dutch legislation allows tax credits to be given to companies which file for intellectual property protection for their new products/inventions. From what has been gathered by the Office, some of the large vegetable seed companies based in the Netherlands have made use of this opportunity to file for more CPVR applications. Time will tell whether the high number of vegetable applications filed in 2008 will continue into 2009 and beyond, particularly taking into account the difficult economic climate. However, an area where the CPVO has identified it would like to see an improvement in figures is the number of vegetable varieties listed in the common catalogue but which do not subsequently get protected by Community rights. Various motives appear to influence the choice of breeders not to protect numerous commercial vegetable varieties, although at the same time feedback from the sector indicated that, with certain incentives, they

Table 2: Number of applications for major vegetable species (2000–08)

Species	2000	2001	2002	2003	2004	2005	2006	2007	2008
<i>Lactuca sativa</i>	62	41	53	80	106	94	93	101	116
<i>Lycopersicon esculentum</i>	5	12	11	17	32	30	68	27	55
<i>Capsicum annum</i>	13	8	4	5	8	15	12	23	47
<i>Cucumis sativus</i>	4	2	4	10	3	5	4	20	27
<i>Pisum sativum</i>	24	10	15	16	16	19	28	16	23
<i>Phaseolus vulgaris</i>	33	14	20	26	21	28	28	18	21
<i>Cichorium endivia</i>	6	5	3	4	7	16	11	4	14



Vegetable open day at Naktuinbouw, the Netherlands

could be tempted to file for more CPVR applications in the future. The Office will therefore look further into this matter during the coming years.

The trend started in 2006 whereby the majority of Dutch vegetable applications for CPVR (which account for approximately 80 % of all applications in this sector), which had been the subject of an earlier application for Dutch plant breeders' rights, seems to have stabilised in 2008. The split of 'takeovers' to technical examinations which the CPVO organised with the Raad voor Plantenrassen is now 3:1. One direct consequence of this is that technical reports for the majority of vegetable varieties are now available to the CPVO much earlier. Whereas in the mid-2000s the average length of time between the filing of a CPVR vegetable application and its subsequent grant was two to three years, this has now been reduced to one to two years, which means that breeders can benefit from Community protection sooner (this being particularly important since vegetable varieties tend to have a short lifespan).

In October 2008, the CPVO organised its first vegetable open day at Naktuinbouw. This forum was well attended by numerous representatives of seed companies and examination offices, and the constructive exchanges during the day highlighted various issues of interest to the sector. As a result of the open day, the CPVO identified various aspects where improvements in efficiency could be made in respect to the planning and duration of vegetable technical examinations. Having had a preliminary discussion on some of these aspects at the CPVO annual vegetable experts meeting in December 2008, the Office will further analyse the possibilities of improvements to procedures in 2009.

9.1.4. Fruit species

The number of fruit CPVR applications in 2008 rose strongly by 9 % in comparison to the previous year, to reach a new record of 181 yearly applications. This was mostly as a consequence of substantial increases in applications in the three main fruit crops: peach/nectarine, strawberry and apple, after they had all witnessed a drop in numbers in 2007 (see Table 3). Conversely, apricot applications, which had seen a continuous rise over the decade, fell to just 13.

Table 3: Number of applications for major fruit species (2000–08)

Species	2000	2001	2002	2003	2004	2005	2006	2007	2008
<i>Prunus persica</i>	22	27	35	36	51	32	53	33	50
<i>Fragaria x ananassa</i>	15	27	13	26	7	25	21	19	36
<i>Malus domestica</i>	17	17	26	18	10	30	18	15	21
<i>Prunus armeniaca</i>	6	6	10	11	22	8	29	26	13
<i>Vaccinium corymbosum</i>	0	0	0	0	8	4	0	12	16
<i>Rubus idaeus</i>	1	0	3	10	4	1	4	14	12



Display of different mutant varieties of 'Gala' apple variety, France



European plum DUS trials, Germany

The increasing number of fruit applications in 2008 is particularly encouraging since the Office feared a drop in fruit applications from 2007 onwards as a result of the increase in the examination fee levels in this crop sector. As reported in last year's annual report, representatives of fruit breeders expressed to the Office that the financial burden of applying for CPVR was becoming too great and ways should be sought to reduce this. The Office subsequently discussed the matter at the annual fruit experts meeting in October 2008 and proposed several areas in which improvements in the efficiency and duration of fruit technical examinations could be achieved. Although there were differing opinions between examination offices on the preliminary proposals, all agreed that efficiency gains could be made in the following areas: (i) different fee levels for the establishment years and observation years; (ii) type of plant material to be sent for DUS testing; (iii) number of observation periods; (iv) rationalisation, harmonisation and maintenance of reference collections; (v) shorter list of characteristics in CPVO protocols. During 2009, the Office will organise a working group to analyse each of these areas in greater detail in order to come up with formal proposals for improvements in the system.

A notable event in the fruit sector in 2008 was the appointment of Mexico and Brazil as CPVO examination offices for avocado and pineapple respectively. This was the first time that countries in the Americas had been appointed as CPVO examination offices, but as the number of exotic fruit species applied for Community rights continues to increase, it is likely that the Office will have to resort to utilising the services of authorities outside the EU more frequently in the future, if appropriate examination offices are not to be found within its borders for such exotic crops.

9.1.5. Origin of the applications

Since the foundation of the Community Plant Variety Office, applications have been received from over 50 countries. In nearly all years, more than one third of all applications received originated from the Netherlands, underpinning the important role of that country. The Netherlands are followed, by quite some distance, by Germany, France and the United States. In 2007, an important applicant for Community plant variety rights transferred all his applications and rights from the Netherlands to Switzerland. This transfer heaved Switzerland into the list of the top 10 countries (Table 4). The 10 most important countries counted in 2008 for 93.2 % of all applications filed at the CPVO. It can furthermore be seen from this table that there are (with the exception of Switzerland) only minor fluctuations in the origin of applications received.

Table 4: The 10 most important countries from where CPVR applications were filed (1996–2008)

Number of applications: absolute numbers (relative numbers)														
Country of main applicant	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
Netherlands	479 (34.6)	553 (36.1)	653 (35.6)	731 (38.9)	796 (39.5)	782 (36.2)	775 (34.9)	833 (33.1)	889 (33.5)	853 (31.2)	903 (33.0)	1 015 (34.1)	1 050 (34.8)	10 312 (34.8)
Germany	223 (16.1)	241 (15.8)	299 (16.3)	311 (16.5)	289 (14.4)	311 (14.4)	385 (17.3)	320 (12.7)	381 (14.3)	411 (15.0)	401 (14.7)	481 (16.0)	381 (12.6)	4 435 (14.6)
France	162 (11.7)	210 (13.7)	260 (14.2)	303 (16.1)	242 (12.0)	332 (15.4)	239 (10.8)	302 (12.0)	337 (12.7)	313 (11.5)	332 (12.1)	362 (12.1)	407 (13.5)	3 801 (12.8)
USA	86 (6.2)	142 (9.3)	191 (10.4)	136 (7.2)	234 (11.6)	233 (10.8)	267 (12.0)	365 (14.5)	358 (13.5)	311 (11.4)	315 (11.5)	372 (12.5)	363 (12.0)	3 373 (11.4)
UK	126 (9.1)	76 (5.0)	81 (4.4)	81 (4.3)	122 (6.1)	126 (5.8)	82 (3.7)	69 (2.7)	129 (4.9)	152 (5.6)	103 (3.8)	119 (4.0)	102 (3.4)	1 368 (4.6)
Denmark	87 (6.3)	83 (5.4)	79 (4.3)	107 (5.7)	108 (5.4)	71 (3.3)	97 (4.4)	167 (6.6)	145 (5.5)	105 (3.8)	114 (4.2)	81 (2.7)	119 (3.9)	1 363 (4.6)
Switzerland	47 (3.4)	48 (3.1)	45 (2.5)	57 (3.0)	51 (2.5)	34 (1.6)	52 (2.3)	108 (4.3)	142 (5.3)	260 (9.5)	230 (8.4)	100 (3.2)	167 (5.5)	1 341 (4.5)
Italy	34 (2.5)	28 (1.8)	67 (3.7)	37 (2.0)	52 (2.6)	73 (3.4)	65 (2.9)	67 (2.7)	60 (2.3)	61 (2.2)	51 (1.9)	73 (2.4)	88 (2.9)	756 (2.5)
Belgium	61 (4.4)	20 (1.3)	43 (2.3)	36 (1.9)	41 (2.0)	46 (2.1)	46 (2.1)	63 (2.5)	56 (2.1)	44 (1.6)	77 (2.8)	45 (1.5)	70 (2.3)	648 (2.2)
Spain	13 (0.9)	18 (1.2)	31 (1.7)	22 (1.2)	24 (1.2)	31 (1.4)	45 (2.0)	46 (1.8)	29 (1.1)	29 (1.1)	43 (1.6)	65 (2.2)	65 (2.2)	461 (1.6)

