



**CPVO**

Community Plant Variety Office

# Annual report 2013





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# Annual report 2013

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# 1.

## INTRODUCTION BY MARTIN EKVAD, PRESIDENT OF THE CPVO



Martin Ekvad

In 2013 we had the pleasure of welcoming Croatia to the European Union (EU), which had the effect that EU titles are now valid in 28 Member States. We have already had the privilege of working with Croatia in the multi-beneficiary programme, and, by the end of 2013, we decided together with the Croatian authorities to organise a seminar on the enforcement of plant variety rights in Zagreb in June 2014.

After 18 years of activities, it can be concluded that there is still room for expansion of the Community plant variety rights (CPVR) system. The Community Plant Variety Office (CPVO) had a record year in 2013. The Office had its highest level of applications (3 297) and, with over 2 700 new titles granted and with a relatively low rate of surrender of titles, saw the total number of grants in force rise above 21 500. The budgetary accounts show a positive net out-turn of EUR 339 000, which is less than in 2012 but in line with forecasts and the plan to bring the free reserve to a reasonable level. This is also in line with the CPVO mission statement, in which it is underlined that the processing of applications should be done at affordable costs. The level of the free reserve will continue to go down, taking into account the change in the annual fee from EUR 300 to EUR 250 as from 1 January 2014.

The increase in workload following the increase in applications and titles in force has been absorbed by existing human resources, with a constant search for more efficient work processes.

A cost calculation exercise was finalised in 2013, which in practice means that the CPVO will pay more for technical examinations to the examination offices as from 1 January 2014. This increase will be reflected by increases in the fees for technical examinations paid by applicants as from 1 January 2015. The level of the fees for technical examinations will depend, amongst other things, on the results of ongoing discussions in the Administrative Council on whether the fees regulation should reflect the remunerations that the CPVO pay to examination offices or if breeders should continue to pay less for the technical examinations than the amounts paid by the CPVO to the examination offices. Presently the difference is paid by the CPVO through income from the application fee and the annual fee. A decision on this will be taken at the Administrative Council meeting in March 2014.

In 2013 the European Parliament commissioned a study on the financial aspects of fully self-financed agencies (the CPVO and the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)). From this study and from a debate in the Parliament on the study it can be concluded that self-financed agencies are an efficient and good model for how EU agencies could be run, under the condition that surpluses and the setting of fees are handled in an appropriate manner.

During the year, the CPVO has closely followed the discussions in the Parliament and the Council on the proposed regulation on plant reproductive material, in which new tasks for the CPVO are proposed. Although recent developments show that the legislator is hesitant with regard to some aspects of the proposal, the CPVO would welcome the implementation of the proposed new tasks.

This introduction has been focused on financial matters, but when reading the annual report you will discover that the CPVO has been involved in a number of important projects during the year.

Finally, I would like to thank the staff of the CPVO for their good cooperation and the high-quality work performed, and Ms Bronislava Bátorová, the Chairperson of the Administrative Council, for her good cooperation during 2013.

# 2.

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

### 2.1. Introduction



Bronislava Bátorová

Since my election as the chair of the Administrative Council more than a year has passed, and I am happy to inform you about its latest activities.

The Administrative Council adopted in the previous year the multiannual staff policy plan for 2014–16 and the budget for 2014, and unanimously appointed Ms Anne-Marie Fernandez as Accounting Officer of the CPVO from 1 March 2013.

The members of the Administrative Council unanimously decided to forward to the Commission a proposal to amend the fees regulation so as to reduce the annual fee from EUR 300 to EUR 250 as from 1 January 2014. They also agreed to the launching of a cost calculation exercise and charged the CPVO with exploring the best legal solution concerning the future relationship with clients and examination offices.

The Administrative Council adopted the Quality Audit Service review report for 2012 and all the entrustment recommendations.

The members of the Administrative Council took note of the provisional accounts and the financial situation of the CPVO and projections for the end of 2013. The net result was significantly down (– 55 %) at the end of August 2013. At the end of the year the budget result was considerably lower than in 2012 but remained on the plus side. The free reserve fell to around EUR 7 million. The decrease in the budget result is in conformity with the budgetary plan for the coming years in order to settle the agreed level of the free reserve.

According to the 2014 annual work programme, the CPVO will focus on three challenges, namely the revision of processes through the carrying out of a business process review, which will also serve as a basis for future IT developments; the implementation of the Commission general policy of staff reduction; and the fee structure.

The members of the Administrative Council adopted the proposal of the CPVO president to establish an audit fees working group responsible for proposing options which would be submitted to the Administrative Council for discussion at the meeting in spring and then for a vote in autumn 2014.

It is very positive to note that the number of applications received for CPVRs from 27 April 1995 to 31 December 2013 was 48 055. In the last 10 years the number of applications has stabilised, averaging about 2 500 applications per year. The number of varieties protected under the Community system over the last 10 years was 21 550. This indicates the stability of the system.

I would like to thank the members of the Administrative Council for their valuable input during the year and for the contributions they made to the activities of the CPVO.

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

Finally, I would like to express my sorrow at the loss of our precious colleague François Boulineau from the Groupe d'Etude et de contrôle des Variétés et des Semences (GEVES), who dedicated his professional career to plant varieties, distinctness, uniformity and stability (DUS) tests and the building of the CPVR system in France, and inside and outside of the EU. His untimely passing is a great loss.

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

The president of the CPVO presented the annual activity report, including the declaration of the authorising officer, for the year 2013 to the Administrative Council at its meeting in Nitra, Slovakia, on 18 March 2014.

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

- In 2013 the level of applications was 3 297, a 15 % increase on the previous year, due in part to the reduction in the application fee from 1 January 2013. Fee income remained relatively stable, with an increase in annual fees and examination fees being offset by a reduction in application fees and interest income. The budget out-turn was significantly lower than in 2012, and at EUR 339 000 is close to equilibrium. The free reserve has also fallen for the first time since 2008.
- The Administrative Council takes note of the results of the internal audits. It will pay attention to the follow-up to the business process review.
- The Administrative Council takes note of the information on ex post verifications, negotiated procedures and the confirmation of instructions.

- The Administrative Council is satisfied with the declaration of the authorising officer that his report gives a true view, that he has reasonable assurances that the resources assigned to the activities described in his report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.
- The Administrative Council is satisfied that the president of the CPVO is unaware of any matter which could harm the interests of the CPVO.

# 3.

## THE COMMUNITY PLANT VARIETY RIGHTS SYSTEM



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

The fact that protection, guaranteeing exclusive exploitation rights for a plant variety, is acquired in 28 Member States of the European Union (EU) through a single application to the CPVO makes the Community system for protecting new varieties very attractive.

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

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

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

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

The table in Chapter 17 shows the number of notices of appeal lodged with the CPVO and the decisions reached by the Board of Appeal.

Once granted, the duration of a CPVR is 25 years, or 30 years in the case of potato, vine and tree varieties. These periods may be extended by legislation for a further 5 years in relation to specific genera or species. The effect of a CPVR is that certain specified activities in relation to variety constituents or the harvested material of the newly protected variety require the prior authorisation of the right holder; such authorisation may be made subject to conditions and limitations. Infringement of a CPVR entitles the right holder to commence civil proceedings against the perpetrator of the infringement.

Registers, which are open to public inspection, contain details of all applications received and all CPVRs granted by the Office. Every 2 months, the Office publishes its *Official Gazette of the Community Plant Variety Office*, which contains the information entered in the registers. Information on applications and titles in force is also found in a database accessible via the Office's website.

# 4.

## THE ADMINISTRATIVE COUNCIL

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

Since Croatia joined the EU on 1 July 2013, the Administrative Council of the CPVO counted a new member as representative of Croatia in its October 2013 meeting.

The Administrative Council met twice in 2013, on 27 February in Angers, France and on 2 October in Brussels, Belgium.

At the meeting on 27 February 2013 in Angers, the members of the Administrative Council adopted the following.

- The authorising officer's report for 2012 and analysis and evaluation of the authorising officer's report. This report was included in the annual report 2012 and sent to the Court of Auditors.
- The discharge of the president of the CPVO for implementation of the 2011 budget.
- The appointment of Ms Anne-Marie Fernandez as CPVO accountant from 1 March 2013.
- The proposal to amend the fees regulation so as to reduce the annual fee from EUR 300 to EUR 250 as from 1 January 2014 and to send it to the European Commission.
- The draft budget for 2014.
- The entrustment of the following examination offices:
  - (a) University of Aarhus in Denmark;
  - (b) Ministry of Agriculture in Greece.
    - In the case of France (GEVES), the extension of scope was granted as requested.
    - In the case of Romania (Institutul de Stat pentru Testarea și Înregistrarea Soiurilor (ISTIS)), the suspensory period of the entrustment was prolonged until the next Administrative Council meeting.
- The Quality Audit Service review report for 2012.
- Seven revisions of technical protocols for *Phaseolus vulgaris* L. (CPVO-TP/012/4), *Solanum lycopersicum* L. (CPVO-TP/044/4), *Spinacia oleracea* L. (CPVO-TP/055/2), *Raphanus sativus* L. var. *sativus* and *Raphanus sativus* L. var. *niger* (Mill.) S. Kerner (CPVO-TP/064/2), *Cynara cardunculus* L. (CPVO-TP/184/2), *Calibrachoa* Llave & Lex (CPVO-TP/207/2) and *Pastinaca sativa* L. (CPVO/TP/218/2).
- The entrustment of the examination offices proposed by the CPVO for the testing of 21 new species.
- Amendment to the rules of procedure of the Administrative Council by which Administrative Council decisions relating to entrustment of examination offices will be ruled by Article 8(2) of those rules.

The members of the Administrative Council also took note of:

- the report of the president of the CPVO with its statistics;
- the CPVO social report for 2012;
- the internal audit report for 2012;
- the report on the first audit cycle (2010–12) by the Quality Audit Service;
- the provisional accounts for 2012;
- the report on the 2012 annual meeting of the CPVO with its examination offices;
- the report on the state of affairs regarding the CPVO Board of Appeal and the Court of Justice;
- the multiannual staff policy (MSPP) for 2014–16.

The members of the Administrative Council also agreed to the launch of a cost calculation exercise and charged the CPVO to explore the best legal solution concerning the future relationship with clients and examination offices.

They furthermore:

- encouraged the CPVO to continue working, on the basis of their last discussions, on the possible centralisation of DUS testing for small species;
- were informed that the CPVO would shortly undertake a review of its internal procedures through a business process review;
- decided to postpone the seminar on the interface between patents and PVRs in 2014.

At the meeting on 2 October 2013 in Brussels, the members of the Administrative Council adopted the following.

- The second supplementary amending budget for 2013.
- The entrustment of the following examination offices:
  - (a) Centro per la Ricerca in Viticoltura (CRA-VIT) in Italy;
  - (b) Centre Wallon de Recherches Agronomiques (CRA-W) in Belgium;
  - (c) Centralny Ośrodek Badania Odmian Roślin Uprawnych (Coboru) in Poland;
  - (d) National Institute of Agricultural Botany (NIAB) in the United Kingdom;
  - (e) National Food Chain Safety Office (NÉBIH) in Hungary.
    - In the case of Romania (ISTIS), the examination office withdrew its application for entrustment and will make a new application at a later stage.
    - In the case of Greece (Ministry of Agriculture), the entrustment has been confirmed following a surveillance visit which verified that remedial measures have indeed been implemented.
- The entrustment of the examination offices proposed by the CPVO for the testing of 37 new species.
- The entrustment of the Bundessortenamt (Germany) for the testing of bicoloured hydrangea varieties.
- The amended version of the new CPVO technical protocol template.

- Creation of an audit fees working group aiming at proposing options for the financing of quality audit activities which would be submitted to the Administrative Council for discussion in spring 2014 and adoption in autumn 2014.

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

- The report of the president of the CPVO with its statistics.
- The provisional accounts for 2013.
- The report on the calculation of costs and fees (new annual fee from 1 January 2014 and the proposal to be presented in March 2014 for a 100 % recovery of the costs of DUS examinations).
- The study produced by the European Parliament on 'The income of fully self-financed agencies and the EU budget' (available on the CPVO website).
- The pilot project with the Koninklijke Algemeene Vereeniging voor Bloembollencultuur (KAVB) in relation to the testing of proposed variety denominations.
- The draft strategy for the CPVO's activities beyond the EU borders.
- The 2014 annual work programme of the CPVO.

The members of the Administrative Council were also consulted on possible future use of electronic technical questionnaires as an annex to the CPVO protocols. The members of the Administrative Council agreed that in the future the technical questionnaires would only be available electronically. This would make it possible to make any updates available immediately.

Furthermore, some technical discussions were held during this meeting as regards the following.

- The CPVO policy regarding the status of plant material presented for reference purposes. The members of the Administrative Council deferred the adoption of the CPVO's proposal clarifying this status until March 2014.
- The situation regarding the agricultural and vegetable species covered not by CPVO technical protocols but by the European directives on seeds. The members referred to technical experts for their input.
- The centralisation of DUS testing for small species in the ornamental sector and the disease resistance characteristics in the CPVO technical protocols for vegetable species. The members referred both items to technical experts for their input.

Finally, the members of the Administrative Council were informed, by oral presentations from representatives of the European Commission, of the following.

- The conclusions of the interinstitutional working group on EU agencies, which had culminated in a road map presented at the end of 2012 by the Commission. In particular, the members of the Administrative Council took note that, as from 1 January 2014, it will be the Administrative Council and not the CPVO president that will adopt CPVO implementing rules to the staff regulations.

- The unitary patent.
- The satisfactory outcome of the half-yearly meeting of the International Treaty on Plant Genetic Resources for Food and Agriculture (PGRFA international treaty).
- The state of affairs regarding the proposal for a plant reproductive material (PRM) regulation.
- The situation regarding the proposal for a regulation of the European Parliament and of the Council on access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation in the Union.

#### Chairperson of the Administrative Council

Ms B. Bátorová

#### Vice-Chairperson of the Administrative Council

Mr A. Mitchell

#### Members of the Administrative Council

Belgium	Ms F. De Schutter Ms M. Petit (alternate)
Bulgaria	Ms B. Pavlovska Mr T. Gadev (alternate)
Czech Republic	Member vacant Mr D. Jurecka (alternate)
Denmark	Mr G. Deneken Mr E. Lawaetz (alternate)
Germany	Mr U. Von Kröcher Mr H. Freudenstein (alternate)
Estonia	Ms L. Puur Alternate vacant
Ireland	Mr D. Coleman Mr J. Claffey (alternate)
Greece	Member vacant Mr K. Michos (alternate)
Spain	Mr A. de León Llamazares Mr L. Salaices Sanchez (alternate)
France	Mr R. Tessier Alternate vacant
Croatia	Mr I. Delic (since 26.8.2013) Alternate vacant
Italy	Ms I. Pugliese Alternate vacant
Cyprus	Mr C. Christou Mr C. Nicolaou (alternate)

Latvia	Ms S. Kalinina Ms D. Bajale (alternate since 23.9.2013) Alternate vacant (until 23.9.2013)
Lithuania	Ms S. Juciuvienė Ms I. Kemeziene (alternate)
Luxembourg	Mr M. Weyland Mr F. Kraus (alternate)
Hungary	Ms A. Szenci Alternate vacant
Malta	Ms M. Delia Mr C. Leone Ganado (alternate)
Netherlands	Mr M. Valstar Mr K. van Ettehoven (alternate)
Austria	Mr P. Zach Mr L. Girsch (alternate)
Poland	Mr E. Gacek Mr M. Behnke (alternate)
Portugal	Ms F. Alfarroba (until 5.8.2013) Ms A. De Almeida Cruz de Carvalho (since 5.8.2013) Mr J. Fernandes (alternate until 5.8.2013) Ms T. Pais Coelho (alternate since 5.8.2013)
Romania	Ms M. Cindea Ms M. Ciora (alternate)
Slovenia	Member vacant (until 7.10.2013) Ms J. Cvelbar (since 7.10.2013) Mr P. Grižon (alternate until 7.10.2013) Ms H. Rakovec (alternate since 7.10.2013)
Slovakia	Ms B. Bátorová Ms D. Vongrejová (alternate)
Finland	Member vacant (until 16.9.2013) Ms T. Hietaranta (since 16.9.2013) Mr M. Puolimatka (alternate)
Sweden	Mr A. Falk (until 27.2.2013) Mr J. Weibull (since 27.2.2013) Mr T. Olsson (alternate until 27.2.2013) Alternate vacant (since 27.2.2013)
United Kingdom	Mr A. Mitchell Ms E. Nicol (alternate)
European Commission	Mr L. Miko Ms D. Simion (alternate)

# 5.

## ORGANISATION OF THE CPVO

In December 2013 the Office employed 45 persons, 11 officials and 34 temporary agents. Twelve nationalities from the EU's Member States were represented.