9.2. Grants of protection

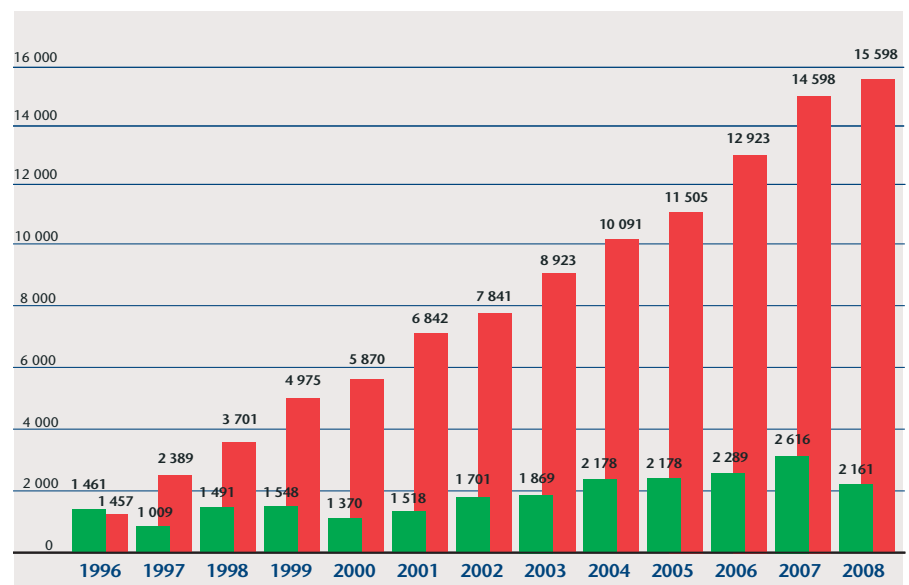
In 2008, the Office granted more than 2 200 titles for Community protection. A detailed list of all protected varieties (status as of 31 December 2008) is published in the separate annex to this annual report.

By the end of 2008, there were more than 15 500 Community plant variety rights in force. The graph below shows the number of titles granted for each year from 1996 to 2008 and illustrates the continuous increase of varieties under protection within the Community system.

Graph 6

Community plant variety rights
granted and rights in force
(1996–2008)

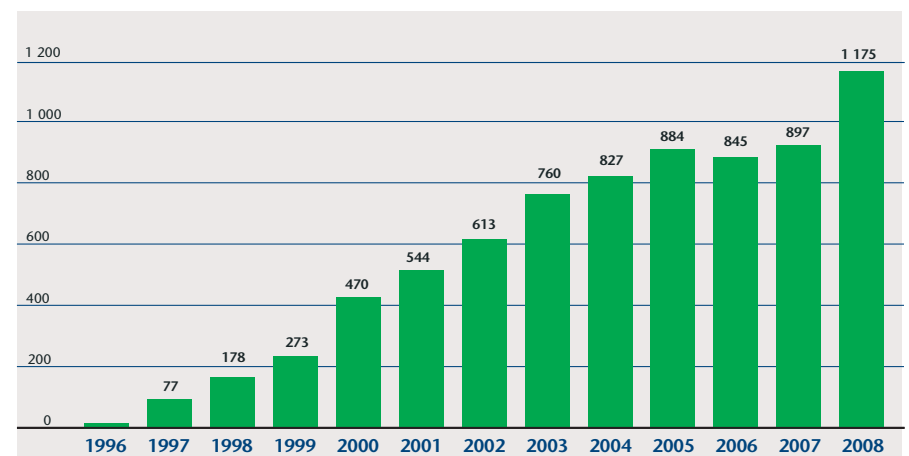
- *Titles granted*
- *Varieties under protection*



The development in the number of Community plant variety rights in force must be seen in conjunction with the number of rights surrendered (Graph 7). The number of rights granted still greatly outweighs the number of surrenders despite the remarkable increase of rights surrendered. The increase of surrenders as such is not a surprise but the importance of that increase might be an anticipation of the rise in the annual fees.

Graph 7

Number of surrenders of Community
plant variety rights (1996–2008)



9.3. Technical examinations

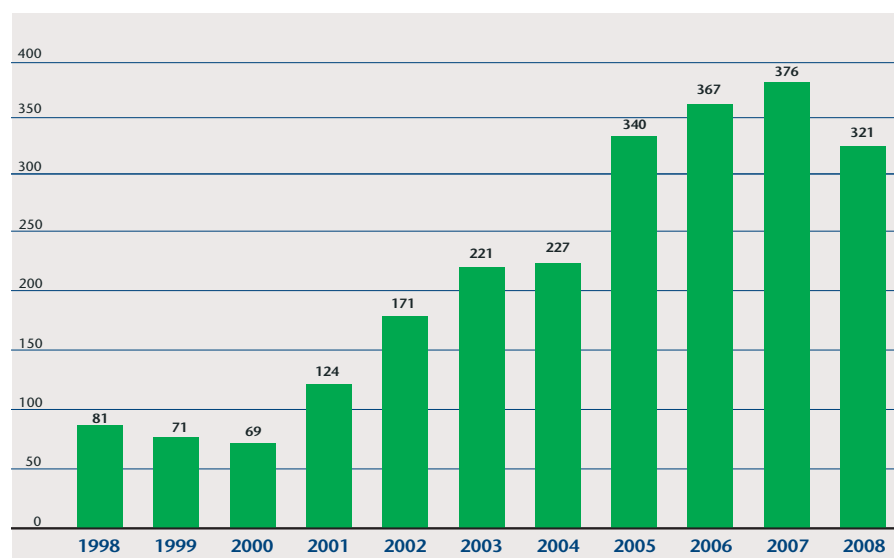
In 2008, the CPVO initiated 1 892 technical examinations, 159 examinations fewer than in 2007. The decrease is linked to the decreasing number of applications for ornamentals, which is not compensated by the increase in application numbers for vegetable and agriculture crops as, for the latter two groups, technical examinations have usually already been carried out in the frame of the national listing procedure. The annex to this report provides a detailed list of examination offices where the technical examinations are conducted.

9.3.1. Sales of reports

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

Graph 8

Evolution in the number of DUS testing reports sold to other PVR authorities (1998–2008)



By the end of 2008, the Office had sold 2 371 technical reports to 36 countries. The most important countries are given in the table below. In 2008, South American countries noticeably increased the number of their requests for reports to the Office, especially in the ornamental sector.

Table 5: The eight most important countries having bought DUS technical reports from the CPVO (1998–2008)

Country	Number of reports bought
Israel	434
Switzerland	247
Ecuador	232
Norway	204
Brazil	198
New Zealand	168
Colombia	155
Canada	125

9.3.2. Relations with examination offices

9.3.2.1. 11th and 12th annual meetings with the examination offices

The 2007 meeting of the CPVO with its examination offices, which is also attended by representatives from the European Commission, the UPOV office as well as the breeders' organisations ESA and Ciopora, had to be postponed to March 2008 due to a railway strike. The main subjects of discussion were:

- the electronic exchange of data;
- two procedures for the use of additional characteristics in technical examinations;
- reporting of examination results;
- implementation of UPOV technical guidelines;
- modification of existing procedures on technical verifications and the keeping of plant material where the examination results were negative;
- organisation of audio/telephone conferences;
- keeping of samples following seizure of plant material by customs authorities;
- data to be stored by examination offices.

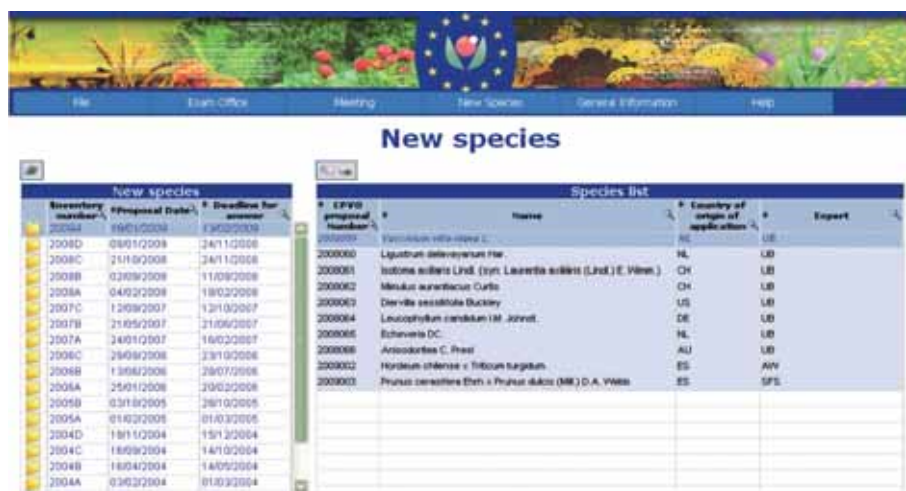
Furthermore, the participants were informed on the state of affairs regarding the strategic discussion and variety denominations, the Commission working group on a possible extension of tasks of the CPVO and the involvement of external experts in DUS testing at examination offices.

The 12th meeting of the CPVO with its examination offices took place as scheduled in December 2008. The main items of discussion were:

- quality assessment of examination offices;
- clarification of the status of documents discussed at the annual meeting of the CPVO and its examination offices;
- maintenance of data stored by the examination offices;
- reporting of examination results;
- a modification of the technical verification procedure;
- deadlines for interim reports on technical examinations;
- reduction of duration/costs of technical examinations for fruit crops.



12th examination offices' annual meeting, Angers, France, December 2008



Extranet for technical liaison officers

The participants were furthermore informed of IT developments regarding online applications, the website for technical liaison officers and the introduction of an entry into force date for technical protocols.

9.3.2.2. Preparation of CPVO protocols

In 2008, experts from the Member States' examination offices were invited to participate in elaborating technical protocols for DUS testing which were subsequently approved by the Administrative Council (see Chapter 4). The following meetings were held:

- agricultural experts: a draft protocol was discussed for *Lolium* and *Festuca ssp.* and revisions for *Brassica napus* and *Triticum aestivum*;
- fruit experts: revisions or drafts of technical protocols were discussed for four species (blackcurrant, strawberry, grapevine and common sea buckthorn);
- ornamental experts: revisions or drafts of technical protocols were discussed for six botanical taxa (*Impatiens New Guinea*, *Kalanchoe*, *Pointsettia*, *Osteospermum*, *Nemesia* and *Portulaca*);
- vegetable experts discussed protocols for 13 species (carrot, cucumber, spinach, celery, celeriac, Chinese cabbage, chives, garden rocket, onion and shallot, leek, parsnip, wild rocket and beetroot).

9.3.2.3. Further development of the centralised database for variety denominations

In July 2005, the Office released a website to test proposals for variety denominations for similarity. Today, the database contains more than half a million denominations from national listing and plant variety rights registers of the EU and UPOV Member States. The database is available on the basis of a restricted access to national authorities of EU Member States, the European Commission and UPOV. Since 2007, a new version of the website also gives EU-based applicants and their procedural representatives the possibility to pre-check their denomination proposals for similarity. In 2008, thanks to good cooperation with Vaste Keuring Commissie (VKC), the Office started including, on a routine basis, denominations of varieties commercialised in the Netherlands. These are,



Onion DUS trials, Spain



Cereals experts meeting at CPVO, March 2008

in particular, varieties registered in the Dutch auction system and varieties of bulb and perennial species registered in the Netherlands.

9.3.2.4. Crop experts meetings

Four meetings and telephone conferences with agricultural experts were held throughout the year discussing trial design and uniformity standards in wheat, the revision of the oilseed rape technical protocol and the preparation of technical protocols for *Lolium* and *Festuca* species.

One fruit experts meeting was held to discuss: a revision or creation of the CPVO technical protocol for four species; phytosanitary documentation; feasibility for the reduction in duration/costs of fruit technical examinations; communication activities in the fruit crop sector; a possible new R & D project for apple mutation groups.

Two vegetable experts meetings were held to discuss: the revision or creation of 13 CPVO technical protocols; narrowing distances between candidate varieties in the same species; update on discussions on the conclusion of the R & D project 'Harmonisation of resistance tests to diseases of vegetable crops in the European Union' and presentation of the first results from the subsequent ring trial; feasibility for the reduction in duration/costs of vegetable technical examinations.

The ornamental experts held one meeting to discuss various technical issues such as the reporting of non-observed characteristics, organisation of technical verifications and possible R & D projects as well as technical protocols for 13 botanical taxa.

9.3.2.5. Collaboration with Japan

In 2006, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) and the CPVO began cooperation in respect of technical examinations. In the framework of this cooperation, Japanese experts visited the CPVO and its examination offices in Germany, the Netherlands and the United Kingdom during 2008. Members of the CPVO and the German Bundessortenamt visited the Japanese examination office working on behalf of the MAFF. These technical visits aimed at a harmonisation of the conduct of technical examinations of several ornamental species. As a result, the MAFF began, at the end of



MAFF visit to CPVO, March 2008

2007, to base its decision on applications for plant variety rights on technical examinations carried out by European examination offices. In turn, the Administrative Council of the Office approved the use of results of DUS examinations carried out in Japan for *Petunia* and *Calibrachoa* varieties as from 2008.

9.3.2.6. New species procedure

During 2008, the CPVO received applications for varieties of 66 botanical taxa not being subject to Community plant variety rights applications before. Four inquiries, so-called new species procedures, were launched by the CPVO in 2008. As a result of the inquiries during 2008, the following 39 taxa could be attributed to examination offices by a decision of the Administrative Council.