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

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

**The Administration Unit** is active in three areas.

- Administrative section: public procurement; organisation of the Office's publications; administration, management and monitoring of the Office's inventory of movable property and buildings; administration of logistical and operational resources with a view to ensuring the smooth functioning of the Office.
- Financial section: management of financial transactions, treasury management, maintenance of the budgetary and general accounts and preparation of budgets and financial documents; management of the fees system.
- IT section: ensures that the Office runs smoothly in computing terms. Its tasks include: analysis of the Office's hardware and software requirements; design, development and installation of new programmes specific to the Office; development and maintenance of the websites of the Office; installation of standard programmes; maintenance of the computer installation and its administration; security of the computer system; helpdesk and interinstitutional cooperation in computing.

**The Legal Unit** provides legal advice to the president and other members of staff of the Office, in principle on matters related to the CPVR 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 EU 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.

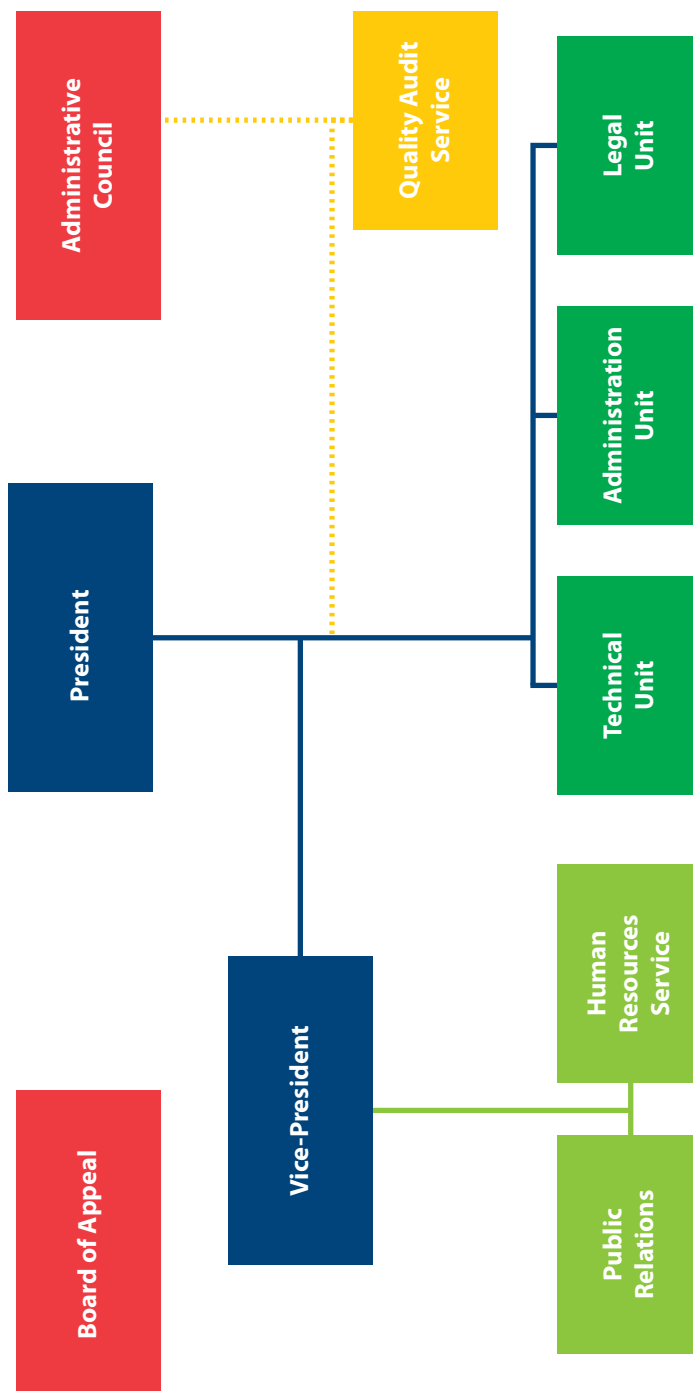
**The Human Resources Service** deals with the administration and management of the Office's human resources in compliance with the Staff Regulations of the European Commission.

**The Public Relations Service** is responsible for external communication and manifestations (CPVO newsletter, annual report, fairs, etc.).

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

In 2013 the CPVO prepared a social report with information concerning the turnover, work environment and social aspects of the CPVO. The different headings covered in the report were employment (staff members, recruitment procedure, staff joining or leaving the CPVO, promotions, absenteeism, gender balance), working conditions (hours worked, part-time work, parental leave, teleworking), training (language training, IT training, other training) and professional relations (staff committee). The CPVO social reports from 2006 to 2013 can be consulted on the CPVO website under the heading 'Annual reports'.

## ORGANISATION CHART OF THE CPVO



# PRESIDENCY



**President**  
Martin Ekvad



**Vice-President**  
Carlos Godinho



**Assistant to the Presidency**  
Cyrille Antoine

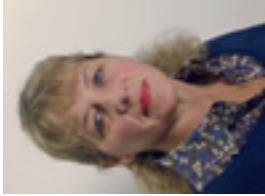
# SUPPORT SERVICES



**Human Resources Service**  
Deirdre Killeen



**Human Resources Service**  
Anna Verdini



**Public Relations/ Training**  
Fabienne Santoro

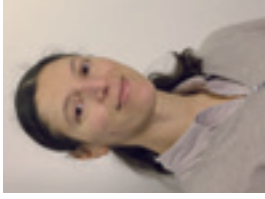
# LEGAL UNIT



**Head of the Legal Unit**  
Francesco Mattina



**Assistant to the Legal Unit & the Quality Audit service**  
Marleen Van de Meulebroeke



**Legal Advisor**  
Muriel Lightbourne



**Board of Appeal/ Data Protection/ Quality Audit**  
Veronique Doreau

# ADMINISTRATION UNIT (AU)



**Head of the AU**  
James Moran



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



**Accounting**  
Valérie De Caestecker



**Accounting**  
Laurence Dumont



**Accounting**  
Anne-Marie Fernandez



**Administration and Logistics**  
Thierry Cluzeau



**Administration and Logistics**  
Isabelle Lanteri



**Administration and Logistics**  
Gil Oliveira



**Administration and Logistics**  
Manuel Soares Teixeira



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



**Finances**  
Ekaterina Mantziaris



**IT Service**  
Sébastien Beugnier



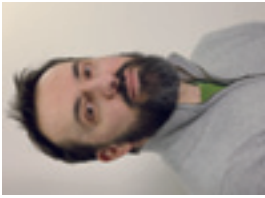
**IT Service**  
Jean-Louis Curnier



**IT Service**  
Patrick Lecoq



**IT Service**  
Laura Naie



**IT Service**  
Marc Rouillard

# QUALITY AUDIT SERVICE



**Quality Audit Team Leader**  
Gerhard Schuon

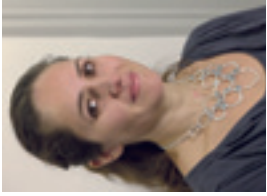
# TECHNICAL UNIT (TU)



**Head of the TU**  
Dirk Theobald



**Deputy Head of the TU**  
Jean Maisson



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



**Agricultural species**  
Anne Weitz



**Denominations**  
Carole Bonneau



**Denominations**  
Rudi Caes



**Denominations**  
Bénédicte Legrand



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



**Fruit and vegetable species**  
Sergio Semon



**Ornamental species**  
Laetitia Denécheau



**Ornamental species**  
Jens Wegner



**Register**  
Pierre-Emmanuel Fouillé



**Register**  
Anne Gardener



**Register**  
Nadège Grantham



**Register**  
Francesco Saldi



**Technical Unit Assistant**  
Chislaine Guilbert



**Technical Unit Assistant**  
Francesca Rampazzi



**Technical Unit Assistant**  
Laurence Théodore

NB: The above organisation chart comprises the members of the CPVO employed as officials and temporary agents on 31 December 2013.

# 6.

## QUALITY AUDIT SYSTEM

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

### 6.1. Assessment of examination offices

The total of 11 assessments carried out included regular audit visits following the triennial cycle, but also surveillance visits and assessments carried out in order to come to a conclusion on a scope extension request by an examination office. The entrustment recommendations to the members of the Administrative Council were generally positive. However, there had been a range of scope reductions, partly resulting directly from assessment visits, partly in anticipation of audit findings that would necessitate substantial investments to address them. One examination office decided to discontinue its entrustments until further notice.

In view of scope extension requests necessitating an audit outside the regular assessment visits, arrangements were made in order to accommodate them in the audit programme without undue delay. The aim of addressing scope extension in the regular visits could largely be respected. All 2013 scope extension requests could be addressed with only two specific extension assessments.

### 6.2. Second cycle of assessments

The audit programme went into a second cycle after all the examination offices had their initial assessment visit between 2010 and 2012. The sequence of visits followed closely the first cycle, however with a shift ensuring that testing work at every entrusted office was assessed at a different time of the year compared to the initial audit. In the same perspective, the assessment team and the assessment sample were different to ensure a comprehensive view of the examination offices' work.

More than half of the 23 individuals constituting the pool of technical experts were involved in the assessments. While the overall number of experts has decreased over the years, there were no major difficulties in securing adequate technical expertise for the different missions.

The question of financing the assessment scheme was raised repeatedly. In response, an audit fee working group was created and mandated to prepare a proposal for discussion within the Administrative Council in spring 2014. The major part of that work was achieved towards the end of 2013.

# 7.

## RESEARCH AND DEVELOPMENT PROJECTS

Following the rules established by the Administrative Council in 2002 and reviewed in 2009 for financial support for projects of interest to the CPVR system, the Office received in 2013 several applications for (co-)financing R & D projects. In this chapter, the Office provides updated information about projects under way and follow-up measures taken in 2013 on projects already concluded.

### 7.1. Projects approved

#### **‘Development of an improved COYU procedure’**

The CPVO decided in February 2013 to co-finance this R & D project coordinated by Adrian Roberts from BioSS (part of the James Hutton Institute, which provides statistical support to Science and Advice for Scottish Agriculture (SASA)), having as a partner the Aarhus University (Denmark). The project was initiated in March 2013 and the final report was received in July 2013.

The combined-over-years uniformity (COYU) method is a statistical procedure for assessing the uniformity of candidate varieties entered for DUS tests. It is widely used, being applicable to measured characteristics typically, but not exclusively, for cross-pollinated varieties.

The project developed and tested an alternative method of adjustment for COYU, based on natural cubic splines. This was described in a paper presented to the International Union for the Protection of New Varieties of Plants (UPOV) Technical Working Party on Automation and Computer Programs (TWC) (TWC/31/15 Corr.) and was presented at the TWC meeting in Seoul, 2013. The proposed new methodology for COYU was compared to the current one by simulation under several scenarios. It was found to have much-reduced bias. It is expected that the achievements will enable the use of more typical significance levels, such as 1 % or 5 %, than for the current formulation.

As a follow-up United Kingdom experts will develop software in Fortran that can be incorporated into the widely used DUST package. A demonstration version of the DUST software using the proposed COYU method will be made at the 32nd session of the TWC in 2014. The TWC agreed that the probability levels to be used in the proposed COYU method should be discussed on the basis of the experience of UPOV members in using the proposed method. The TWC also agreed that a circular should be prepared by an expert from the United Kingdom and issued by the UPOV office to the Technical Committee representatives, in order to investigate which members of the Union used the current COYU method and in which software it was used. A presentation of the outcome of the project will be made in 2014 in the UPOV Technical Committee.



R & D project on *Helleborus*, Netherlands

#### **‘Modification of the cultivation scheme and the plant material requirements for *Helleborus*’**

The CPVO formally approved in March 2013 the co-financing of the R & D project ‘Modification of the cultivation scheme and the plant material requirements for *Helleborus*’. The project was initiated by the CPVO and includes another project partner, Naktuinbouw. The project was launched in March 2013 and the final report is expected in the second half of 2014.

The aim of this project is to investigate the suitability of an alternative to the current cultivation scheme, namely to move to a cultivation in pots with delivery in April.

Currently, the DUS testing of *Helleborus* varieties in the framework of an application for CPVRs is centralised at Naktuinbouw, where plants are cultivated outdoors in open ground. This cultivation scheme seems not to be optimal as, in the past, the weak drainage of the soil caused some damage, and some cold winters or bad weather conditions could damage the candidate varieties and the reference collection. Moreover, the commercial standard way of production seems to be more suitable for pot culture rather than ground cultivation. The stakeholders have expressed a wish to move to cultivation in pots with delivery in April.

If the new cultivation scheme proves to be adequate, the reference collection will be transferred from outdoors to pots in cold frames. This should avoid too many losses within the collection. Moreover, with this new cultivation, it should become more certain in the future that the DUS technical examination can be concluded within 1 year.

## **7.2. Projects underway in 2013**

#### **‘Harmonisation of vegetable disease resistances 2’**

This project, initiated in 2012, is coordinated by GEVES (France), with project partners from the Czech Republic, Germany, Spain, Hungary, the Netherlands, the United Kingdom and the European Seed Association (ESA). This project is a follow-up to the earlier ‘Harmonisation of vegetable disease resistances’, completed in 2008, although the new project deals with



Bremia disease resistance tests for numerous lettuce varieties

seven disease resistances in pepper, pea and lettuce. A first meeting was organised by GEVES, the project coordinator, at the end of June 2012, in order to obtain consensual agreement amongst the project partners on the schedule of work to be done, and the races/isolates and example varieties which would be utilised. The work done in the second half of 2012 was concentrated on the description and comparison of the existing tests for these disease resistances. A second meeting of the group took place in May 2013 and the Office received the first interim report in August 2013. The project is expected to be concluded in 2015.

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

This project, initiated in January 2013, is coordinated by the CPVO and the Food and Environment Research Agency (FERA) (United Kingdom), with the following project partners: Bundessortenamt (Germany), ESA (breeding companies: DLF Trifolium and Barenbrug) and GEVES (France). The project aims at clarifying the possible impact that the presence of endophytes in varieties of *Lolium perenne* (Lp) and *Festuca arundinacea* (Fa) might have on the phenotype, and thus on the expression of the characteristics observed during the DUS tests and eventual consequences in terms of quality requirements for material to be submitted for that purpose. The project provides for the assessment of four varieties from each species, with two stages of endophyte infections (0 % and 100 % endophytes). These varieties will be integrated into regular DUS tests during two growing cycles using the relevant CPVO technical protocol. The final report is expected at the end of 2015.

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

This project is coordinated by the CPVO, with the following project partners: Bundessortenamt (Germany), Coforu (Poland), the Organisation of Breeders of Asexually Reproduced Ornamental and Fruit Plants (Ciopora), Centro di ricerca per la frutticoltura (CRA-FRU) (Italy), Oficina Española de Variedades Vegetales (OEVV) (Spain), GEVES (France), NÉBIH (Hungary), the Central institute for supervising and testing in agriculture — the National plant variety office (NPVO) (Czech Republic) and Plantum.

The project was initiated in the beginning of 2013 and the final report with the conclusions is expected at the beginning of 2014. The costs of DUS testing for candidate fruit varieties are relatively high compared to varieties in other crop sectors. This fact has been subject of discussions in several circles over the recent years. The CPVO has committed itself to investigating how this cost could be reduced. The issue was discussed in the group with fruit experts in 2009. Several options for a possible cost reduction, which need further investigation, have been identified. One of them was a reduction in the number of obligatory DUS cycles for candidate varieties.

The aim of the project is: (i) to determine whether there is indeed technical justification of two satisfactory crops of fruit in order to make a conclusion on DUS; and (ii) to draw up a subsequent reliable variety description. Five species are considered in the scope of

the project: peach, strawberry, apple, raspberry and grapevine. Varieties where the CPVO technical protocol has been implemented and which have been registered (national listings, national plant variety rights, CPVRs) in the past 5 years have been considered. The results were received at the end of summer 2013 and a first discussion took place during the fruit expert meeting in October 2013. Most of the participants agreed that reducing the number of observation years would lead to a less reliable variety description. Some of them pointed out that a description based on the second fruiting period would be sufficiently reliable and there would be no need to have 2 years of observation. In a few situations, a reduction in the number of years of observation could also affect the assessment of distinctness or uniformity. The Office will draft a conclusion to the project and propose a follow-up in 2014.

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

#### ‘European collection of rose varieties’

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

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



Ring test on potato, United Kingdom



Ring test on potato, United Kingdom

A DNA sample from the original plant material submitted for each rose's technical examination is kept on a compulsory basis, following the adopted procedure. The leaves are collected in the different entrusted examination offices (Bundessortenamt, Naktuinbouw and NIAB) and sent to the entrusted laboratory (Naktuinbouw). DNA extractions and storage take place in this laboratory. Since the start of the project, the DNA of 525 candidate varieties tested in 2011, 2012 and 2013 have been extracted and stored. The pilot project will be reviewed at the end of 2014.

The cost of the sampling and the extraction have so far been supported by the Office.

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

This collaborative 3-year project among the CPVO's entrusted examination offices and their technically qualified bodies for *Prunus persica* — GEVES and the Institut national de la recherche agronomique (INRA) (France), the national food chain safety office (OMMI) (Hungary), CRA-FRU (Italy) and the Instituto Valenciano de Investigaciones Agrarias (IVIA) and the Centro de Investigación y Tecnología Agroalimentaria de Aragón (CITA) (Spain) — was concluded in summer 2011. The project partners analysed a total of 510 peach varieties in their reference collections (including 12 common to all of them) under the following four themes: (i) compilation of morphological data; (ii) creation of standardised digital data; (iii) generation of molecular data; (iv) creation of a phenotypic and molecular variety database.