Acalypha godseffiana hort. Sander ex Mast.
Alocasia infernalis P.C. Boyce
Beta vulgaris L. ssp. *vulgaris* var. *cicla* (L.) Ulrich
Betula nigra L.
Carex oshimensis Nakai
Carex trifida Cav.
Catharanthus G. Don
Chamaecyparis obtusa (Siebold & Zucc.) Endl.
Cotoneaster Medik.
Crinum bulbispermum (Burm. f.) Milne-Redh. & Schweick.
Dischidia R. Br.
Euryops pectinatus (L.) Cass.
Fallopia sachalinensis (F. Schmidt) Ronse Decr.
Festuca glauca Vill.
Fothergilla major Lodd. et al.
Hakonechloa macra (Munro) Makino
Haworthia limifolia Marloth
Kerria japonica (L.) DC.
Loropetalum chinense (R. Br.) Oliv.

Magnolia kobus DC.
Miltonia Lindl.
Ornithopus sativus
Paulownia fortunei (Seem.) Hemsl. × *P. tomentosa* (Thunb.) Steud.
Paulownia Sieb. et Zucc.
Pennisetum setaceum (Forssk.) Chiov.
Philadelphus L.
Prunella L.
Prunus salicina Lindl. × *Prunus avium* L.
Ptilotus exaltatus Nees
Quercus ilex L.
Rhapis L. f. ex Aiton
Sansevieria kirkii Baker
Senecio ficoides (L.) Sch.Bip.
Stokesia laevis (Hill) Greene
Syringa L.
Trachelospermum asiaticum Nakai
Trachelospermum jasminoides (Lindl.) Lem.
Vaccinium virgatum Aiton
 × *Odontocidium* Hort.

For 11 species, a written entrustment procedure was launched in the last quarter of 2008. Entrustment of these species is expected during the first quarter of 2009. For eight species, received during the last quarter of 2008, a new species procedure is being launched in January 2009. The decision for these species can be expected in March 2009.

Further entrustments/or extensions of existing entrustments

Entrustment of the examination office located in Poland for the following species:

Juniperus L.
Leucothoë axillaris (Lam.) D. Don
Picea abies (L.) H. Karst.
Picea glauca (Moench) Voss
Pinus nigra Arnold
Salix L.
Thuja L.

Entrustment of the examination office located in Finland for the following species:

Avena sativa L. (Oats)
Festuca arundinacea (Tall fescue)
Festuca pratensis (Meadow fescue)
Hordeum vulgare L. (Barley)
Phalaris arundinacea (Reed canary grass)
Phleum pratense (Timothy)

Poa pratensis (Smooth stalked meadow grass)
Secale cereale L. (Rye)
Trifolium pratense (Red clover)
Trifolium repens (White clover)
Triticum aestivum L. (Wheat)

Entrustment of the examination office located in Japan for the 'takeover' of DUS reports for the following species:

Petunia Juss.
Calibrachoa Llave & Lex.
Petunia Juss. x *Calibrachoa* Llave & Lex.

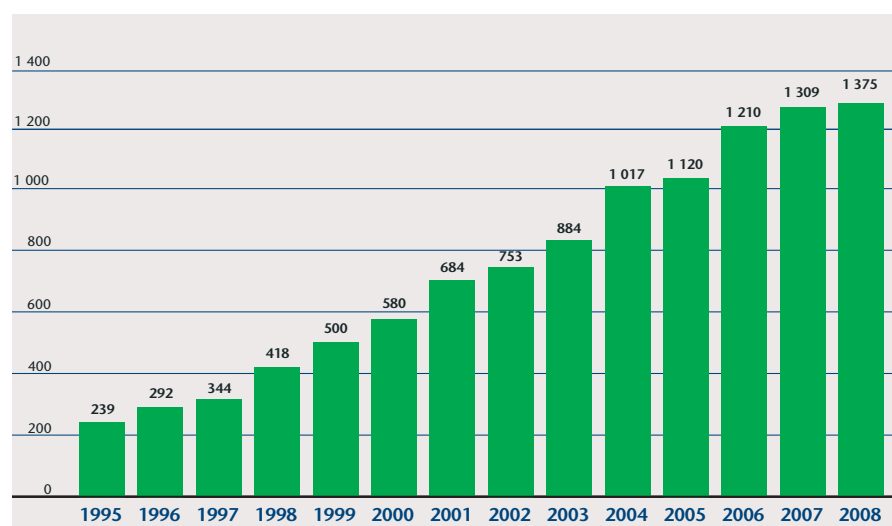
Extensions of entrustment:

- the examination offices of the United Kingdom and Denmark for the species *Liriope spicata* (Thunb.) Lour and *Ophiopogon japonicus* (L.f.) Ker Gawl;
- the examination offices of the United Kingdom and Denmark for the genera *Liriope* Lour. and *Ophiopogon* Ker Gawl;
- the examination office of the United Kingdom for the species *Iberis sempervivens* L.;
- the examination office of the United Kingdom for the genus *Iberis* L.

Graph 9 illustrates the evolution in the number of botanical taxa for which the CPVO received applications. At the end of 2008, applications for varieties belonging to 1 375 taxa were filed with the Office.

Graph 9

Evolution of the number of botanical taxa for which the CPVO received applications (1995–2008)



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

Centre de recherche agronomiques
Département Production Végétale
Rue de Liroux 9
5030 Gembloux, BELGIUM
<http://www.cra.wallonie.be>

Instituut voor Landbouw- en Visserijonderzoek Ilvo Eenheid Plant-teelt en Omgeving
Caritastraat 21
9090 Melle, BELGIUM
<http://www.ilvo.vlaanderen.be>

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

Ministry of Food, Agriculture and Fisheries
Plant Directorate Department of Variety Testing
Teglvaerksvej 10, Tystofte
4230 Skælskør, DENMARK
<http://eng.agrsci.dk>

Bundessortenamt
Osterfelddamm 80 Postfach 610440
30627 Hannover, GERMANY
<http://www.bundessortenamt.de>

Plant Production Inspectorate
Variety Control Department
Vabaduse plats 4
71020 Viljandi, ESTONIA
<http://www.plant.agri.ee>

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

Ministry of Agriculture
Directorate of Inputs of Plant Productions Section A
2 Acharnon Street
10167 Athina, GREECE
<http://www.varinst.gr>

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

GEVES
Rue Georges Morel — BP 90024
49071 Beaucouzé Cedex, FRANCE
<http://www.geves.fr>

Ente Nazionale Sementi Elette
Via Ugo Bassi 8
20159 Milano, ITALY
<http://www.ense.it>

CRA-FRU
Centro di Ricerca per la Frutticoltura
Via di Fioranello 52
00134 Roma, ITALY
<http://frutticoltura.entecra.it>

CRA-VIT
Centro di Ricerca per la Viticoltura
Viale XXVIII Aprile 26
31015 Conegliano Veneto (TV), ITALY
<http://www.inea.it/isv/>

Ministry of Agriculture of the Republic of Latvia
Seed Control Department
Lubāņas Street 49
1073 Riga, LATVIA
<http://www.vaad.gov.lv>

Central Agricultural Office
Keleti Karoly U. 24
1024 Budapest, HUNGARY
<http://www.ommi.hu>

Raad voor Plantenrassen
Bennekomseweg 41
6717 LL Ede, NETHERLANDS
<http://www.plantenrassen.nl>

Bundesamt für Ernährungssicherheit
Spargelfeldstraße 191 Postfach 400
1226 Wien, AUSTRIA
<http://www.ages.at>

Coboru
Centralny Ośrodek Badania Odmian Roslin Uprawnych
63-022 Słupia Wielka, POLAND
<http://www.coboru.pl>

Direcção-Geral de Agricultura e Desenvolvimento Rural (DGADR)
Divisão Sementes, Variedades e Recursos Genéticos
Edifício 2 — Tapada de Ajuda
1349-018 Lisboa, PORTUGAL
<http://www.dgadr.pt>

UKSUP
Central Controlling and Testing Institute in Agriculture
Variety Testing Department
Matúškova 21
83316 Bratislava, SLOVAKIA
<http://www.uksup.sk>

Jordbruksverket
551 82 Jönköping, SWEDEN
<http://www.sjv.se>

Plant Variety Rights Office (PVRO)
Department for Environment Food and Rural Affairs (DEFRA)
White House Lane, Huntingdon Road
Cambridge CB3 0LF, UNITED KINGDOM
<http://www.defra.gov.uk>

NIAB
Ornamental crops
Huntingdon Road
Cambridge CB3 0LE, UNITED KINGDOM
<http://www.niab.com>

Plant Breeders' Rights Testing Unit
Volcani Center PO Box 6
50250 Beit Dagan, ISRAEL
<http://www.agri.gov.il>

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

Ministry of Agriculture, Forestry and Fisheries, Seeds & Seedlings Div.
1-2-1 Kasumigaseki Chiyodaku
100-8950 Tokyo, JAPAN
<http://www.maff.go.jp>

A detailed list providing information on the entrusted examination offices for all species is separately published in the annex to this annual report.

9.3.2.8. Participation in international fairs and open days

The CPVO considers its participation in international fairs and open days at examination offices as a useful tool to promote the Community plant variety rights system, to have direct contact with applicants and to provide information to growers. In 2008, the Office participated in three fairs and three open days.

At the end of January 2008, the Office attended the 'IPM' in Essen, Germany, for the fifth time. 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.

Meeting for orchid breeders

The number of applications for orchids rapidly increased in 2007 and was associated with the introduction of new orchid genera tested on behalf of the CPVO. At the same time, new clients entered the Community system. As a consequence of the changes, the Office organised a meeting for orchid breeders, in cooperation with its examination office in the Netherlands. The meeting aimed at discussing different aspects of the Community plant variety protection focusing on the technical examination of varieties of various genera. The meeting was held at the testing station in the Netherlands on 18 February 2008. Taking into account the international participation and quality of the discussion, the meeting proved to be an effective tool in responding to stakeholders' needs.

The 'Salon du Végétal', which takes place at the end of February in Angers, France, is a fair mainly for growers of ornamental plants in which the Office regularly participates together with the French examination office GEVES.

Open day at NIAB

The Office, together with the examination office for ornamental crops NIAB, Cambridge, United Kingdom, organised an open day for breeders of perennial crops and chrysanthemums on 24 July. All breeders, having filed applications for these crops, tested



Open day for *Chrysanthemum* and perennial breeders at NIAB, United Kingdom



CPVO at Hortifair 2008, the Netherlands

at NIAB, were invited. About 20 breeding companies participated in the open day, which started with a general introduction to the DUS testing system, followed by a discussion. The participants could afterwards participate in a trial visit with the examiners. Taking into account the active and international participation of the breeders, it can be concluded that an open day is an effective tool to exchange views in respect of DUS testing.

An open day for vegetable breeders was held in October 2008 at Naktuinbouw, providing an opportunity to discuss various issues at the DUS testing site with the aim of further improving procedures.

The Dutch 'Hortifair', which takes place in October in Amsterdam, is another regularly attended event of the ornamental world. Here, the stand was shared with the Raad voor Plantenrassen and Naktuinbouw.

9.4. Technical liaison officers (TLOs)

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

The following principles apply:

- the TLO is appointed by the relevant member of the Administrative Council;
- there is only one TLO per Member State;
- any modification as far as the person 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.



Technical liaison officers and CPVO staff, December 2008, France

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

The latest version of the list of appointed TLOs (status as at 31 December 2008) is as follows:

John Austin	Executive Agency of Variety Testing Ministry of Agriculture and Forestry Field Inspection and Seed Control Bulgaria
Bronislava Batorova	UKSUP Central Controlling and Testing Institute in Agriculture Variety Testing Department Slovakia

Julia Borys	Coboru Centralny Ośrodek Badań Odmian Roslin Uprawnionych Poland
Maureen Delia	Seeds and Other Propagation Material Unit Plant Health Department Rural Affairs and Paying Agency Division Ministry of Rural Affairs and the Environment Malta
Gerhard Deneken	Ministry of Food, Agriculture and Fisheries Plant Directorate Department of Variety Testing Denmark
José Fernandes	Direcção-Geral de Agricultura e Desenvolvimento Rural (DGADR) Divisão Sementes, Variedades e Recursos Genéticos Portugal
Krieno Fikkert	Raad Voor Plantenrassen The Netherlands
Bruno Foletto	European Commission Directorate-General for Health and Consumers Unit 1 — Biotechnology and plant health
Barbara Fürnweiger	Bundesamt für Ernährungssicherheit Austria
Zsuzanna Füstös	Central Agricultural Office Hungary
Primoz Grižon	Ministry of Agriculture, Forestry and Food Phytosanitary Administration of the Republic of Slovenia Slovenia
Joël Guiard	GEVES France
Sigita Juciuvienė	Lithuanian State Plant Varieties Testing Center Lithuania
Sofija Kalinina	Ministry of Agriculture of the Republic of Latvia Seed Control Department Latvia
Ulf Kjellström	Statens Utsädeskontroll Sweden

Angelos Kyrtzis	Ministry of Agriculture, Natural Resources and Environment Department of Agriculture Cyprus
David McGilloway	Department of Agriculture and Food Office of the Controller of Plant Breeders' Rights Ireland
Andy Mitchell	Plant Variety Rights Office (PVRO) Department for Environment, Food and Rural Affairs (DEFRA) United Kingdom
Paivi Mannerkorpi	European Commission Directorate-General for Health and Consumers
Kaarina Paavilainen	KTTK — Plant Production Inspection Centre Seed Testing Department Finland
Adriana Paraschiv	State Office for Inventions and Trademarks Romania
Eha Puusild	Plant Production Inspectorate Variety Control Department Estonia
Beate Ruecker	Bundessortenamt Germany
Radmila Safarikova	UKZUZ Fruit Testing Station Czech Republic
Luis Salaices Sánchez	Oficina Española de Variedades Vegetales Ministerio de Medio Ambiente y Medio Rural y Marino Spain
Achilios Sotiriou	Ministry of Rural Development Variety Research Institute of Cultivated Plants Greece
Domenico Strazzulla	MIPAF — Ministero delle Politiche Agricole e Forestali Dipartimento della Qualità dei Prodotti Agroalimentari e dei Servizi Italy
Camille Vanslembrouck	Office de la Propriété Intellectuelle Belgium
Marc Weyland	Administration des Services Techniques de l'Agriculture Service de la Production Végétale Luxembourg

9.5. Farm-saved seed study

In January 2008, the CPVO charged Dr Hans-Walter Rutz of the Bundessortenamt with conducting a farm-saved seed (FSS) study in the European Union. For this purpose, questionnaires were developed on the legal situation of FSS in the Member States (24 questions), on the application of agreements between holders and farmers (11 questions) and on statistical data for different crops to assess the level of use on FSS. The legislation and the statistic questionnaires were addressed to the representatives of the Member States in the Administrative Council of the CPVO and the agreement questionnaire to the members of the European Seed Association (ESA) and of the Committee of Professional Agricultural Organisations (COPA).

Some 24 answers were obtained for the legislation, 23 for the agreement questionnaires and up to 22 answers for the statistic inquiries. The answers obtained were merged into different tables. The results of the legislation questionnaire are presented in three groups: Member States without PVR, Member States applying the UPOV Act of 1961/72 or 1978 and Member States applying the UPOV Act of 1991.