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

The CPVO proposed a set of concrete follow-up measures which the project coordinator should consider with the other project partners, with the aim of improving the management of the reference collections in the four entrusted examination offices, and the overall efficiency of DUS testing in peach.

A first step in achieving this will be the signature of the contract agreement between GEVES and the project partners regulating the contribution and access of each partner to the GEMMA database.

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

This project started in April 2006. The final report was received in spring 2008. The partners involved are Bundessortenamt (Germany), Coforu (Poland), Naktuinbouw (Netherlands) and SASA (United Kingdom). The project delivered a database including marker profiles of potato varieties, key morphological characteristics and a photo library with light sprout pictures. The aim is to rapidly identify plant material of a vegetatively propagated crop where reference material has to be submitted every year and to ease the management of the reference collection. At the request of the breeders' association, the ESA, the possible use of molecular means for variety identification for enforcement purposes has been taken into account. Several conference calls were held in 2010 and 2011 with the project partners and the ESA in order to agree upon the follow-up of the project results and their implementation in the DUS test. A ring test was organised in 2012 involving all nine entrusted examination offices. The outcome of the ring test was discussed in a meeting organised in June 2013 in Edinburgh. Emphasis was placed on the harmonisation of the variety descriptions from the different examination offices. A procedure for the sending of tubers of candidate varieties to a laboratory so that their DNA can be extracted and profiled for the management of the reference collection has been agreed. The CPVO has prepared a follow-up project, with a duration of 2 years (2014–15), which involves the nine entrusted examination offices for potato and the ESA. The main objectives of this follow-up project are as follows.

- To organise a ring test of light sprout characteristics and picture taking.
- To set up a common calibration book and revision of potato CPVO-TP.
- A call for tenders for two labs, and lab work definition and subsequent entrustment.
- To set up an agreement between the CPVO, labs, examination offices and the ESA covering molecular data.
- To set up an agreement between CPVO, GEVES, examination offices and the ESA concerning the GEMMA database and the procedure for contribution and maintenance of the GEMMA database.

# 8.

## BUDGET

### 8.1. Overview — out-turn

The budget out-turn for 2013 showed a significant and forecast decrease on previous years, due mainly to an increase of expenses in operational expenditure. Revenue was slightly higher than in previous years, due to a higher number of applications combined with the decrease in application and annual fees.

Net out-turn for the year	(million EUR)
Budgetary revenue (a)	13.05
Budgetary expenses (b)	12.75
<b>Budgetary out-turn (c) = (a) – (b)</b>	<b>0.30</b>
Non-budgetary receipts (d)	0.04
<b>Net out-turn for the budgetary year 2013 (e) = (c) + (d)</b>	<b>0.34</b>

The net out-turn for the year was slightly over EUR 0.34 million, compared to EUR 1.55 million for the previous year. This significant fall is fully in line with the CPVO policy of reducing the accumulated free reserve.

### 8.2. Revenue

The Office's revenue mainly comprises various fees paid by applicants for, and holders of, CPVRs and revenue from interest on bank accounts. The total revenue collected in 2013 was EUR 13.06 million.

	Variation (%)	2013 (million EUR)	2012 (million EUR)
Fees	2.30	12.92	12.63
Bank interest	– 59.37	0.13	0.32
Other revenue	– 95.00	0.01	0.20
<b>Total revenue</b>	<b>– 0.68</b>	<b>13.06</b>	<b>13.15</b>

The total fees received in 2013 amounted to EUR 12.92 million, representing an increase of 2.30 % in comparison with the previous year. Interest income is recorded for the budgetary accounts based on the date of actual receipt of the interest. There were no grants received in the year in the context of the multi-beneficiary programme compared to 2012 (grant received in 2012 from the European Commission: EUR 200 000).

### 8.3. Expenditure

In 2013 the total amount of recorded expenditure and commitments carried over was EUR 12.76 million, compared with EUR 11.74 million in 2012.

	Variation (%)	2013 (million EUR)	2012 (million EUR)
Staff expenditure	4.50	5.81	5.56
Administrative expenditure	10.10	1.09	0.99
Operational expenditure	12.91	5.86	5.19
<b>Total expenditure</b>	<b>8.69</b>	<b>12.76</b>	<b>11.74</b>

The salary grid for staff of the Office, being governed by the levels set by the European Council, is also subject to changes in line with inflation and career progression and this is reflected in the modest increase (4.5 %). The Court case to decide on the matter of back-dated salary increases, which is being contested between the European Commission and the Council, was inconclusive at year-end.

Administrative expenditure increases are mainly due to higher spending on IT development.

Operational expenditure, which consists mainly of remuneration for examination offices, increased as the number of applications increased by 15 % compared to 2012.

## 8.4. Conclusion

The net result in 2013 is significantly lower than the previous year. The reduced application and annual fees, which came into force at the beginning of 2013, helped bring the out-turn to a lower level than in 2012, fully in line with the CPVO's medium-term policy of lowering its free reserve.

# 9.

## DEVELOPMENTS OF THE SYSTEM — REGULATORY

### 9.1. Evaluation of the CPVR system

In 2010 the European Commission launched an evaluation of the CPVR *acquis* to assess how well it has met its original objectives, as well as its current strengths and weaknesses. The outcome was that 'The CPVR *acquis* functions well and has met its objectives. Stakeholders are generally content with the system.' However, some options have been proposed to resolve deficiencies identified in the system. In order to give a follow-up to those recommendations the CPVO has decided to take some initiatives, like the reactivation of the ad hoc Legislative Working Group and the initiation of a discussion about the criteria to accept proposals for variety denominations. The ad hoc Legislative Working Group commenced its activities in 2012 with the aim of finding possible solutions regarding areas where there is common support for changes and, where possible, provide concrete answers to questions and comments of a legal nature which have been raised by various stakeholders in the framework of the evaluation of the CPVR system in the EU.

The ad hoc Legislative Working Group is chaired by the CPVO and is composed of mainly legal experts from national authorities, representatives from the European Commission and lawyers active in breeders' organisations. The final conclusions of the ad hoc Legislative Working Group are expected to be presented by the end of 2014.

### 9.2. EU legislation on plant reproductive material

The CPVO is following the discussions held at the Council of the European Union among representatives of the Member States concerning the revision and adoption of the new EU legislation on plant reproductive material (PRM), which might give new responsibilities to the CPVO in that domain. The CPVO is reflecting on the practical consequences that such new tasks will have for it, in particular vis-à-vis the managing of the Union Plant Variety Register, the testing of variety denominations and the enhanced scope of activities of the quality audit service. In connection with this, in December 2013, the president of the CPVO was invited to give a presentation on the activities of the CPVO to the Committee on Agriculture and Rural Development of the European Parliament.

### 9.3. Fees

There have been a number of changes over the past years in the fee structure of the CPVO, with reductions in the annual fee and the application fee. In 2013, the CPVO launched a comprehensive cost calculation exercise in order to update the real costs for examination offices of conducting DUS examinations.

On the basis of the results of the cost calculation exercise, the CPVO will analyse the financial impact on breeders of a potential move to 100 % cost recovery. In parallel the CPVO will propose further changes to the annual fee and the application fee with a view to ensuring that the free reserve of the Office is reduced over the medium term.

The analysis and proposals will be presented to the Administrative Council in the spring 2014 meeting with a view to making the necessary changes to the fees regulation by the end of 2014.

## **9.4. Enforcement**

On 30 May 2013, the CPVO, in cooperation with the Italian Ministry of Economic Development, the Italian Patent and Trademark Office and the breeders' organisations (Ciopora, ESA and Plantum), organized a seminar on the enforcement of plant variety rights. This seminar aimed at sharing information and experience relating to the enforcement of plant variety rights in Italy and possibly in other EU Member States. More than 130 persons from more than 15 countries participated in the event which was held at the premises of the Chamber of Commerce in Rome. Different stakeholders, including authorities, indicated that they will take on board the experiences shared in the seminar in coming dialogues, dialogues that the CPVO would support. All presentations made during the seminar are published on the website of the Office.

Seminars on the enforcement of plant variety rights organized by the CPVO have always encountered a great success and are highly appreciated by participants. Before the Rome seminar in 2013, the Office organised seminars on enforcement in Brussels (2005), Warsaw (2006), Madrid (2007), Sofia and Bucharest (2008), Athens (2010) and Hamburg (25 May 2011). In October 2013, the CPVO Administrative Council agreed to organise a seminar on the enforcement of plant variety rights in Zagreb in June 2014.



Enforcement seminar, May 2013, Rome, Italy

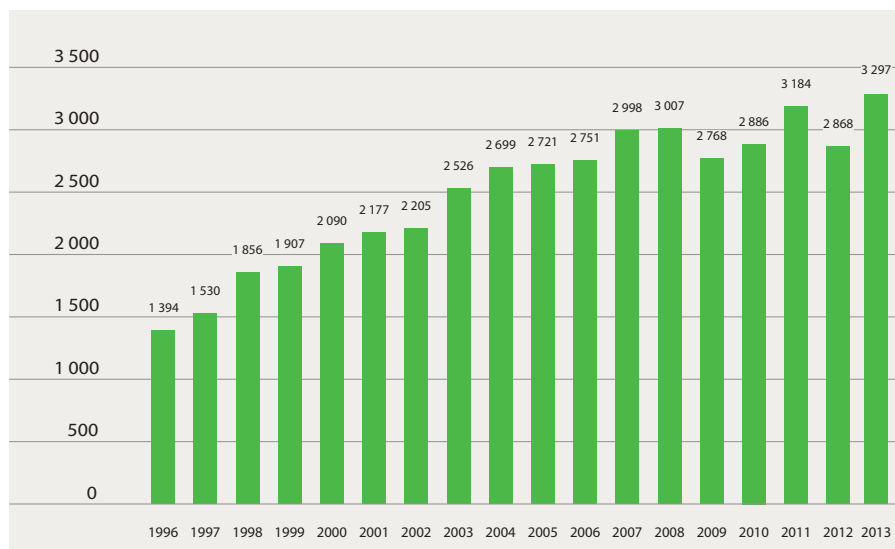
# 10. DEVELOPMENTS OF THE SYSTEM — TECHNICAL

## 10.1. Applications for Community plant variety protection

In 2013 the Office received 3 297 applications for Community plant variety protection, which represents an all-time record and an increase of 15 % compared to the previous year. Graph 1 shows the evolution of application numbers received by the Office (all figures are based on the date of arrival of the application documents at the Office). It may be assumed that the strong increase observed in 2013 is partly due to the decrease at the end of 2012, when it was announced that a lowered application fee would become applicable as from 2013.

**Graph 1**

Evolution of the annual number of applications for Community plant variety protection (1996–2013)

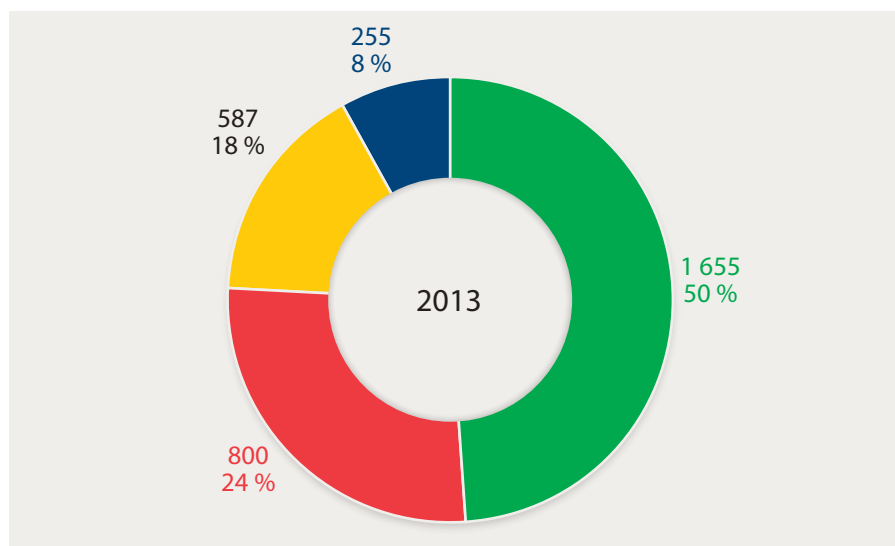


Graph 2 represents the shares of the crop sectors in the number of applications received in 2013.

**Graph 2**

Shares of application numbers per crop sector in 2013

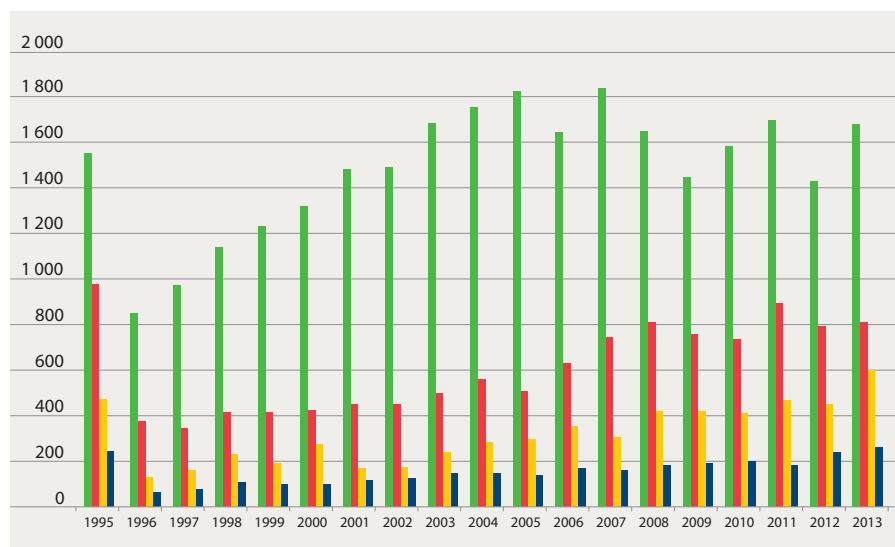
- Ornamental
- Agricultural
- Vegetable
- Fruit



**Graph 3**

Evolution of application numbers  
per crop sector (1995–2013)

■ Ornamental  
■ Agricultural  
■ Vegetable  
■ Fruit



Graph 3 shows the evolution of the number of applications per crop sector since 1995. In 2013 the Office observed an increase in application numbers in all crop sectors: agricultural + 19 applications (2.4 %), fruit + 22 applications (9.4 %), ornamental + 249 applications (17.7 %) and vegetable + 139 applications (31 %).

In 2013, 3 484 applicants filed applications for CPVRs. The following table lists for each crop sector the 15 most frequent users of the Community system and their respective number of applications filed in 2013. These top 15 applicants have a relative share of applications ranging from 96.4 % (in 2012: 83.9 %) for vegetables, over 59.6 % (in 2012: 59.7 %) for agricultural species and 52.5 % (in 2012: 57.5 %) for fruit species to as little as 35.9 % (in 2012: 34.9 %) for ornamentals. This range does not only reflect the continuing process of concentration in breeding, in particular in the vegetable sector, it also shows that, in the case of ornamentals, a great number of 'small' breeders are in business and seeking protection for their varieties. However, also in ornamentals, a concentration in plant breeding seems to be taking place. This may be seen as an indication of the investment behind each variety relative to the revenues it delivers.