The answers give a very complex picture of the legal and practical situation in the Member States. Possible coherences between the parameter 'judgments of the efficiency of the applied national remuneration systems' and other parameters were analysed. A positive coherence could be observed between the efficiency of the applied remuneration systems and the obligatory or voluntary delivery of information by the national authorities. The statistical data demonstrate that the variation of the parameter 'level of use of FSS' is higher between the Member States than inside the Member States. Therefore it can be assumed that the agricultural structure of Member States has stronger implications for the 'level of use of FSS' than any parameter of the remuneration systems.

10. IT DEVELOPMENTS

In 2008, the CPVO developed several tools, both for internal and external usage.

- Following the study achieved in 2007, a new version of the website dedicated to the technical liaison officers was launched in February, improving access to up-to-date information for them, and broadening access to members of examination offices.
- The study for an online application system was carried on. Numerous leads were followed, in order to choose the most appropriate system for the Office. It was finally decided that the CPVO would develop a system to dynamically generate in a web environment the numerous forms used for a PVR application. The developments will continue until mid-2009, and the opening to the public is expected in late 2009.
- A new corporate identity was adopted by the CPVO, and thus a new graphical chart was designed for the public website of the Office. Consequently, the public website of the Office was completely revised. The new website was launched in four languages (German, English, French, Dutch). The new platform based on open source software will allow for extending the website with useful capabilities in order to enhance the interaction with CPVO users (search engine, RSS feed, e-newsletter).
- Following a decision taken to change the human resources (HR) management software, the IT service, in conjunction with the HR service, has been working during the second half of 2008 on the implementation of the replacement software 'Centurio', in order to initiate its utilisation at the start of 2009. Centurio was created by the European Economic and Social Committee in Brussels. A complement for the management of leave has been developed by the CPVO's IT service.
- The electronic document management system (EDMS) 'Docman' was installed in June 2008 for administrative documents (accountancy, purchase files). In December, Docman was extended to the Presidency files, the application files and the human resources files. This project has mobilised the majority of the staff members during 2008. One relevant characteristic of this IT system is its integration with the other IT systems such as the accountancy system and the PVR system.
- The installation of the integrated budgetary accountancy and general ledger system PIA5/EMP continued in 2008. This new accountancy system is closely integrated with the CPVO IT software program for the management of the application PVR and the EDMS.



CPVO website welcome page



CPVO website mission page

11. CONTACTS WITH EXTERNAL ORGANISATIONS

11.1. Contacts with Ciopora and ESA

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

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

11.2. Contacts with UPOV

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

During 2008, as members of the EC delegation, CPVO officials participated in the activities of UPOV and attended the meetings of the following bodies and committees of the international union:

- UPOV Council;
- Legal and Administrative Committee;
- Technical Committee;
- Consultative Committee;
- technical working parties (agricultural crops, vegetables, fruit crops, ornamental plants and forest trees);
- Working Group on Biochemical and Molecular Techniques (BMT);
- Advisory Group of the Legal and Administrative Committee.

Furthermore the CPVO attended specific meetings organised by UPOV:

- Symposium on Contracts in relation to Plant Breeders' Rights;
- Meeting on Electronic Applications.

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



UPOV TWO technical visit to Naktuinbouw, June 2008, the Netherlands



UPOV TWA annual meeting, July 2008, South Africa

The CPVO signed a memorandum of understanding in October 2004 with UPOV for a programme of cooperation. In the framework of this cooperation, the CPVO exchanged information with UPOV during the development of its centralised database on variety denominations in order to ensure compatibility with the existing UPOV plant variety database (UPOV-ROM). Both databases contain data on plant varieties for which protection 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 centralised database operates on the basis of a system of codes attributed to botanical names and developed by UPOV. Since its release in July 2005, the Office and UPOV started to exchange data extensively, UPOV collecting data from non-EU UPOV countries and the Office bringing together data from the EU. The CPVO assisted UPOV in the attribution of codes to the species name of varieties of the UPOV-ROM.

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

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

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

The President of the Office has signed, with the Director-General of OAPI, a memorandum of understanding setting up the framework for future cooperation. The decision of the



OAPI delegation technical visit to grass breeder, June 2008, France

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 June of the report year, three officials of OAPI paid a study visit to the CPVO.

11.4. Contacts with the OECD

The CPVO closely follows the activities of the Organisation for Economic Cooperation and Development (OECD) in the seed and variety sector. The Vice-President of the CPVO attended the meeting of the Extended Advisory Group in Paris in January 2008 and the annual OECD meeting in Chicago in July 2008.

11.5. Other contacts

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

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

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

- the Translation Centre Administrative Council;
- the Steering Group of the SI2 Common Support Service;
- coordination of the EU agencies at management level;
- the annual coordination meeting of the Publications Office with the EU agencies.

12. RELATIONSHIP WITH THE DIRECTORATE-GENERAL FOR HEALTH AND CONSUMERS

12.1. Standing Committee on Community Plant Variety Rights

This standing committee met three times during 2008 in Brussels and the CPVO attended its sessions. Of particular interest for the CPVO throughout the year 2008 were the following items:

- amendment of Commission Regulation (EC) No 1239/95 as regards the use of electronic means of communication in proceedings before the CPVO;
- recast of Commission regulation establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the CPVO;
- amendment of Commission Regulation (EC) No 1238/95 as regards the level of the annual fees and the fees relating to technical examination payable to the CPVO and the manner of payment;
- presentation by the CPVO of the current state of affairs as regards technical cooperation between the Member States and the CPVO on variety denomination.

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

This standing committee met six times during 2008 in Brussels and staff members of the CPVO attended these meetings when the subject was of relevance for the Community plant variety rights system.

Of particular interest for the CPVO throughout the year 2008 were the following items:

- discussion on the main conclusions of the working group on possible extension of the activities of the CPVO in the seed sector;
- discussion on a draft Commission directive amending Directive 2003/91/EC on implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species;



Selection field of *Jugland nigra*, Spain

- the continued discussion on a draft Commission directive as regards the acceptance of landraces and varieties threatened by genetic erosion for marketing;
- coordination of OECD activities in respect of varietal identity and the possible use of synonyms as variety denominations;
- the evaluation process of the legislation on the marketing of seed and propagating material in progress;
- the updating of the scientific denomination of plant species and harmful organisms covered by the Council directives on the marketing of fodder plants (66/401/EEC), cereals (66/402/EEC), beet seed (2002/54/EC), seed potatoes (2002/56/EC) and oil and fibre plants (2002/57/EC). A new draft including the technical inputs received from Member States and the CPVO was considered;
- programme and technical protocols for the Community comparative trials;
- presentation of the proposal for future cooperation in variety denomination testing;
- discussions on the Commission's work programme for 2009.

12.3. Standing Committee on Propagating Material of Ornamental Plants



Dianthus barbarus

The CPVO attended the only session of this committee organised in 2008. In that meeting, the Commission presented the conclusions of a working group meeting as regards possible amendments to Commission Directive 93/49/EEC. One of the conclusions was that there is no need for formal Commission guidelines including an interpretation of 'substantially free' of harmful organisms. It was advised to set up a system for the exchange of information between Member States, in particular with regard to emerging pests, using the CIRCA platform. There was agreement that the general provisions of Directive 98/56/EC provide for sufficient guarantees as regards the health status of the propagating material of ornamental plants and that Directive 93/49/EEC has become superfluous and should be repealed. The mandate of the group of rapporteurs was extended, with a view to elaborating the practical set-up of the information exchange system.