## Agricultural sector

Top 15 applicants	Country	Number of applications in 2013
Limagrain Europe SA	France	81
KWS Saat AG	Germany	64
RAGT 2n SAS	France	64
Adrien Momont et Fils SARL	France	38
Monsanto Technology LLC	United States	35
Deutsche Saatveredelung AG	Germany	34
Soltis SAS	France	31
Euralis Semences SAS	France	26
DLF-Trifolium A/S	Denmark	22
Secobra Recherches SAS	France	17
Caussade Semences SA	France	16
Böhm Nordkartoffel Agrarproduktion OHG	Germany	13
Maïsadour Semences SA	France	13
SESVanderHave NV/SA	Belgium	12
Sejet Planteforædling I/S	Denmark	11
<b>Total</b>		<b>477</b>

## Vegetable sector

Top 15 applicants	Country	Number of applications in 2013
Monsanto Vegetable IP Management BV	Netherlands	154
Nunhems BV	Netherlands	102
Rijk Zwaan Zaadteelt en Zaadhandel BV	Netherlands	96
Enza Zaden Beheer BV	Netherlands	52
Syngenta Crop Protection AG	Switzerland	41
Bejo Zaden BV	Netherlands	35
Vilmorin SA	France	27
De Groot en Slot Allium BV	Netherlands	14
Gautier Semences SAS	France	11
Laboratoire ASL SNC	France	7
Nirit Seeds Limited	Israel	7
Clause SA	France	6
Emmanuel Emylyanus Iruthayathan	Belgium	5
Monsanto Holland BV	Netherlands	5
Asparagus Beheer BV	Netherlands	4
<b>Total</b>		<b>566</b>

## Fruit sector

Top 15 applicants	Country	Number of applications in 2013
Driscoll Strawberry Associates Inc.	United States	13
Investigacion y Tecnologia de Uva de Mesa (ITUM) S. L.	Spain	12
PSB Produccion Vegetal S. L.	Spain	12
Agro Selections Fruits SAS	France	10
Florida Foundation Seed Producers Inc.	United States	10
Consorzio Italiano Vivaisti (CIV) Società Consortile a rl	Italy	9
Fall Creek Farm and Nursery Inc.	United States	9
Selección Plantas Sevilla S. L.	Spain	9
Star Fruits Diffusion SAS	France	9
CostaExchange	Australia	8
Institut de Recerca i Tecnologia Agroalimentaries (IRTA)	Spain	7
Instituto Valenciano de Investigaciones Agrarias (IVIA)	Spain	7
International Fruit Genetics LLC	United States	7
Agricultural Research & Development (ARD) LLC	United States	6
Agricultural Research Organisation	Israel	6
<b>Total</b>		<b>134</b>

## Ornamental sector

Top 15 applicants	Country	Number of applications in 2013
Anthura BV	Netherlands	110
Dümmen Group GmbH	Germany	55
Terra Nova Nurseries Inc.	United States	50
Testcentrum voor Siergewassen BV	Netherlands	38
Poulsen Roser A/S	Denmark	36
Fides BV	Netherlands	35
Nils Klemm	Germany	35
Suphachatwong Innovation Co. Ltd	Thailand	34
W. Kordes' Söhne Rosenschulen GmbH & Co. KG	Germany	32
Rosen Tantau KG	Germany	31
Dekker Breeding BV	Netherlands	25
Meilland International SA	France	24
Syngenta Crop Protection AG	Switzerland	24
Florist Holland BV	Netherlands	23
Vletter & Den Haan Beheer BV	Netherlands	22
<b>Total</b>		<b>595</b>

Applicants from outside the EU must appoint a representative with a registered office or with a domicile inside the EU to handle their applications. Sometimes, mother companies located

outside the EU appoint their daughter company in the EU; this is the case, for example, for Monsanto, Pioneer, Syngenta and Sakata. EU applicants do not have such an obligation; however, some of them prefer to outsource the application procedure to an external agent. In 2013, 1 346 applications (42.3 %; in 2012: 45.6 %) were filed by 150 procedural representatives. The following table lists the 15 most active procedural representatives for 2013, having submitted in total 801 applications.

Name of procedural representative	Country	Number of applications filed in 2013
Royalty Administration International CV	Netherlands	237
Hortis Holland BV	Netherlands	86
Deutsche Saatgutgesellschaft mbH. Berlin	Germany	79
Syngenta Seeds BV	Netherlands	63
Limagrain Europe SA	France	46
Ronald Houtman Sortimentsadvies	Netherlands	41
Monsanto SAS	France	35
Plantipp. BV	Netherlands	34
WürtenbergerKunze	Germany	34
Hans-Gerd Seifert	Germany	32
Limagrain Nederland BV	Netherlands	32
GPL International A/S	Denmark	25
Moerheim New Plant BV	Netherlands	22
Società Italiana Brevetti SpA	Italy	18
New Variety BV	Netherlands	17
<b>Total</b>		<b>801</b>

### 10.1.1. Ornamental species

With 50.2 % of the applications received in 2013, ornamentals continue to represent the largest group of applications filed for CPVRs. As can be seen in Graph 3, the ornamental sector remains the most important in terms of the number of applications each year. While in the early days of the Office the share of ornamentals was well above the 60 % mark it is now lingering around the 50 % threshold. There may be a number of reasons behind the decrease in share: merger of companies, refraining from protecting varieties or protecting



DUS trials on Phalaenopsis, Netherlands



DUS trials on *Matricaria* L., France

only a few varieties of a given series or seeking protection through other systems such as patents (where possible) or trademarks. Also, as breeders of ornamental varieties are mostly small or mid-size companies, the costs for variety protection take a higher share of the budget than for big players.

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

Table 1 shows the 10 most important ornamental crops in terms of the number of applications received over the last 5 years. Changes in the importance of most of these crops — with the exception of orchids — seem to be rather accidental. Also in 2013, roses and chrysanthemums remain by far the most important species. With the exception of *Dianthus* and *Calibrachoa*, all major species could reach or top the number of applications of the previous year.

**Table 1: Number of applications for the 10 most important ornamental species groups from 2009 to 2013, with a total covering 1995–2013**

Species	2009	2010	2011	2012	2013	Total (1995–2013)
<i>Rosa</i> L.	155	200	239	131	231	3515
<i>Chrysanthemum</i> L.	162	175	153	146	120	2952
<i>Pelargonium</i> L'Her. ex Aiton,	49	44	74	45	58	1418
<i>Calibrachoa</i> Llave & Lex. and <i>Petunia</i> Juss.	78	77	58	54	48	1116
<i>Lilium</i> L.	56	55	63	37	68	1035
<i>Gerbera</i> L.	63	37	58	36	47	949
<i>Dianthus</i> L.	29	61	30	54	34	814
<i>Phalaenopsis</i> Blume and x <i>Doritaenopsis</i> hort.	50	85	84	47	110	769
<i>Osteospermum</i> L.	28	32	24	24	24	518
<i>Anthurium andraeanum</i> Linden ex Andre	20	47	29	19	44	507
<b>Total</b>	<b>690</b>	<b>813</b>	<b>812</b>	<b>593</b>	<b>784</b>	

**Table 2: Number of applications received for *Mandevilla***

1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
2	1	0	0	0	2	2	3	5	14	9	12	7	23	29	16	19	144

Another crop that took a remarkable development was *Mandevilla*. After the first applications arrived in 1997, application numbers remained low until 2005. As from 2006, the Office received a considerable number of applications (see table 2). This trend is taken into account by UPOV where a special test guideline for this crop is under preparation.

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

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

The introduction in 2010 of the principle that any competent examination office can be entrusted for the DUS test of any species has resulted in a situation where, for a number of ornamental species, more than one examination office is available to undertake DUS examination. Whereas in the past a centralised testing situation existed, the CPVO has now to decide at which examination office a certain candidate variety is going to be examined. For that reason, the CPVO's Administrative Council has extended the criteria to be applied by the CPVO. Ornamental experts have nevertheless requested a better centralisation of species and the Administrative Council gave the mandate to the Office to develop a proposal. A new centralisation for crops with low application numbers may be expected in the course of 2014.

### 10.1.2. Agricultural species

The year 2013 showed a slight increase of 2.4 % in the number of applications but it remains lower than in 2011, when an all-time high had been reached. In 2013, agricultural varieties represented 24 % of all applications. The 800 applications received are still to be considered as important in that sector.

The following table shows the number of applications received per year over all agricultural species since 2009, as well as the total figure for the years 1995–2013.

	2009	2010	2011	2012	2013	Total (1995–2013)
All agricultural species	745	725	878	781	800	11 404

Table 3 shows the number of applications for the 10 most important agricultural species for the last 5 years.

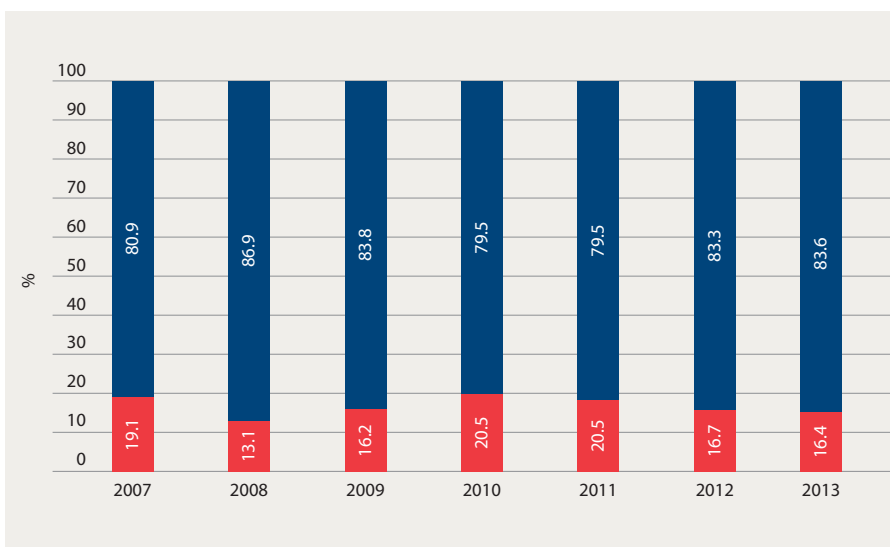
**Table 3:** Number of applications of the 10 most important agricultural species from 2009 to 2013, with a total covering 1995–2013

Species	2009	2010	2011	2012	2013	Total (1995–2013)
<i>Zea mays</i> L.	221	220	264	215	147	3 510
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	75	92	115	83	129	1 343
<i>Solanum tuberosum</i> L.	86	63	80	75	77	1 300
<i>Brassica napus</i> L. emend. Metzg.	95	75	71	107	82	995
<i>Hordeum vulgare</i> L. sensu lato	67	56	60	72	85	981
<i>Helianthus annuus</i> L.	46	66	73	42	67	728
<i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>altissima</i> Döll	18	7	18	17	22	280
<i>Lolium perenne</i> L.	20	19	30	20	43	269
<i>Triticum durum</i> Desf.	18	14	32	18	15	245
<i>Oryza sativa</i> L.	2	12	21	20	17	162
<b>Total</b>	<b>648</b>	<b>624</b>	<b>764</b>	<b>669</b>	<b>684</b>	

**Graph 4**

Evolution in percentage of the ratio of technical examinations to takeovers of DUS reports in the agricultural sector (2007–2013)

■ Technical examinations  
■ Takeovers



As in previous years, *Zea mays* is the most important species in the agricultural sector, although its number of applications decreased in 2013, as it had already in 2012. An important increase is observed for wheat applications, while oilseed rape applications decrease significantly. Potato applications remained stable at a high level; barley applications increased compared to the previous year.

Given that the large majority of applications refer to species that are covered by the EU seed directives, about 85 % of all applications have already undergone a DUS test when the CPVR application is filed, or the DUS test is at least ongoing. This allows the Office to take over the DUS report from entrusted examination offices, in accordance with Article 27 of the regulation (Commission Regulation (EC) No 874/2009), if it constitutes a sufficient basis for a decision. If this is not the case, the Office organises a technical examination carried out by an entrusted examination office (see Graph 4).



DUS trials on Sorgho, Spain



Cereals

### 10.1.3. Vegetable species

The year 2013 was a memorable one for the vegetable sector. It had the highest number of applications ever (587), which was in itself a huge 31 % increase on the previous year's figure. As was also the case in other crop sectors, several applicants held back making applications at the end of 2012 to profit from the lower application fee from 1 January 2013, although large numbers of vegetable applications continued to be received throughout 2013. The vegetable sector now accounts for 18 % of all CPVR applications, whereas in the past it had always accounted for about 12 % of the overall figure. It was also notable that three out of the five main applicants in 2013 came from the vegetable sector, including, for the first time ever, the top two places, for Monsanto Vegetable IP Management BV and Nunhems BV respectively.

As has been stated earlier in this chapter, there has been a great deal of concentration in the vegetable sector in recent years as a consequence of several acquisitions and mergers between seed companies. For a time there was a fear that this would lead to a rationalisation of breeding activities, leading to a subsequent reduction of new candidate vegetable varieties being put forward for protection. But as 2013 has demonstrated, the number of commercial varieties for which protection has been applied, and in particular hybrids, appears to be encouragingly healthy. The work of the ESA and the Anti-Infringement Bureau (AIB) for vegetable crops must be complimented here since, thanks to their support and encouragement, several seed companies have realised that CPVRs provide an effective 'insurance policy' against possible infringements of their varieties. Not only have several of the big seed companies substantially increased their portfolio of protected vegetable varieties, but some of the small and medium-sized companies have also seized upon this momentum.

As always, lettuce continues to be the top vegetable species, but 2013 nearly saw first place being taken by tomato, with a difference of just six applications between them. The progress of tomato in the league table of vegetable crops over the past decade has been commendable, so it will be interesting to see if 2014 will see lettuce and tomato swapping places. The three next main vegetable species also saw very strong growth in 2013,



DUS trials on peppers, France



DUS trials on courgette, France

although figures are still some way below the top two. Overall though, as illustrated by Table 4, there is now a shift of applications from field vegetables to greenhouse/salad vegetable crops, which probably also reflects consumers' preferences throughout the EU.

**Table 4: Number of applications of the 10 most important vegetable species from 2009 to 2013, with a total covering 1995–2013**

Species	2009	2010	2011	2012	2013	Total (1995–2013)
<i>Lactuca sativa</i> L.	110	127	118	104	135	<b>1 618</b>
<i>Solanum lycopersicum</i> L.	66	40	72	71	129	<b>678</b>
<i>Phaseolus vulgaris</i> L.	14	16	28	25	10	<b>431</b>
<i>Pisum sativum</i> L.	13	17	27	24	24	<b>366</b>
<i>Capsicum annuum</i> L.	20	37	38	33	48	<b>330</b>
<i>Cucumis sativus</i> L.	40	13	21	22	44	<b>241</b>
<i>Cucumis melo</i> L.	12	29	20	20	41	<b>223</b>
<i>Cichorium endivia</i> L.	4	6	12	16	11	<b>149</b>
<i>Allium cepa</i> (Cepa group)	9	11	6	16	16	<b>134</b>
<i>Spinacia oleracea</i> L.	12	15	17	9	9	<b>124</b>
<b>Total</b>	<b>300</b>	<b>311</b>	<b>359</b>	<b>340</b>	<b>467</b>	

Aside from the good figures outlined above, 2013 was also a busy year with other matters in the vegetable sector within the CPVO. Foremost amongst these were the continuing discussions on disease resistance characteristics in CPVO vegetable protocols. In October, the Administrative Council of the CPVO decided to maintain the moratorium on any new asterisked (obligatory) disease resistance characteristics being added to CPVO protocols. Parallel to this, the Office held discussions with breeders, entrusted examination offices and other interested parties in relation to this matter, so as to find possible solutions to resolve the current deadlock. After the gathering and analysing the various opinions, the Office formulated the following three proposals, which were presented at the annual vegetable experts meeting in the beginning of December.

- (i) Establish a running-in phase in the adoption of asterisked disease resistance characteristics in CPVO protocols.
- (ii) Possible deletion of the asterisks from the corresponding CPVO protocols.
- (iii) Create a two-tier system for DUS testing in vegetables, one for plant breeders' rights and the other for national listing.

The first proposal received widespread support during the meeting, whilst the second one required further investigation. The third option was discarded by most participants. The CPVO will therefore analyse the first two options in greater detail during the course of 2014, whilst also seeking the assistance of its stakeholders concerned by the matter.

#### 10.1.4. Fruit species

The number of fruit CPVR applications in 2013 increased to 255. Over 75 % of the applications were made for varieties of 10 crops. The top three crops in 2013 were peach, strawberry and grapevine. A significant decrease compared to previous years was noted for apple applications.

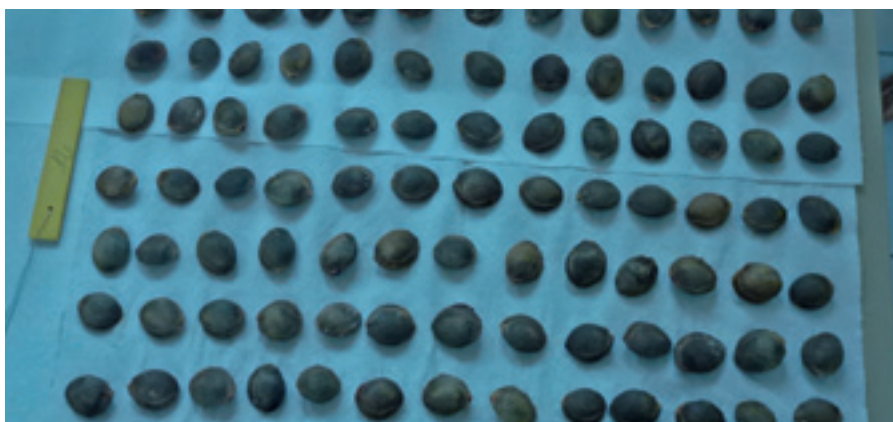
Discussions with the stakeholders in the fruit sector continued in 2013 with regard to ways to optimise DUS testing for this sector. The results were presented of the R & D project, carried out by the entrusted examination offices for a set of species, on the differences in results between the first satisfactory fruiting period and the second satisfactory fruiting for varieties that have completed DUS testing in recent years. It was established that reducing the number of observation years would lead to a less reliable variety description. It was questionable, though, whether this would affect the reliability of the title being granted. The issue will be further investigated in 2014.

**Table 5:** Number of applications of the 10 most important fruit species from 2009 to 2013, with a total covering 1995–2013

Species	2009	2010	2011	2012	2013	Total (1995–2013)
<i>Prunus persica</i> (L.) Batsch	64	68	54	46	43	725
<i>Fragaria x ananassa</i> Duchesne ex Rozier	18	25	35	31	39	456
<i>Malus domestica</i> Borkh.	30	19	17	27	15	399
<i>Prunus armeniaca</i> L.	8	7	7	27	11	221
<i>Vitis</i> L.	16	15	15	10	34	171
<i>Rubus idaeus</i> L.	6	5	9	22	13	126
<i>Vaccinium</i> L.	0	4	8	23	19	101
<i>Prunus salicina</i> Lindl.	2	6	3	3	8	99
<i>Prunus avium</i> (L.) L.	3	13	1	7	4	96
<i>Rubus</i> subg. <i>Eubatus</i> sect. <i>Moriferi</i> & Ursini	4	1	2	5	10	35
<b>Total</b>	<b>151</b>	<b>163</b>	<b>151</b>	<b>201</b>	<b>196</b>	



DUS trials on *Cucumis melo* L., France



DUS trials on *Cucumis melo* L., France

The issue of reference varieties was discussed as being of particular importance for candidate mutation varieties where, in some cases, it seems necessary to have reference varieties of the same age and the same rootstock. Other possibilities were considered, such as providing further technical information, a DNA analysis or even providing a fruit sample in advance of submitting the plant material in order to avoid having an imprecise DUS trial and subsequent delays when it was discovered that the most similar comparison variety was not planted at the outset of the examination.

In the course of the year, further harmonisation among the entrusted examination offices was achieved as regards the plant material submission requirements for some crops, including grapevine.

### 10.1.5. Origin of the applications

Since the creation of the CPVO, applications have been received from over 50 countries. Nearly every year, more than one third of all applications received have originated from the Netherlands, underpinning the important role of that country in the breeding sector. The Netherlands is followed, quite some distance behind, by France, Germany and the United States. In 2013 only minor fluctuations were observed in the origin of applications. The table below gives an overview of the number of applications received from different European countries in 2013.

**Table 6: The EU Member States from which CPVR applications were filed in 2013**

Country of main applicant	Number of applications received in 2013
Netherlands	1226
France	509
Germany	440
Denmark	152
Italy	102
United Kingdom	91
Spain	90
Belgium	52
Poland	34
Austria	14
Sweden	13
Hungary	10
Czech Republic	8
Ireland	7
Slovakia	4
Slovenia	3
Finland	2
Latvia	2

Table 7 shows the application numbers for the 10 most important countries outside the EU.

**Table 7: The non-EU countries from which CPVR applications were filed in 2013**

Country of main applicant	Number of applications received in 2013
United States	198
Switzerland	86
Japan	58
Australia	46
Israel	40
Thailand	38
Republic of China, Taiwan	19
New Zealand	16
China	13
Argentina	9
South Africa	8
Brazil	2
Chile	2
Canada	1
Monaco	1
French Polynesia	1

## 10.2. Grants of protection

In 2013 the Office granted 2 706 titles for Community protection, which represents the highest number ever granted by the CPVO within a calendar year. A detailed list of all varieties under protection (as of 31 December 2013) is published on the CPVO website, in the separate annex to this annual report.

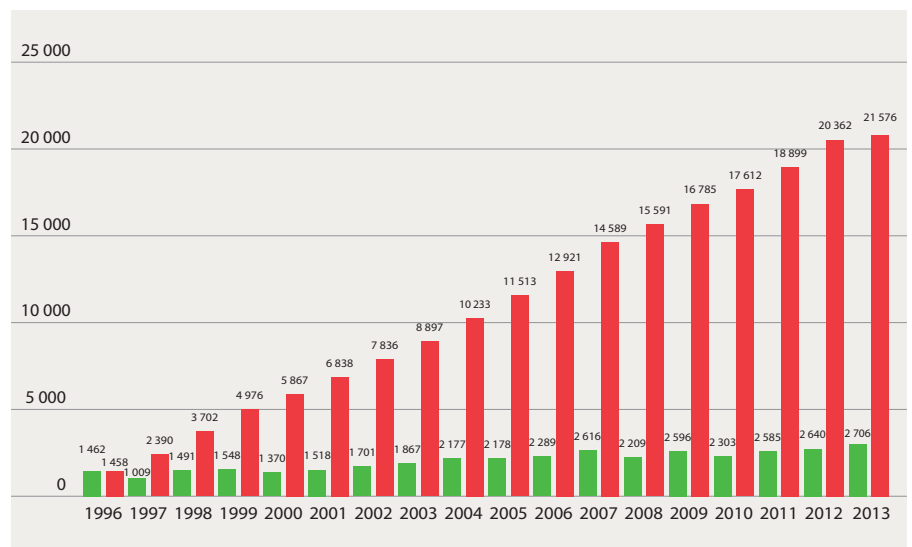
By the end of 2013 there were 21 576 CPVRs in force. Graph 5 shows the number of titles granted for each year from 1996 to 2013 and illustrates the continuous increase in the number of varieties under protection within the Community system.

The development in the number of CPVRs in force must be seen in conjunction with the number of rights surrendered (Graph 6). The number of rights granted still greatly outweighs the number of surrenders. As older varieties are replaced by newer ones, the

**Graph 5**

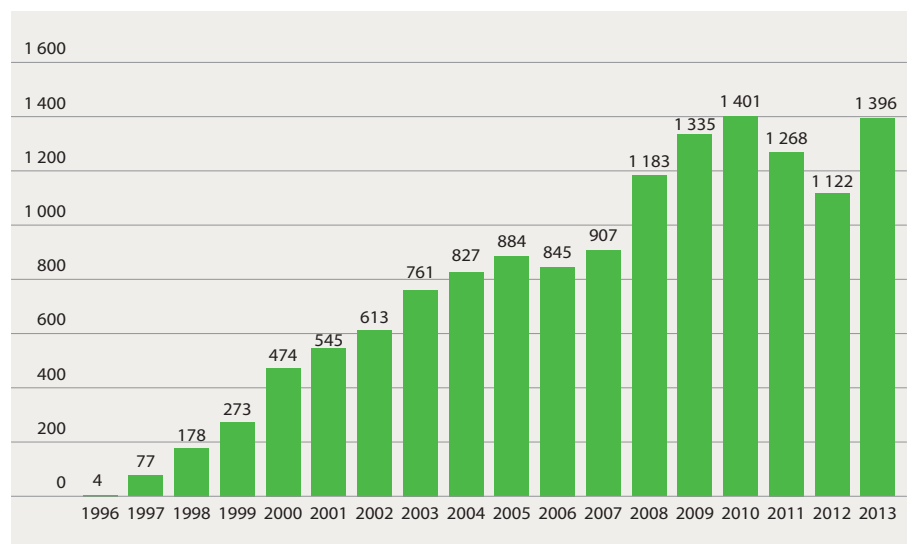
Community plant variety rights granted and rights remaining in force at the end of each year from those granted per year (1996–2013)

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



**Graph 6**

Number of surrenders of Community plant variety rights (1996–2013)



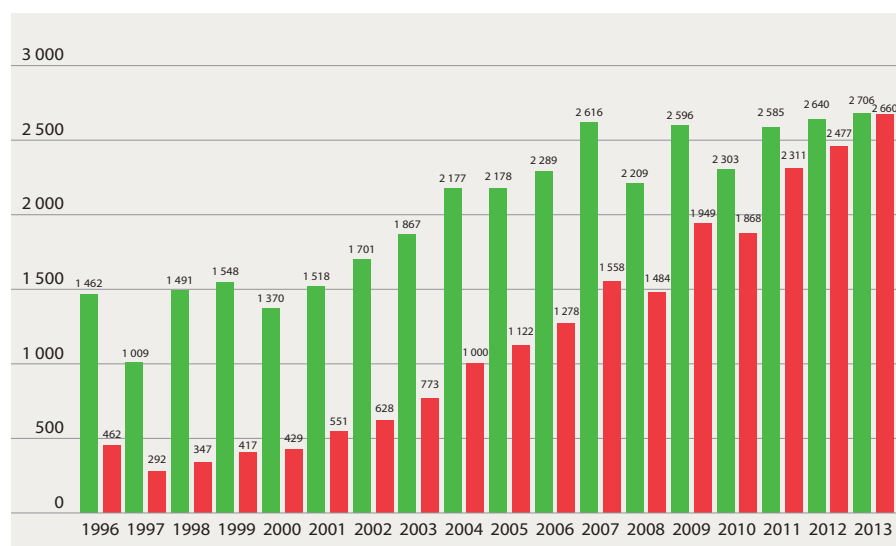
number of surrenders is expected to approach more closely the number of applications. The regular increase in the number of surrenders is therefore not a surprise. After having seen an important drop in surrenders in 2011 and 2012, the expected trend of increasing numbers of surrenders was observed in 2013.

Graph 7 shows the number of rights granted in the years 1996 to 2013 and those still in force on 31 December 2013. A large number of rights are surrendered within a few years. The CPVR system is still too young to say how many varieties will actually enjoy their full term of protection of 25 or 30 years. However, figures suggest that it will be a relatively small percentage of all the varieties once protected. This also suggests that the current period of protection might generally be rather well adapted to the needs of breeders. This does not preclude the idea that, for some individual species, crop-specific situations might exist.

**Graph 7**

Number of rights granted each year from 1996 to 2013 and those remaining in force on 31 December 2013 from those granted per year

■ Number of rights granted  
■ Number of rights remaining in force



At the end of 2013, of the 36 265 rights granted in total, 21 576 (59.5 %) were still active. Table 8 illustrates that fruit varieties are generally kept protected for a longer period and that, within each crop sector, the situation varies from species to species. There might be a number of reasons for this phenomenon, such as a change in consumer preferences, breeding trends, differences in intensity of breeding activities, the time and expense required to develop new varieties or — as it may be assumed for *Phalaenopsis* — their rather recent boom in plant breeding.

**Table 8:** Percentage of granted rights that were still in force on 31 December 2013

Crop sector	Species	Proportion %
<b>Agricultural</b>		<b>62</b>
	<i>Festuca rubra</i> L.	88
	<i>Solanum tuberosum</i> L.	69
	<i>Triticum aestivum</i> L. emend. Fiori et Paol.	62
	<i>Zea mays</i> L.	57
	<i>Hordeum vulgare</i> L. sensu lato	56
<b>Vegetable</b>		<b>69</b>
	<i>Daucus carota</i> L.	88
	<i>Capsicum annuum</i> L.	81
	<i>Solanum Lycopersicum</i> L.	78
	<i>Lactuca sativa</i> L.	61
	<i>Cichorium endivia</i> L.	54
<b>Ornamental</b>		<b>55</b>
	<i>Clematis</i> L.	89
	<i>Phalaenopsis</i> Blume & <i>Doritaenopsis</i> hort.	72
	<i>Rosa</i> L.	52
	<i>Chrysanthemum</i> L.	51
	<i>Gerbera</i> L.	26
<b>Fruit</b>		<b>80</b>
	<i>Prunus avium</i> (L.) L.	91
	<i>Malus domestica</i> Borkh.	82
	<i>Prunus domestica</i> L.	80
	<i>Prunus persica</i> (L.) Batsch	78
	<i>Fragaria</i> × <i>ananassa</i> Duch.	69

### 10.3. Technical examinations

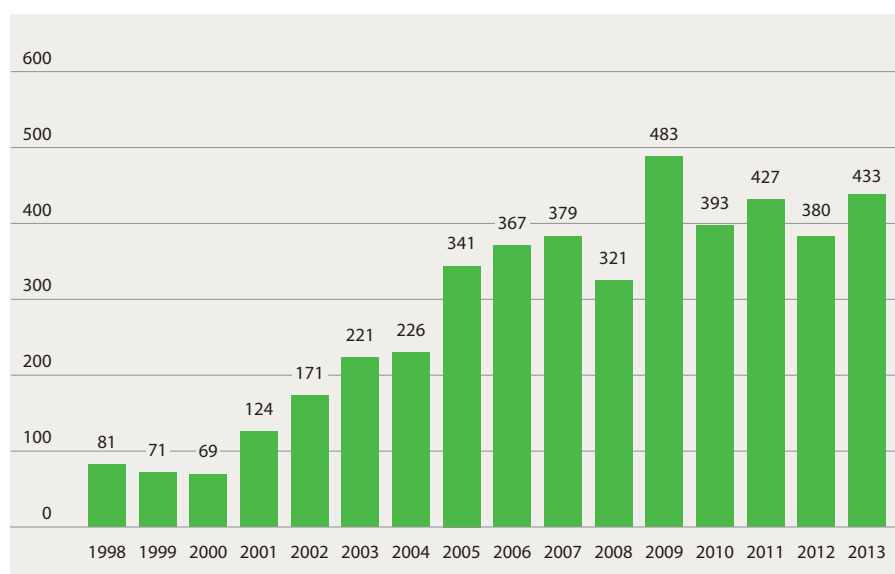
In 2013 the CPVO initiated 2 086 technical examinations, 299 more than in 2012. The increase is of course linked to an increasing number of applications. For vegetable and agricultural crops, a large number of technical examinations have already been carried out under the framework of the national listing procedure. If such a technical examination has been carried out by an entrusted examination office, the CPVO can base its decision to grant CPVRs on a technical examination which has been carried out in the framework of a national application.

### 10.3.1. Sales of reports

National authorities from all over the world regularly base their decisions on applications for plant variety rights on technical examinations carried out on behalf of the CPVO (international cooperation, takeover of reports). Graph 8 illustrates the number of reports the Office has made available to national authorities.

**Graph 8**

Evolution of the number of DUS testing reports made available to other plant variety rights authorities (1998–2013)



By the end of 2013 the Office had sold 4 488 technical reports to 52 countries. During that year, South America continued to be the region from which most requests emanated (Table 9). In general most requests concern ornamental varieties. In 2013 the Office received 695 requests, which is the second best figure after the record year 2009, with 728 requests received.

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

**Table 9: The 10 countries that have bought the most DUS technical reports from the CPVO (1998–2013)**

Country	Number of reports bought
Israel	546
Brazil	475
Ecuador	423
Colombia	414
Switzerland	336
Canada	251
Kenya	248
Norway	240
New Zealand	203
France	199

## 10.3.2. Relations with examination offices

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

In December 2013 the CPVO held its 17th annual meeting with its examination offices, which is also attended by representatives from the European Commission, the UPOV office and the breeders' organisations — Ciopora, the ESA and Plantum. The main subjects of discussion were:

- time limits for examination offices to submit interim reports;
- the centralisation of DUS testing of ornamental species with low application numbers (so-called small species);
- the duties and responsibilities of a technical liaison officer (see also Section 10.4);
- the Office's feedback to examination offices when monitoring the growing trials;
- the use and user-friendliness of the database in which the discussion documents of the annual meetings with the examination offices are stored;
- the Variety Finder database and the cooperation in variety denomination testing;
- various legal matters, such as aspects on the 'one key, several doors' principle, according to which one DUS examination would be sufficient for the official variety listing as well as for the granting of plant variety rights, the public access of data held by examination offices, the status of plant material submitted for DUS testing and reporting on cases decided by the Court of Justice.

Furthermore, the participants were informed on the state of play of R & D projects and of IT projects such as the electronic exchange of documents with examination offices and the pilot project of sharing the online application system.

### 10.3.2.2. Preparation of CPVO protocols

In 2013, experts from the Member States' examination offices were invited to participate in drawing up or revising technical protocols for DUS testing, which either were

subsequently approved by the Administrative Council or can be expected to be approved in 2014. The following meetings were held.

- Agricultural experts: in 2013, no technical protocols were adopted. The discussion on protocols continued for the species barley, durum wheat and linseed/flax.
- Fruit experts: in 2013, no technical protocols were adopted. The discussion on protocols continued for grapefruit/pummelo, raspberry and pomegranate. These are all expected to be approved in March 2014.
- Vegetable experts: the approval in 2013 of the revision of the technical protocols for spinach, radish/black radish, globe artichoke and parsnip, and partial revision of the protocol for tomato. Discussion at the end of 2013 on the creation of a new protocol for tomato rootstocks, on the revision of the endive and watermelon protocols and on the partial revision of the vegetable marrow/squash protocol. These are all expected to be approved in March 2014.
- Ornamentals experts: the technical protocol for *Calibrachoa* was revised. The adoption of newly drawn-up technical protocols for *Agapanthus*, *Bougainvillea*, *Dianella*, *Hebe*, *Hibiscus syriacus* and *Lobelia*, as well as the revised technical protocols of *Osteospermum* and *Phalaenopsis*, is expected for March 2014.

#### 10.3.2.3. Crop experts' meetings

Two meetings with agricultural experts were held in 2013. The first was held in the United Kingdom (Scotland) in order to visit the ring test of potatoes which was conducted by nine entrusted examination offices during 2013.

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

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



Vegetable experts meeting, December 2013, Angers

The discussion was continued, from 2011, as regards the testing of parental lines in oilseed rape when the subject of the application is a hybrid variety. It was agreed that, for hybrid varieties, according to the technical protocol, parental lines must be tested in the same way as any other variety, however, in case breeders have difficulties in providing the requested amount of seed for certain parent lines, they might be exempted from examination.

The experts' group got a short presentation summarising the actual state of play of all ongoing R & D projects.