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

The Commission organised one session of this committee in 2008, in which the CPVO participated. The following items were of interest for the CPVO:

- possible implementing measures for Council Directive 2008/90/EC;

In the framework of that topic, Member States agreed that the implementing measures foreseen by Article 4 (conditions with which the propagating material must comply) and Article 7 (requirements for variety: denomination, official registration and notification) are the first priority. Measures concerning the supplier's requirements and

inspections shall be discussed in a second step. All other possible measures should be discussed later.

- the discussions on the final report of the Community comparative tests and trials on *Malus Mill*;
- a first discussion on a possible adoption of a certification scheme for fruit plants propagating material and fruit plants.

12.5. Council working parties

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

Of particular interest for the CPVO, throughout 2008, were the following items:

- coordination of UPOV meetings (Council, Consultative Committee and Administrative and Legal Committee);
- preparation of forthcoming OECD meetings (schemes for the varietal certification of seed moving in international trade);
- international trade and use of synonyms in varietal denominations (TAD/CA/S(2008)12/Prov);
- revision of Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production.



Apple DUS trials, France

13. 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 ⁽¹⁾. In order for these rules to apply also to documents held by the Office, a new article, Article 33(a), was introduced to the basic regulation in 2003 by the adoption of Council Regulation (EC) No 1650/2003 ⁽²⁾.

Article 33(a) contains the following elements.

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

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

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

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

⁽¹⁾ 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.

⁽²⁾ 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.

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

14.1. Legal background

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

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

14.2. Role and tasks of the data protection officer

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

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

By decision of the President of 24 April 2007, a DPO was appointed at the CPVO for a term of two years. He shall be eligible for reappointment up to a maximum of 10 years.

14.3. Report of the CPVO data protection officer for 2008

For 2008, the DPO of the Community Plant Variety Office drafted an 'action plan' which he achieved in the following areas.

- He drafted and sent to the EDPS an inventory of the CPVO data processing operations. An update of this inventory is sent to the EDPS on a regular basis.
- The Administrative Council of the CPVO adopted on 13 March 2008 implementing rules concerning Regulation (EC) No 45/2001.
- To raise awareness of data protection, he drafted and distributed to the CPVO staff members a 'Guide for users to data protection at the CPVO'. This guide has been sent to the EDPS for information.

- He created DPO intranet web pages on the CPVO intranet which are updated regularly. They contain the principles of data protection, the regulation, the subject's rights and some documents relating to data protection as well as the register of prior-checking notifications.
- He drafted various data protection notices which have been included in the intranet and Internet.

Moreover, the DPO participated in the 22nd and 23rd DPO meetings held by the EDPS and the DPOs from the other EU institutions and agencies in Luxembourg on 27 February 2008 and in Brussels on 26 June 2008.

15. APPEAL PROCEDURES OF THE CPVO

15.1. Composition of the Board of Appeal of the CPVO

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

15.1.1. Chairman and alternate of the Board of Appeal



P. Van der Kooij, acting chairman of the Board of Appeal of the CPVO since 18 December 2007

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

15.1.2. 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 on 14 and 15 March 2006, adopted the following list of qualified members of the Board of Appeal of the CPVO for the period of five years from 23 February 2006.

List of qualified members 2006–11

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

15.2. Decisions of the Board of Appeal in 2008

In 2008, the Board of Appeal met on two occasions, in September and December.

15.2.1. Appeal A 011/2007 — ‘Gasore’

On 18 September 1998, the Office received an application for a potato variety Gasore, application 1998/1247. In the application form, SPRL BACO (hereinafter ‘BACO’) was mentioned as the applicant and Centre de Recherches Agronomiques de Gembloux, which later changed its name to Le Centre Wallon de Recherches Agronomiques (CRA-W), as the original breeder. A title was granted to BACO which subsequently transferred it to Mr Marc Bauche.

On 2 April 2007, the Office cancelled the title for the variety Gasore due to non-payment of the eighth annual fee. The decision was published in the *Official Gazette of the CPVO* on 15 June 2007. The decision was served on Marc Bauche but the decision was returned to the Office. On 9 July 2007, CRA-W informed the Office that Mr Bauche had died.

On 17 December 2007, the Office received an appeal from CRA-W asking that the decision of 2 April 2007 to cancel the protection for the variety Gasore be cancelled.

In essence, the appellant argued that he was the holder and that BACO, and subsequently Mr Bauche, was only acting as his representative. For this reason, the appellant should have been informed of the decision to cancel the variety. The appellant also argued that the time to appeal starts to run when he was informed of the contested decision. Moreover, according to Article 80, on *restitutio in integrum*, and the principle of *force majeure*, the appeal should be admissible.

The Board of Appeal dismissed the appeal. The Board established that the breeder had transferred his right to apply for Community protection to BACO, which in turn transferred the title to Mr Bauche. Accordingly, the Office was right in serving the contested decision on Mr Bauche and not on the appellant. The appellant did not file the appeal within the two-month period from publication of the decision pursuant to Article 69 of Council Regulation (EC) No 2100/94. The Board then stated that since the appellant became aware of the contested decision on 23 July 2007, he had had time to make an appeal. Failing to do so showed that he had not taken due care within the meaning of Article 80. The Board concluded that the principle of *force majeure* was not applicable since the breeder had failed to make sufficient arrangements with the assignee to protect his interests.

15.2.2. Appeal A 009/2008 — ‘Barberina’

On 8 December 2004, the CPVO received the application for the *citrus L.* candidate variety ‘Barberina’ from Mr Vicente Barber López. Under question 9 of the application form, he indicated that the variety had been marketed for the first time in 2002 which, under Article 10 of Council Regulation (EC) No 2100/94, was not in line with the novelty requirement. The Office informed Mr Vicente Barber López who confirmed that the

initial information provided was not correct since, in 2002, the 'Barberina' variety was only disposed to various authorities in Spain for study purposes. The Office accepted the explanation and granted a CPVR to 'Barberina' on 24 October 2005.

On 6 December 2006, the Office received a request for nullity under Article 20 of Council Regulation (EC) No 2100/94 from the Spanish company Plantones Certificados S.L. based on a lack of novelty since there had been disposal of material of the variety in Spain for sales purposes with the consent of the breeder that occurred more than one year prior to the date upon which the application was made. On 7 April 2008, by Decision A6, the Office declared the CPVR for 'Barberina' null and void relying mainly on marketing statistics provided by the Spanish authorities.

On 6 June 2008, the CPVO received an appeal lodged by Mr Vicente Barber López against CPVO Decision A6. Plantones Certificados S.L. asked to be party to the appeal proceedings. In this appeal Mr Vicente Barber López put forward the following grounds of appeal: (a) inadequacy of the proceedings initiated; (b) prescription on the action brought; (c) manipulation, lack of veracity and falsification of the invoices adduced by the applicant; (d) doubts in relation to the data contained in the records and certificates issued by the official bodies responsible for monitoring nursery plants; (e) the disposal of variety constituents made in 2002 to the public authorities was done for experimental purposes only.

The Board of Appeal found the appeal admissible but not well founded and rejected the appeal. The Board relied on the data on commercialisation issued by the Spanish authorities and concluded that the variety was not novel on the date of application.

15.2.3. Appeals A 001/2008 and A 002/2008 — 'Yuval'

On 30 January 2006, a CPVR was granted to the variety 'Yuval' of strawberry (*Fragaria L.*). On 30 March 2006, the applicant Fertiseeds Ltd domiciled in Israel appointed the Dutch company Florasale B.V. as procedural representative. On 16 July 2007, since the holder had not paid the second annual payment despite several reminders sent by registered mail to this representative which were returned to the Office, the CPVO cancelled the CPVR.

On 14 December 2007, the Office received a notice of appeal lodged by Fertiseeds Ltd and eight other different appellants — licensees from Fertiseeds — who were limited to three on 15 February 2008 when the grounds of appeal were received by the Office.