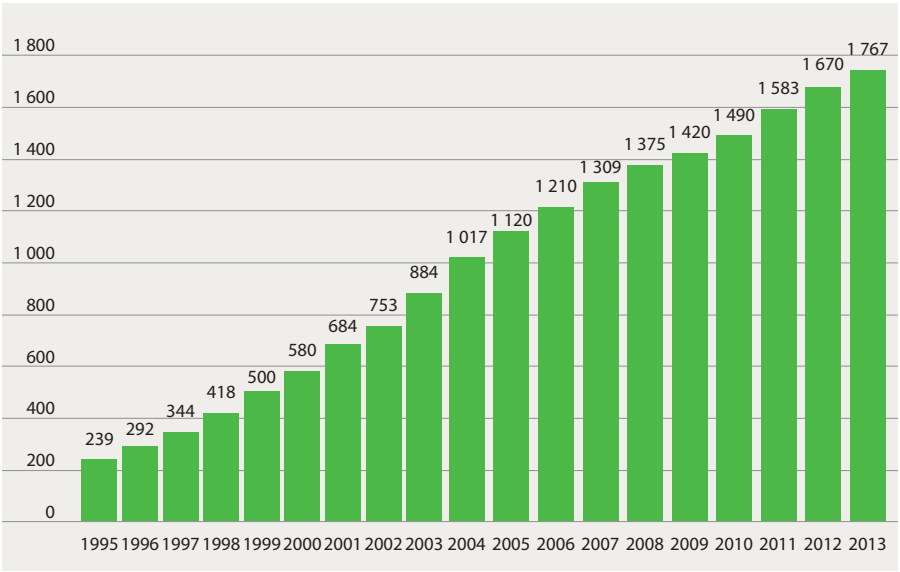
A meeting of fruit experts was held in October to discuss new and revised TPs in the fruit sector; further harmonisation of requirements for acceptance of plant material; the feasibility of the reduction in duration/costs of fruit technical examinations; preparation of the apple open day; and a follow-up of the R & D project 'Management of peach tree reference collections'.

A meeting of vegetable experts was held in December to discuss the protocols mentioned previously; working rules on DUS testing of vegetable varieties in two separate locations; the ongoing subject of disease resistance testing issues (see Section 10.1.3 for further details); greater cooperation between entrusted examination offices; vegetable species covered by EU seed directives but without a CPVO protocol; and the agreement between experts to launch the proposal for a new 1-year-long collaborative R & D project entitled 'Effect seed priming on vegetable DUS tests', which will be coordinated by the CPVO and which will investigate tomato rootstock and aubergine as the pilot species.

### 10.3.2.4. New species

In 2013 the Administrative Council of the CPVO entrusted examination offices for a number of botanical taxa resulting from the so-called new species inventories (61 different taxa). The following table states the taxa for which new examination offices were entrusted in 2013 to conduct the technical examination (55 taxa). Graph 9 shows the evolution of

**Graph 9**  
Evolution of the number of botanical taxa for which the CPVO received applications (1995–2013)



the number of taxa for which the Office has received applications for Community plant variety protection.

At the end of 2013 the CPVO started a project to improve the procedure by computerisation. The purpose is to make the whole process more efficient and more transparent in order to save work, but also to give the possibility for all examination offices to be aware of the species which the other examination offices may be interested in.

**Table 10: List of new species entrusted to examination offices in 2013**

Botanical taxon	Examination offices entrusted
<i>Actaea racemosa</i> L. (syn. <i>Cimicifuga racemosa</i> (L.) Nutt.) x <i>A. simplex</i> (DC.) Wormsk. ex Prantl (syn. <i>Cimicifuga simplex</i> (DC.) Wormsk. ex Turcz.)	Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Adenophora pereskiiifolia</i> (Fisch.) Fisch. ex G. Don (syn. <i>Adenophora latifolia</i> Fisch.)	Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Agave attenuata</i> Salm-Dyck	Germany — Bundessortenamt Netherlands — Naktuinbouw
<i>Arabis alpina</i> L. subsp. <i>caucasica</i> (Willd.) Briq. (syn. <i>Arabis caucasica</i> Willd.)	Germany — Bundessortenamt United Kingdom — NIAB
<i>Arthropodium candidum</i> Raoul	Germany — Bundessortenamt Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Astroloba spiralis</i> (L.) Uitewaal (syn. <i>Haworthia spiralis</i> (L.) Duval; <i>Haworthia pentagona</i> (Aiton) Haw.)	Netherlands — Naktuinbouw
<i>Carex phyllocephala</i> T. Koyama	Denmark — University of Aarhus Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Clematis cadmia</i> Buch.-Ham. ex Hook. f. & Thomson	Netherlands — Naktuinbouw Poland — Coboru United Kingdom — NIAB
<i>Clematis courtoisii</i> Hand.-Mazz.	Netherlands — Naktuinbouw Poland — Coboru United Kingdom — NIAB
<i>Delosperma nubigenum</i> (Schltr.) L. Bolus	Netherlands — Naktuinbouw
<i>Digitalis chalcantha</i> (Svent. & O'Shan.) Albach et al. x <i>D. purpurea</i> L.	United Kingdom — NIAB
<i>Dracaena surculosa</i> Lindl.	Netherlands — Naktuinbouw
<i>Elettaria cardamomum</i> (L.) Maton	Netherlands — Naktuinbouw
<i>Eriobotrya japonica</i> (Thunb.) Lindl.	Spain — OEVV
<i>Fagopyrum tataricum</i> (L.) Gaertn.	Poland — Coboru
<i>Ficus benghalensis</i> L.	Netherlands — Naktuinbouw
<i>Ficus punctata</i> Thunb.	Netherlands — Naktuinbouw
<i>Helianthus decapetalus</i> L.	United Kingdom — NIAB Germany — Bundessortenamt
<i>Hesperaloe parviflora</i> (Torr.) J. M. Coult.	Hungary — NÉBIH Netherlands — Naktuinbouw
<i>Lathyrus sativus</i> L.	France — GEVES
<i>Leucadendron discolor</i> E. Phillips & Hutch. x <i>L. laureolum</i> (Lam.) Fourc.	Portugal — DGAV United Kingdom — NIAB
<i>Leucospermum</i> R. Br.	Germany — Bundessortenamt
<i>Leucothoe keiskei</i> Miq.	Netherlands — Naktuinbouw Poland — Coboru
<i>Lewisia cotyledon</i> (S. Watson) B. L. Rob.	Germany — Bundessortenamt Netherlands — Naktuinbouw United Kingdom — NIAB

<i>Ligustrum obtusifolium</i> Siebold & Zucc.	Germany — Bundessortenamt Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Magnolia laevifolia</i> (Y. W. Law & Y. F. Wu) Noot. (syn.: <i>Michelia yunnanensis</i> Franch. ex Finet & Gagnep.)	France — GEVES
<i>Mandevilla splendens</i> (Hook. f.) Woodson	Netherlands — Naktuinbouw
<i>Mecardonia procumbens</i> (Mill.) Small	Germany — Bundessortenamt United Kingdom — NIAB
<i>Molinia arundinacea</i> Schrank	Netherlands — Naktuinbouw
<i>Nerine bowdenii</i> W. Watson	Netherlands — Naktuinbouw
<i>Ostrya carpinifolia</i> Scop.	Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Pennisetum advena</i> Wipff & Veldkamp	United Kingdom — NIAB
<i>Pennisetum americanum</i> (L.) Leeke subsp. <i>stenostachyum</i> (Klotzsch ex. Müll. Berol.) Brunken	Netherlands — Naktuinbouw
<i>Pennisetum purpureum</i> Schumach. x <i>P. squamulatum</i> Fresen	Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Peperomia prostrata</i> B. S. Williams	Netherlands — Naktuinbouw
<i>Philadelphus delavayi</i> L. Henry x <i>Ph. microphyllus</i> A. Gray	Germany — Bundessortenamt Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Protea burchellii</i> Stapf. x <i>P. obtusifolia</i> H. Buek ex Meisn.	Portugal — DGAV
<i>Prunus</i> L. ( <i>P. armeniaca</i> L. x <i>P. cerasifera</i> Ehrh. x <i>P. pumila</i> L. var. <i>besseyi</i> (L.H. Bailey) Gleason)	Germany — Bundessortenamt France — GEVES Hungary — NÉBIH Spain — OEVV
<i>Prunus</i> x <i>schmittii</i> Rehder	Germany — Bundessortenamt France — GEVES Hungary — NÉBIH
<i>Rhipsalis clavata</i> F. A. C. Weber	Netherlands — Naktuinbouw
<i>Rhipsalis lindbergiana</i> K. Schum.	Netherlands — Naktuinbouw
<i>Rhodohypoxis</i> Nel	Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Rubus idaeus</i> L. x <i>R. parvifolius</i> L.	Germany — Bundessortenamt Poland — Coboru Hungary — NÉBIH
<i>Salix udensis</i> Trautv. & C. A. Mey. (syn. <i>Salix sachalinensis</i> F. Schmidt)	Germany — Bundessortenamt Poland — Coboru
<i>Salix</i> x <i>dasyclados</i> Wimm. x <i>Salix rehderiana</i> C. K. Schneid.	Germany — Bundessortenamt Poland — Coboru
<i>Sansevieria ehrenbergii</i> Schweinf. ex Baker	Netherlands — Naktuinbouw
<i>Solidago canadensis</i> L. x <i>S. virgaurea</i> L.	Netherlands — Naktuinbouw
<i>Stachys byzantina</i> K. Koch x <i>S. debilis</i> Kunth	Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Syzygium australe</i> (J. C. Wendl. ex Link) B. Hyland	United Kingdom — NIAB
<i>Thalictrum delavayi</i> Franch.	Netherlands — Naktuinbouw United Kingdom — NIAB
<i>Tibouchina foveolata</i> (Naudin) Cogn. (syn. <i>T. organensis</i> Cogn.) x <i>Tibouchina mutabilis</i> (Vell.) Cogn.	Netherlands — Naktuinbouw
<i>Trigonella foenum-graecum</i> L.	France — GEVES
<i>Vaccinium angustifolium</i> Aiton x <i>V. corymbosum</i> L.	Poland — Coboru
<i>Wisteria floribunda</i> (Willd.) DC.	Germany — Bundessortenamt
x <i>Amarine tubergenii</i> Sealy	Netherlands — Naktuinbouw

## 10.4. Technical liaison officers (TLOs)

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

The following principles apply.

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

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

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

The latest version of the list of appointed TLOs (as of 31 December 2013) is as follows.

John Austin	Executive Agency of Variety Testing Ministry of Agriculture and Food Field Inspection and Seed Control Bulgaria
Bronislava Bátorová	UKSUP Central Controlling and Testing Institute in Agriculture Variety Testing Department Slovakia
Alexandra Chatzigeorgiou	Ministry of Rural Development and Food Variety Research Institute of Cultivated Plants Greece
Mihaela Ciora	State Institute for Variety Testing and Registration (ISTIS) Romania
John Claffey	Department of Agriculture, Food and the Marine Office of the Controller of Plant Breeders' Rights Ireland
Teresa Coelho	Direção Geral de Alimentação e Veterinária Portugal
Maureen Delia	Ministry for Resources and Rural Affairs Seeds and Other Propagation Material Unit Plant Health Directorate Malta
Gerhard Deneken	Ministry of Food, Agriculture and Fisheries Danish AgriFish Agency Department of Variety Testing Denmark
Françoise De Schutter	OPRI Office de la propriété intellectuelle Belgium
Kees van Ettehoven	Naktuinbouw The Netherlands
Barbara Färnweiger	Bundesamt für Ernährungssicherheit Austria
Zsuzsanna Füstös	National Food Chain Safety Office (NÉBIH) Directorate of Plant Production and Horticulture Hungary
Sigita Juciuvienė	Ministry of Agriculture Lithuanian State Plant Service Lithuania
Sofija Kalinina	State Plant Protection Service Division of Seed Certification and Plant Variety Protection Latvia
Marcin Król	Coboru Research Centre for Cultivar Testing Centralny Ośrodek Badań Odmian Roślin Uprawnych Poland
Paivi Mannerkorpi	European Commission Directorate-General for Health and Consumers Unit E.2 — Plant health Belgium

Clarisse Maton	GEVES Groupe d'étude et de contrôle des variétés et des semences France
Kyriacos Mina	Ministry of Agriculture, Natural Resources and Environment Agricultural Research Institute Cyprus
Kaarina Paavilainen	Finnish Food Safety Authority Evira Finland
Laima Puur	Agricultural Board Estonia
Helena Rakovec	Ministry of Agriculture, Forestry and Food Phytosanitary Administration of the Republic of Slovenia Slovenia
Mara Ramans	Food and Environment Research Agency (FERA) United Kingdom
Ivana Rukavina	Croatian Centre for Agriculture Food and Rural Affairs Institute for Seed and Seedlings Croatia
Beate Rücker	BSA Bundessortenamt Germany
Radmila Safarikova	UKZUZ Central Institute for Supervising and Testing in Agriculture Czech Republic
Luis Salaices Sánchez	OEVV Oficina Española de Variedades Vegetales Ministerio de Agricultura, Alimentación y Medio Ambiente Spain
Karin Sperlingsson	Statens Jordbruksverk Sweden
Domenico Strazzulla	Ministero delle Politiche Agricole Alimentari e Forestali Dipartimento della Politiche Competitive del Mondo Rurale e della Qualità Italy
Marc Weyland	Administration des Services Techniques de l'Agriculture Service de la Production Végétale Luxembourg

# 11. VARIETY DENOMINATIONS

## 11.1. The CPVO Variety Finder: latest developments

The CPVO Variety Finder is a web-based database developed by the Office in 2005 for the purpose of testing variety denominations proposals in the procedure of assessment of their suitability.

It contains national data on varieties applied for and on varieties granted plant variety rights, national listings of agricultural and vegetable species and some commercial registers.

The database is freely available under the 'Databases' heading of the CPVO website but requires an identification. The assignment of a login and password is computerised and takes place immediately upon request.

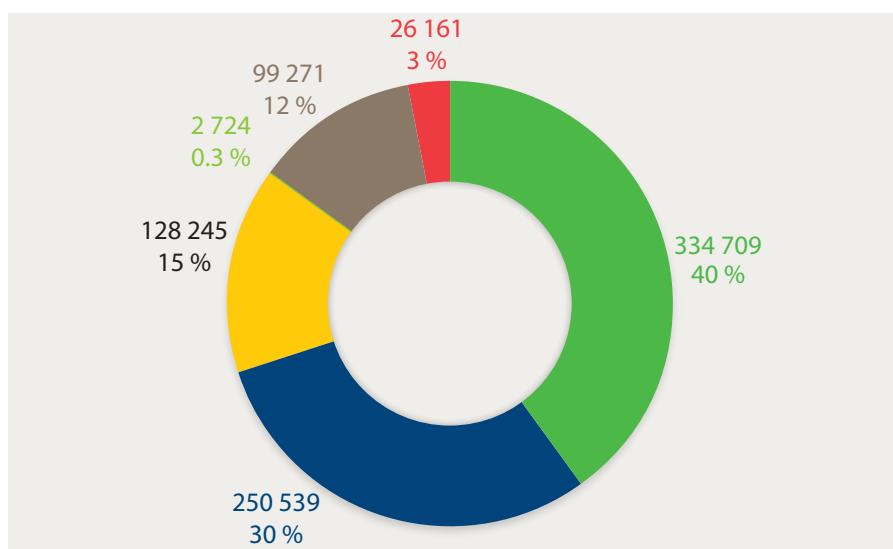
In total, more than 850 000 denominations originating from EU and UPOV Member States have been included so far.

Graph 10 below shows an overview of the content of the database with the number of records per type of register.

**Graph 10**

Number of records per type of register

- Reference list
- Plant Patents
- Other registers
- Commercial registers
- Plant breeders' rights
- National listing



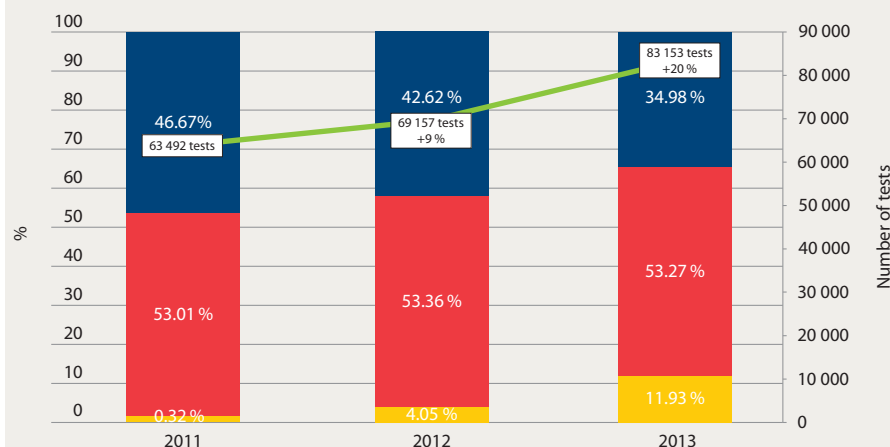
For the purpose of testing proposed denominations for similarity, the system includes a search tool widely used by users from 43 different EU Member States and non-EU countries.

Graph 11 below shows the number of tests for similarity performed in the database by national or international authorities and CPVO clients over the last 3 years. More than 83 000 tests were launched in 2013; this represents an increase of 20 % compared to 2012.

**Graph 11**

Number of tests performed by:

- Clients
- National or international authorities
- Other categories
- Total number of tests



A retrieval tool allows more general searches for details on varieties or species present in the database.

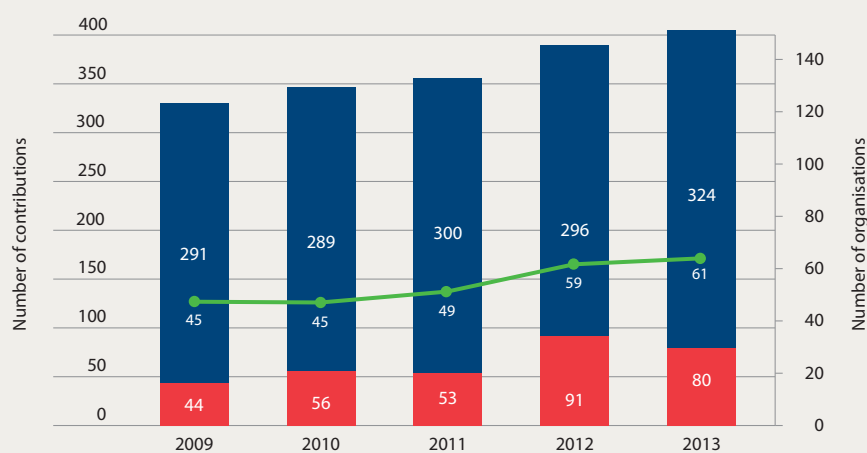
This retrieval tool, named 'Search varieties', was developed in 2012, making more information available for each variety and allowing users to export the desired information to an Excel sheet.

The Office receives contributions directly from EU Member States in respect of official and commercial registers, and via UPOV for most non-EU countries. The Office puts great effort into keeping the database as up-to-date as possible: 90 % of the 400 contributions received in 2013 were dealt with within 5 days. There has been a steady increase in the number of contributions submitted per year since 2009, as illustrated below. This increase continued in 2013, noticeably through contributions from new non-EU countries.

**Graph 12**

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

- EU Member States
- Non-EU countries
- Number of organisations



Most of these contributions are provided by UPOV in the framework of a memorandum of understanding, but are also collected by the CPVO in the case of EU neighbouring countries participating in the multi-beneficiary programme.

## 11.2. An increased use of the service of cooperation with EU Member States

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

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

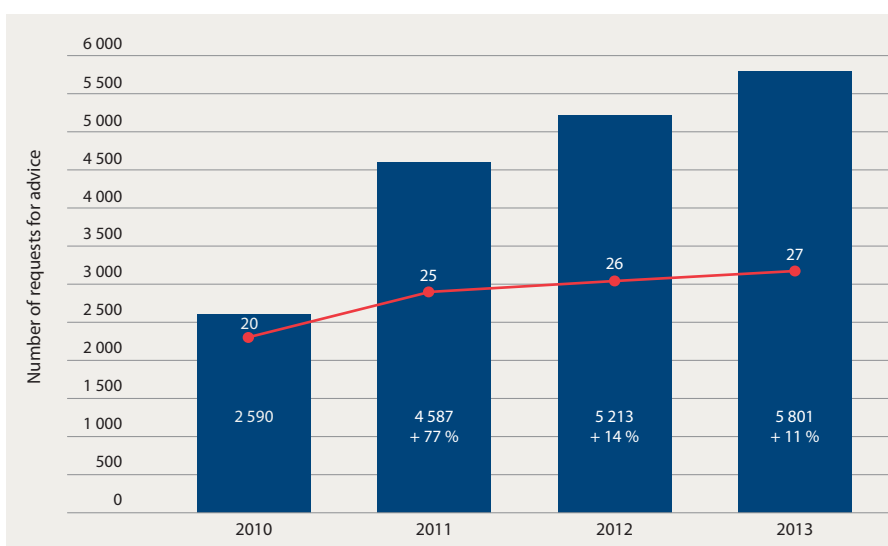
In March 2010 the CPVO put in place a web-based system whereby EU Member States can request advice from the CPVO before publishing an official proposal for denomination in the plant variety rights or listing procedure. In the case of controversial opinions, exchanges of view can take place, but the decision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

With an 11 % increase in the number of requests for advice, the Office dealt with a total of 5 800 requests in 2013. This confirms the success of this project, as illustrated in Graph 13 below. Most EU Member States request advice, but some of them started to do it on a more systematic basis in 2013, and this is the main explanation for the year-on-year growth so far.

**Graph 13**

Evolution of the yearly number of requests for advice and contributing EU Member States (2010–2013)

— contributing EU Member States

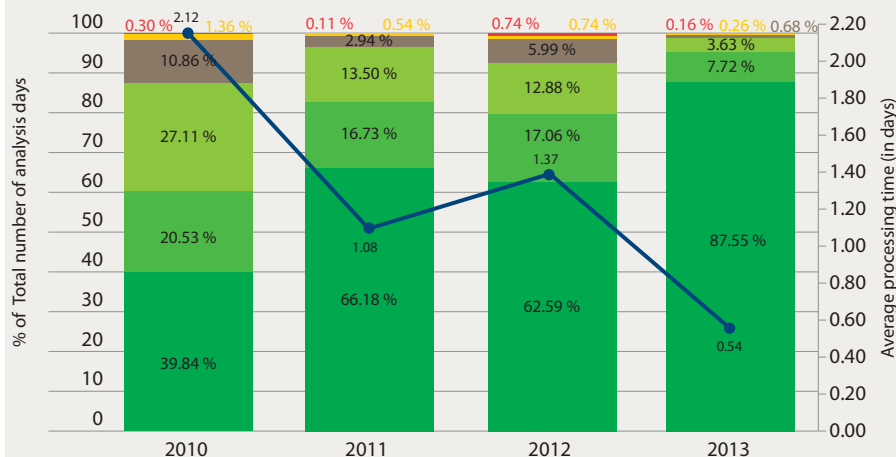


**Graph 14**

Shares in processing time per year in average duration of analysis in days

**Processing time**

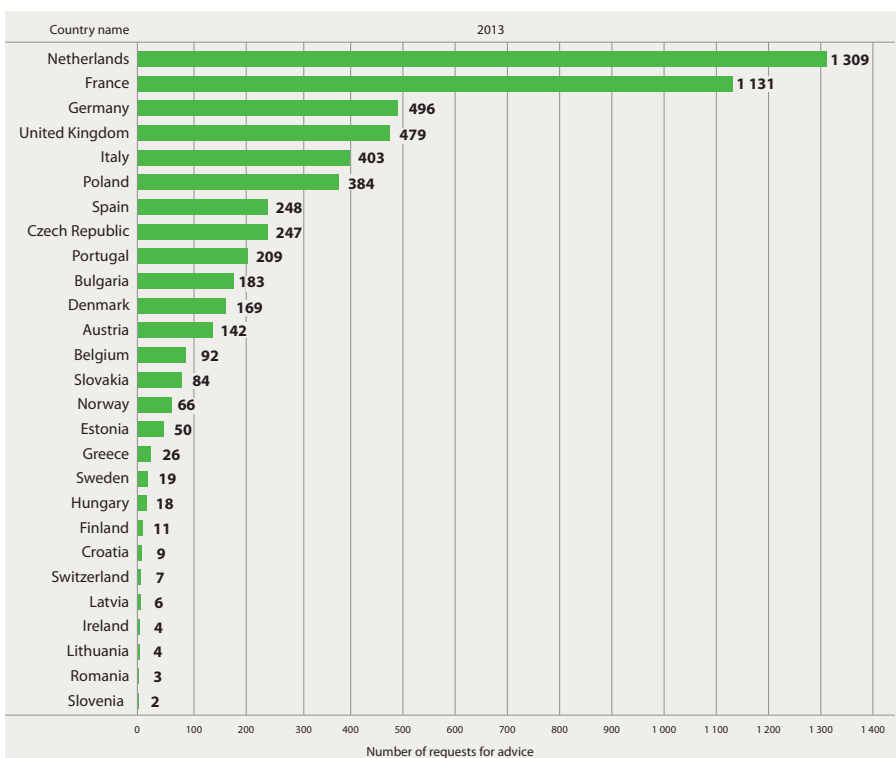
- within 24 hours
- 1–2 working days
- 3–5 working days
- 6–10 working days
- 11–15 working days
- > 16 working days
- Average analysis days



The overall processing time has not been affected by the increase, which had already been anticipated by the Administrative Council at the end of 2012 when it agreed to increase the manpower dedicated to the service from 60 % to 80 % of a full-time job. As a consequence, 95 % of the requests for advice were given within 5 working days and the average processing time significantly decreased from 1.37 to 0.54 days.

**Graph 15**

Number of requests for advice received per country in 2013



In 2013 the CPVO welcomed the participation of Croatia amongst the 27 countries which benefited from the service. However, it was still obvious that not all EU Member States made use of it on a systematic basis. The CPVO approached directly some of them in this respect on the occasion of technical and annual meetings. Explanations and discussions provided by the Office were welcomed by these countries, which showed a strong willingness to cooperate more closely in the near future.

### **11.3. A pilot project for enhanced cooperation in denomination testing with the KAVB**

With about 1 600 Members, this Dutch association is active in the flower bulb sector. The Koninklijke Algemeene Vereeniging voor Bloembollencultuur (KAVB) gathers and registers all cultivars for the flower bulb industry and plays a major role in the area of name giving and registration of bulbous, cormous and tuberous-rooted plants. This registration is officially recognised and a precondition for the export of bulbs to some countries.

As a consequence of its registration activity, it is not uncommon for the CPVO to receive applications or requests for advice from Member States for ornamental bulb propagated species, which first have been registered or for which registration has been applied at the KAVB. In case the denomination proposed is deemed to be unsuitable by the CPVO, this creates a conflict with the register held by KAVB.

The CPVO and the KAVB have already been cooperating for several years in the framework of the exchange of data and information: the KAVB registers are included in the Variety Finder database, which can be used by the Dutch association to test the denominations proposals it receives. In case of possible impediment found in the denomination for a bulb species application, the CPVO and the KAVB communicate between themselves before sending an observation.

During its meeting of 2 October 2013, the Administrative Council of the CPVO agreed to the principle that the Dutch association join the enhanced cooperation in denomination testing for a test period of 1 year. The KAVB will ask the CPVO for advice after having checked the suitability of denomination proposals in the Variety Finder. As a consequence, the denominations will be automatically included in the CPVO database at an earlier stage of the registration procedure and will be taken into account in the results of subsequent tests made by all users of the Variety Finder. An assessment report will be provided to the Administration Council at the end of 2014.

## **11.4. Activities for the development and the harmonisation of the rules for suitability of variety denominations**

The Office was invited by Plantum and KAVB to a seminar held in June 2013 in the Netherlands in order to explain to breeders the policy of the Office in respect of the assessment of variety denominations for suitability. The meeting was attended by more than 50 participants and was well received. One main piece of feedback the Office received was that its interpretation of the denomination rules was perceived to be too strict by breeders. As a consequence, the CPVO committed to investigate the possibilities for the development of its interpretation in the future.

In July 2013 the Office participated in Beijing as an observer in the meetings of the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission). At those meetings, the IUBS Commission considered proposals to amend the eighth edition of the International Code of Nomenclature for Cultivated Plants (ICNCP). The proposals agreed by the IUBS Commission will be reflected in the ninth edition of the ICNCP, which is expected to be published in 2014. A proposal was made by the IUBS Commission to establish a working group, which would include UPOV and CPVO, in the early stages of the preparatory work for the tenth edition of the ICNCP.

The Office has decided to follow, as from 1 March 2013, the internationally agreed rules as published in the ICNCP for the script of variety denominations. Each word of a denomination published as a fancy name starts with an initial capital letter unless linguistic custom demands otherwise. Exceptions are conjunctions and prepositions other than those in the first word of the denominations, e.g. 'Pride of Africa'. Established abbreviations and denominations identified as codes remain in capitals. Finally, denominations appear in all documents issued by the CPVO between single quotation marks.

# 12. INFORMATION TECHNOLOGY

During 2013 significant developments were made in IT in all four of the programmes included in the IT vision for the Office. This vision covers four overarching programmes which are considered crucial to the continuing development of the CPVO.

## 12.1. E-services

The e-services programme encompasses all of the various projects which will ensure that CPVO dealings with external stakeholders (clients, examination offices and partners such as OHIM and UPOV, etc.) shall be online, transparent, paperless and, to the extent possible, shall minimise manual intervention in the procedures.

During 2013 the pilot project 'Exchange platform' was launched and documents were sent securely as from December 2013 to examination offices. This project will continue during 2014 and the exchange platform will be a key feature of future e-services applications.

The Office also advanced significantly with the sharing of its online application tools with Member States.

## 12.2. Operational improvements

Operational tools cover all the IT applications necessary for the day-to-day business of the Office. As is the case every year, significant developments were made in 2013 in regard to internal operational tools which manage, inter alia, application processing, document management, HR and finance.

## 12.3. Communication tools

Strong internal and external communication channels are critical. As regards internal communication, the Office implemented a SharePoint platform to replace its intranet and shared servers. This project has allowed improved collaboration and a more coherent management of information. The improvement of the external website is an ongoing project within the Office as it is the key point of contact for many stakeholders.

## 12.4. Infrastructure development

With a view to streamlining its infrastructure, a process of server virtualisation was launched in 2013. This process, which will continue in the coming years, provides a more efficient way to respond to changing data needs while also providing a sound and well-protected architecture. Further changes were made to complete the move to a 64-bit environment. A robust infrastructure remains a cornerstone for all other projects identified above, and continues to receive the utmost attention of the IT service.

# 13.

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

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

### 13.1. Standing Committee on Community Plant Variety Rights

This committee had one meeting on 29 May 2013 to approve a few amendments to the fees regulation, namely the reduction of the annual fees from EUR 300 to EUR 250 with effect from 1 January 2014. Furthermore the Commission services provided information on the latest developments in respect of the Nagoya protocol.

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

This committee met six times during 2013 in Brussels and staff members of the CPVO attended three meetings.

Of particular interest for the CPVO throughout 2013 were the following items.

- The Commission's updates and the related discussions on the review of the legislation related to seed and plant material and the discussions on the Commission's priorities for secondary acts of the PRM law.
- The discussions relating to a temporary experiment for heterogeneous material.
- The discussion on a draft Commission directive amending Commission Directives 2003/90/EC and 2003/91/EC setting out implementing measures for the purposes of Article 7 of Council Directives 2002/53/EC and 2002/55/EC respectively as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant and vegetable species.
- Information provided by the Commission on the common catalogues of vegetables and agricultural species.
- The CPVO informs the members of the standing committee on a regular basis of developments of interest at the level of the CPVO and here in particular in respect of decisions taken by the CPVO Administrative Council on new or revised technical protocols for DUS testing.

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

This committee did not meet in 2013.

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

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

One major issue in this directive is the obligation of official listing of varieties of fruit plants for their commercialisation in the EU as of 1 October 2012. The directive also establishes that fruit varieties granted CPVRs will automatically be authorised for marketing within the EU without any further need for registration. Implementing rules could unfortunately not be agreed upon by 1 October 2012 and the Commission intends to have them adopted in 2014 for implementation at the beginning of 2016.

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

### **13.5. Council working parties**

Following an invitation from the Directorate-General for Health and Consumers to integrate the representation from the European Commission, the CPVO participated in the following Council working parties:

- coordination of UPOV meetings (Council, Consultative Committee, Technical Committee and Administrative and Legal Committee);
- agricultural questions, mainly dedicated to discussions on the draft regulation on plant reproductive material (PRM);
- coordination of OECD meetings on seed schemes (annual meeting).

# 14. EXTERNAL RELATIONS

## 14.1. Contacts with external organisations

### 14.1.1. Contacts with breeders' organisations

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

In the report year the CPVO attended the annual meeting of the ESA in Warsaw, Poland. The CPVO also participated in the annual meeting of Ciopora Deutschland. In the framework of its annual meeting in Angers, France, Ciopora visited the CPVO.

### 14.1.2. Contacts with UPOV

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

During 2013, as members of the EU delegation, CPVO officials participated in the activities of UPOV and attended the meetings of the following bodies and committees of the International Union:

- UPOV Council;
- Legal and Administrative Committee;
- Technical Committee;
- Consultative Committee;



Ciopora visiting the CPVO, April 2013

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

On 22 October the CPVO participated in the UPOV seminar on essentially derived varieties in Geneva, Switzerland. Technical and legal views on 'predominantly derived', 'essential characteristics' and 'differences which result from the act of derivation', the relationship between Articles 14(5)(b)(i) and (iii) of the 1991 act of the UPOV convention and the possible impact on breeding and agriculture were discussed. The president of the CPVO, Martin Ekvad, was the moderator of one of the sessions in his capacity as Vice-Chair of the Administrative and Legal Committee. The seminar was open to the public and was attended by 177 participants. Documents and a video of the seminar are available on the UPOV website.

In its 47th ordinary session on 24 October 2013, the Council of UPOV elected Martin Ekvad as Chair of the Administrative and Legal Committee of UPOV for a term of 3 years ending with the 50th ordinary session of the Council of UPOV in 2016.