It was decided to split the appeal lodged into two categories: one appeal lodged by the holder and one appeal lodged by the three licensees.

In essence the appellants argued that it was not equitable for the Office to cancel the 'Yuval' CPVR just because the procedural representative did not fulfil its duties and since the non-payment was due to a technical mistake. The appellants also argued that the Office should not have cancelled the CPVR since it had discretion not to do so under Article 21.2 of Council Regulation (EC) No 2100/94.

On 4 December 2008, the Board of Appeal rejected both appeals as inadmissible.

Indeed, in Case A 1/2008, the appeal lodged by Fertiseeds Ltd had been filed more than two months after the service of the decision appealed.

In the other Case A 2/2008, the notice of appeal was filed on time but the Board of Appeal, in order to consider whether the appellants Shamay Izhar (original breeder of the variety), Yosi Sinai (grower of the variety) and Agrexco Ltd (distributor of the variety) could claim direct and individual concern against the decision to cancel Decision C 283, invited via registered letter, with *Accusé de réception* (AR) dated 1 September 2008, the PR to submit a certified copy of each of the licence agreements before the end of September 2008. The documents were not delivered in time for either the Board or the Office to study them effectively prior to the hearing. In consequence, the Board declined to take them into consideration by effect of Article 76 of Council Regulation (EC) No 2100/94 and rejected the appeal.

The complete decisions are available in English on the CPVO website or on written request to the CPVO.

15.3. Further appeal to the Court of Justice of the European Communities in 2008

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

15.3.1. New further appeals in 2008

In 2008, four further appeals were lodged against decisions of the Board of Appeal.

- (i) Appeal T-133/08 against Board of Appeal Decision A 007/2007 (appeal against CPVO decision to adapt the variety description of the variety 'Lemon Symphony');
- (ii) Appeal T-134/08 against Board of Appeal Decision A 006/2007 (appeal against CPVO decision not to cancel the CPVR for the variety 'Lemon Symphony');
- (iii) Appeal T-135/08 against Board of Appeal Decisions A 003/2007 and A 004/2007 (appeals against CPVO decision to grant CPVR to the variety 'Gala Schnitzer');
- (iv) Appeal T-177/08 against Board of Appeal Decision A 005/2007 (appeal against CPVO decision to reject the application for the candidate variety 'Sumost 01').

15.3.2. Rulings by the Court of First Instance

Case T-95/06 — 'Nadorcott'

On 4 October 2004, Community plant variety rights for the Nadorcott variety of the *citrus L.* species were granted to SARL Nador Cott Protection by Decision No 14111. On

11 February 2005, an appeal was lodged by a third party, la Federación de Cooperativas Agrarias de la Comunidad Valenciana (Fecoav), a federation of unions of cooperatives in the Spanish provinces of Alicante, Castellón and Valencia seeking the annulment of this decision on the basis that the variety was not novel at the time of granting the CPVR.

In its decision of 8 November 2005, the Board of Appeal rejected the appeal. It was not established, according to the Board, that Fecoav was directly and individually concerned by the contested decision and dismissed the appeal as inadmissible.

Fecoav contested that decision and lodged an appeal at the Court of First Instance of the European Communities in March 2006.

Fecoav based its action on three main arguments. Firstly, Fecoav put forward that the Board of Appeal should have informed it of the *locus standi* problem (right to appeal) and should have called a second hearing. Secondly, it put forward that the Board of Appeal made a mistake concluding that Fecoav was not directly and individually concerned by the contested decision and thirdly that the Board of Appeal did not meet its motivation obligation.

The Court of First Instance dismissed the action and ordered Fecoav to pay the costs.

Case T-187/06 — ‘Sumcol 01’

By Decision R446 of 19 April 2004, the Office rejected an application for a variety of the *Plectranthus ornatus* Codd. species with denomination Sumcol 01 due to a lack of distinctness with the reference variety. The applicant lodged an appeal against this decision on 11 June 2004.

The reference variety was transmitted to the examination office (Bundessortenamt, Germany) by Mr van Jaarsveld from the Kirstenbosch botanical garden in South Africa. The appellant mainly put forward that the reference variety sent by Mr van Jaarsveld was not of common knowledge since it came from Mr van Jaarsveld's private garden. The appellant also put forward that the plants transmitted by Mr van Jaarsveld were in fact the Sumcol 01 variety, the appellant's variety.

In its decision of 2 May 2006, the Board of Appeal concluded that the reference variety was different from the candidate variety, even if 'not clearly distinguishable' according to Article 7 of Council Regulation (EC) No 2100/94, of common knowledge and that it was not the variety of Sumcol 01. A further appeal was lodged before the Court of First Instance of the European Communities (CFI) on 18 July 2006.

The Court of First Instance of the European Communities ruled on 19 November 2008.

The main grounds of the appeal against the decision of the CPVO were as follows. Firstly, the reference variety from which Sumcol 01 was considered not to be distinct was actually Sumcol

01 itself. It was alleged that plant material of Sumcol 01 had been acquired by Mr Jaarsveld which he then sent to the Bundessortenamt. The appellant argued that although the Bundessortenamt had identified some minor differences between the reference variety and the candidate variety during the technical examination, these differences were due to environmental factors. The non-distinctness was not, for that reason, a ground to refuse Sumcol 01 plant variety protection.

Secondly, if the Court would find that the reference variety was another variety than Sumcol 01, the reference variety was not a variety of common knowledge within the meaning of Article 7 of Council Regulation (EC) No 2100/94 since the plants sent by Mr Jaarsveld had been taken from his private garden. Also, for that reason, the non-distinctness could not be a reason to refuse Sumcol 01 protection.

The CFI dismissed the appeal. In its view there were no sufficient grounds to question the CPVO's assessment, based on the results of the technical examination performed by the Bundessortenamt, that Sumcol 01 and the reference variety constituted two different varieties.

The CFI also concluded that information given by the South African authorities and Mr van Jaarsveld confirmed that the reference variety was a matter of common knowledge. The decision of the CFI is of fundamental importance, whereby it expresses the opinion that the appraisal of the distinctive character of a plant variety, a major requirement for plant variety protection, is of a scientific and technical complexity such as to justify a limit to the scope of judicial review.

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

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

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

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

Number of notices of appeal lodged with the CPVO	Reasons for appeal	Number of decisions reached by the Board of Appeal	Number and date of the decision	Date of publication in the Official Gazette of the CPVO
2007				
8	<ul style="list-style-type: none"> – Novelty (1) – Non-payment of annual fees (1) – Article 55(4) of BR (2) – Distinctness (1) – Article 20 (1) – Article 21 (1) – Article 87 (1) 	6	<ul style="list-style-type: none"> A001/2007 of 11.9.2007 A003/2007-004/2007 of 21.11.2007 A005/2007 of 4.12.2007 A006/2007 of 4.12.2007 A007/2007 of 4.12.2007 	<ul style="list-style-type: none"> 15.12.2007 15.2.2008 15.2.2008 15.2.2008 15.2.2008
2008				
12	<ul style="list-style-type: none"> – Non-payment of annual fees (7) – Article 8 (4) – Article 20 (1) 	3	<ul style="list-style-type: none"> A011/2007 of 9.9.2008 A009/2008 of 3.12.2008 A001/2008 002/2008 of 4.12.2008 	<ul style="list-style-type: none"> 15.12.2008 To be published To be published

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CPVO

3, Bd. Maréchal Foch - BP 10121
49101 Angers Cedex 02 - France
Tel. +33 (0)2 41 25 64 00 - Fax +33 (0)2 41 25 64 10
cpvo@cpvo.europa.eu - www.cpvo.europa.eu

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