The CPVO collaborated in the training course for Latin American countries on the protection of plant variety rights, organised by UPOV, the World Intellectual Property Organisation (WIPO), the Spanish authorities and the United States Patent and Trademark Office (USPTO), in Montevideo (Uruguay) in November. The CPVO vice-president also participated in a seminar on the benefits of plant variety protections systems in line with the UPOV convention. This event was organised by UPOV, the Japanese Ministry of Agriculture (MAFF), the USPTO and the Department of Agriculture of Sri Lanka (DOA). The seminar took place in Kandy, Sri Lanka in November 2013. The main aim of the seminar was to explain to the national authorities from the region (south-east Asia) the interest and advantages for national stakeholders of a UPOV-based system for protection of new plant varieties.

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

The CPVO signed a memorandum of understanding with UPOV in October 2004 for a programme of cooperation. Within the framework of this cooperation the CPVO exchanged information with UPOV during the development of its CPVO Variety Finder in order to ensure compatibility with the existing UPOV plant variety database (PLUTO database and UPOV-ROM). Both databases contain data on plant varieties for which protection has been granted or which are the subject of an application for protection, and also those which are included in national lists of varieties for marketing purposes.

The CPVO Variety Finder operates on the basis of a system of codes assigned to botanical names and developed by UPOV. Since its release in July 2005 the Office and UPOV have

started to exchange data extensively, UPOV collecting data from non-EU UPOV countries and the Office bringing together data from the EU.

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

The CPVO also actively participated in the joint UPOV-USPTO 'Train the trainers' programme on plant variety protection in Geneva in September 2013.

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

In January 2013 the vice-president of the CPVO attended the Technical Working Group meeting of the OECD seed schemes held in Paris and, in June, the president and the vice-president of the CPVO attended the annual meeting of the OECD seed schemes in Paris.

#### **14.1.4. Contacts with the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)**

As a follow-up to the actions started in 2012, an IT project in the field of testing variety denominations has been developed. Moreover, in 2013 the CPVO started its participation in the legal working group of the European Observatory on Infringements of Intellectual Property Rights and in the plenary session, where it was proposed that the next version of the OHIM/EPO's intellectual property survey shall also include plant variety rights. The CPVO will also start participating in the Enforcement Working Group of the Observatory from 2014 on.

#### **14.1.5. Other contacts**

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

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

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

- the relevant standing committees of the European Commission;
- the Translation Centre Administrative Council;
- the coordination of the EU agencies at management level;
- the annual coordination meeting of the Publications Office with the EU agencies;

- the meetings of the data protection officers of the EU agencies, as well as other working groups established under the umbrella of the coordination of EU agencies.

## 14.2. Training and promotion of the CPVR system

### 14.2.1 Participation in international fairs and open days

The CPVO considers its participation in international fairs and open days at examination offices to be a useful opportunity to promote the CPVR system, to have direct contact with applicants and to provide information to growers. In 2013, the Office participated in two fairs.

- At the end of January 2013, the Office attended the IPM (Internationale Pflanzenmesse) in Essen, Germany. The stand was shared with German colleagues from the Bundessortenamt. Even though the fair is open to the entire field of horticulture, the focus lies with ornamentals.
- The Salon du Végétal, which takes place at the end of February in Angers, France, is a fair mainly for growers of ornamental plants in which the Office regularly participates together with GEVES, the French examination office.
- An apple open day was organised in cooperation with INRA-IRHS (the French Institute for Research in Horticulture and Seeds) and GEVES on 18 December 2013 in Angers. Around 60 representatives actively involved in the apple sector participated in it. Breeders presented mutation breeding as being supplementary to hybridisation. Discussions focused on possible improvements of the DUS testing of varieties obtained from mutations by more efficient cooperation with breeders, especially at the initial stages of applications, and by a potential use of molecular techniques.
- On 5 and 6 December 2013, the president of the CPVO gave a speech at the sixth International Conference on Intellectual Property Protection for Plant Innovation in Amsterdam, the Netherlands. The seminar was organised by FORUM, Institut für Management GmbH. He presented recent developments of the Community plant variety protection system and also participated in a panel debate which focused on recent legal and policy developments in the plant variety right sector in the EU.



Apple open day, December 2013, France



Apple open day, December 2013, France

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

Since 2006 the CPVO has been participating in the so-called multi-beneficiary programme aimed at preparing candidate countries for accession to the EU. This programme was initially set up for Croatia and Turkey. In 2008 it was extended to the former Yugoslav Republic of Macedonia, and since 2009 it has been open to all countries in the western Balkans region. Albania and Serbia expressed an interest in participating in its activities in 2009 and Bosnia and Herzegovina in 2010. Croatia, although an EU Member State since 1 July 2013, still profits from the current programme, running until autumn 2014.

Within the framework of this programme, representatives of the national plant variety rights authorities were invited to participate in crop expert meetings held regularly at the CPVO. Furthermore, practical DUS training sessions for DUS crop experts were given by CPVO examination offices, such as on cereal varieties by the Croatian Institute of Seeds and Seedlings for experts from Bosnia and Herzegovina; on fruit varieties at the German Bundessortenamt for experts from Croatia; and on tomato varieties at the Polish Coforu and on cabbage and onion varieties at the Czech UKZUZ for Albanian experts. Furthermore, experts from Croatia and the former Yugoslav Republic of Macedonia participated in the Apple open day held by GEVES in France.

In addition to the training sessions at EU examination offices, experts from Naktuinbouw went to Turkey to train experts in vegetable testing. The programme furthermore provided funding to enable beneficiaries to participate in the CPVO's seminar on the enforcement of plant variety rights held in May in Rome and to allow one Serbian expert to participate in a 2-week training course on plant variety protection given by the University of Wageningen, in the Netherlands. The Office gave a workshop for Serbian experts on variety denomination, including the establishment of databases and the exchange of information. Finally, within the framework of this programme, the Office participated in the congress 'Intellectual Property Rights in Plant Breeding' held in Antalya, Turkey.

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

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

The president of the CPVO participated in a regional workshop on the ARIPO legal framework for the protection of new varieties of plants and a workshop on the ARIPO regional framework for the protection of new varieties of plants in Lilongwe, Malawi on 22–25 July 2013, which was organised in cooperation with UPOV and with the assistance of the USPTO and the WIPO. It was an expert meeting concerning the recommendations of the Administrative Council of the ARIPO on the legal framework for the protection of new varieties of plants. The CPVO presented the EU system of plant variety protection and Naktuinbouw presented the Dutch system and how that interacts with a regional system. Questions posed by civil organisations were also addressed during the two workshops.

#### **14.2.4. Contacts with the Association of Southeast Asian Nations (ASEAN)**

The Thai government is considering amending its plant variety rights legislation so that it will comply with the UPOV 1991 act and subsequently applying for UPOV membership. In order to acquire information on how the UPOV convention has been successfully implemented in Europe, the president of the CPVO was invited by the Thai Department of Agriculture to give a presentation in Bangkok to stakeholders in the subject matter on 18 November 2013. Specific focus was on the scope of the breeders' rights, including essentially derived varieties and the exceptions relating to breeders' exemptions and the farm-saved seed exemption.

#### **14.2.5. Contacts with universities**

In 2013, the legal adviser of the CPVO, Muriel Lightbourne, presented the system of plant variety rights to the students of the master's course in intellectual property of the University of Alicante — 'Magister Lucentinus' (Spain). Among other contacts, the head of the Legal Unit of the CPVO, Francesco Mattina, made a presentation to the students of the ESSCA School of Management, Angers.

The president of the CPVO gave a presentation to the course on plant variety protection at the University of Wageningen on 24 June 2013.

# 15. PUBLIC ACCESS TO DOCUMENTS

In 2001 specific rules on public access to documents held by the European Parliament, the Council and the Commission were introduced by the adoption of Regulation (EC) No 1049/2001 <sup>(1)</sup>. In order for these rules to apply also to documents held by the Office, a new article, Article 33a, was introduced into the basic regulation in 2003 by the adoption of Council Regulation (EC) No 1650/2003 <sup>(2)</sup>.

Article 33a contains the following elements.

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

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

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

Year of receipt	Number of requests for access received	Number of refusals	Reasons for such refusals	Confirmatory applications
2004	30	6 (partial)	Confidential technical questionnaire not sent	
2005	55	2 (partial)	Confidential technical questionnaire not sent	
2006	58	6 (partial)	Confidential technical questionnaire not sent	
2007	55	17 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	2 (successful)
2008	57	19 (partial)	Confidential technical questionnaire/photo/assignment not sent	1 (unsuccessful)
2009	54	28 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent/ photos not available	2 (successful)
2010	63	29 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	1 (unsuccessful)
2011	71	27 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	2 (1 unsuccessful and 1 successful)
2012	88	57 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	8 (3 unsuccessful and 5 successful)
2013	63	18 (partial)	Confidential technical questionnaire not sent/ information of commercial interest not sent	1 (unsuccessful)

<sup>(1)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43).

<sup>(2)</sup> Council Regulation (EC) No 1650/2003 of 18 June 2003 amending Regulation (EC) No 2100/94 on Community plant variety rights (OJ L 245 of 29.9.2003, p. 28).

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

## 16.1. Legal background

Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data was adopted for the purpose of complying with Article 16 of the Treaty on the Functioning of the European Union. Article 16 requires the application to the EU institutions and bodies of the Union 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 means not only transferring data to third parties but also collecting, recording and storing data, whether or not by electronic means.

## 16.2. Role and tasks of the DPO

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

The main task of the DPO is to ensure, in an independent manner, the internal application of the provisions of Regulation (EC) No 45/2001 in the CPVO. The DPO is also required to keep a register <sup>(3)</sup> of all of the processing operations involving personal data carried out by the CPVO. This register, which must contain information explaining the purpose and conditions of the processing operations, is accessible to any interested person in the DPO intranet webpages.

By decision of the CPVO president of 24 April 2012 the acting part-time DPO was reappointed for a term of 2 more years.

## 16.3. Report of the DPO for 2013

### 16.3.1. Register of data processing operations

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

This register contained, as at the end of 2013, 54 entries composed of 35 notifications and 19 prior checking operations, all with an opinion from the EDPS.

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<sup>(3)</sup> [https://secure.edps.europa.eu/EDPSWEB/edps/lang/en/EDPS/DPO/DPO\\_Register](https://secure.edps.europa.eu/EDPSWEB/edps/lang/en/EDPS/DPO/DPO_Register)

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

An inventory was first drafted by the DPO when appointed and is regularly updated with new processing operations within the CPVO. This inventory contained, as at the end of 2013, 54 processing operations, of which four still need to be notified to the DPO and finalised in the register.

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

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

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

The EDPS adopted thematic guidelines concerning the processing of personal data in the context of public procurement, grants and the selection and use of external experts.

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

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

In September 2013 the staff members were presented with the data protection policy of the CPVO and the progress made therewith during the general assembly of members of staff.

### **16.3.5. Meetings of the DPO network in 2013**

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

The DPO of the CPVO participated in one meeting of the DPO network, in Brussels (November 2013).

# 17. APPEAL PROCEDURES

## 17.1. Composition of the Board of Appeal of the CPVO

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

### 17.1.1. Chairperson and alternate of the Board of Appeal

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

### 17.1.2. Qualified members of the Board of Appeal

In accordance with the procedure prescribed by Article 47(2) of Council Regulation (EC) No 2100/94, the Administrative Council of the CPVO, at its meeting of 16 February 2011, adopted the following list of 19 qualified members of the Board of Appeal for a period of 5 years starting on 23 February 2011 (21 members were appointed but two members resigned, on 24 November 2011 and on 12 November 2012).

#### List of qualified members 2011–16

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



Board of Appeal meeting, September 2013, Angers

## 17.2. Decisions of the Board of Appeal in 2013

The Board of Appeal met once on 20 September 2013 in appeal Cases A003/2007 and A004/2007 (Gala Schnitzer) and took two decisions cancelling CPVR EU 18759 of 26 February 2007 and Decisions OBJ06-021 and OBJ06-022.

### 17.2.1. Appeal Cases A003/2007 and A004/2007 further remitted to the board by Judgment of the Court of Justice of 19.12.2012 in Case C-534/10P — Gala Schnitzer

#### Background

The CPVO received on 18 January 1999 an application from KSB, the legal predecessor of Schniga GmbH, for the apple variety Gala Schnitzer. In 2005 two objections were lodged against the application for the said variety by Elaris SNC and Brookfield New Zealand Ltd, licensee and holder respectively of a CPVR for the Baigent variety. The final technical examination report for the DUS test was issued in 2005. The president of the CPVO approved with a decision of December 2006 the use of an additional characteristic, namely 'fruit: width and stripes', for establishing the distinctness of the Gala Schnitzer variety. A corrigendum issued on 5 February 2007 corrected an error in the initial decision. Finally, the relevant committee of the CPVO rejected the objections lodged and granted a CPVR for the Gala Schnitzer on 26 February 2007. The CPVO held, among others, that the allowance of the additional characteristic was justified for technical reasons.

On 11 April 2007, Elaris SNC and Brookfield New Zealand Ltd filed notices of appeal before the Board of Appeal against the decisions of the committee of the CPVO. In its decision delivered on 21 November 2007 the Board of Appeal of the CPVO annulled the decisions and refused the application for the Gala Schnitzer variety (Cases A003/2007 and A004/2007).

However, the Board of Appeal only dealt with the question of whether the resubmission of plant material for the DUS test had been justified. On 6 August 2008 the Bundessortenamt sent the raw data of the observations during the DUS test at Wurzen, Germany. The data demonstrated that the additional characteristic 'fruit: width of stripes' had been observed only in 2005. On 8 August 2008 the Bundessortenamt reported that this characteristic was further assessed in 2006 and 2007 (after the final technical examination report).

On 4 April 2008, Schniga GmbH brought an action against the decision of the Board of Appeal before the General Court. The General Court upheld the action and annulled the Board of Appeal's decision (Case T-135/08) on 13 September 2010. Brookfield New Zealand Ltd and Elaris SNC filed an appeal against the judgment of Case T-135/08. On 19 December 2012 the Court of Justice dismissed the appeal.

Based on the decision of the General Court (Case T-135/08), the Board of Appeal was to determine whether or not the candidate variety, Gala Schnitzer, is distinct from the

reference variety, Baigent. The appellant requested that the grant of CPVR EU 18759 and the decisions OBJ06-021 and OBJ06-22 be cancelled.

### **Arguments raised by the parties**

- The appellant argued that the conduct of DUS testing must be in accordance with the relevant test guidelines. The decision of the president of the CPVO to accept *ex post* an additional characteristic for testing purposes pursuant to Article 23 of the basic regulation was flawed. The DUS testing procedure for the candidate variety was flawed. Two satisfactory crops should be tested to establish distinctness on a characteristic before the grant of CPVRs.
- The applicant stated that the test guidelines were merely a framework and not to be applied strictly. He further noted that it might not be necessary to examine all characteristics between two crops if there were elements to establish that the variety was stable and distinct. The decision of the CPVO to adopt an additional characteristic was justified.
- The president of the CPVO claimed that the decision was not flawed. He further stated that one season of testing was considered sufficient in respect of that characteristic.

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

The Board of Appeal noted that the mention of the other characteristic ‘fruit: width of stripes’ was only made when the final technical examination report was issued and authorisation to use it was given by the president of the CPVO around 1 year after the final technical examination report. The Board of Appeal held that it was not permitted to determine the distinctness of the variety on the basis of an additional characteristic that was not listed in the protocol or the guideline applicable at the time. The characteristic ‘fruit: width of stripes’ did not exist as an official one in the protocol or the guideline and there was no request made to test it as additional one. There is, therefore, an infringement of point III of TP 14/1 and the candidate variety cannot be deemed legally distinct from Baigent. The post-examination decision of the president of the CPVO allowing the said additional characteristic is fundamentally flawed and cannot be justified. The Board of Appeal cited Decision A010/2008, which states that additional characteristics should be approved in advance by the president of the CPVO.

The Board of Appeal also stated that, as general rule, retroactive effect of a decision of the Administrative Council of the CPVO is not possible. Apart from the fact that the said characteristic was not valid according to the conclusion of the Board of Appeal, the DUS test was further flawed since the characteristic was tested only for the year 2005. TG/1/2, which has to be followed according to TG/14/8, specifies that, in order to establish distinctness between two varieties, the difference must be found to be consistent. It is consistent if it occurs with the same sign in two consecutive or in two out of three growing seasons. Therefore, the Board of Appeal held that there was infringement of the protocol and the guideline since the characteristic had been observed only in 2005 and a check for consistency was not made.

The Board of Appeal concluded that, following the infringement of the DUS test procedures, the candidate variety could not be held legally distinct from the reference variety. CPVR EU 18759 and decisions OBJ06-021 and OBJ06-022 were cancelled and the CPVO was ordered to bear the costs of the appeal proceedings incurred by both the appellant and the applicant.

## **17.2.2. Appeal Case A007/2011 — Pink Sachsenstern**

### **Background**

On 27 March 2008 an application for a Community plant variety right was filed by Mr Karsten Rannacher for the variety Pink Sachsenstern. Following a request by the CPVO, Mr Rannacher clarified that the variety, a mutant of the variety 'Sachsenstern' protected in Germany and Belgium in his name, had been discovered and developed by Mr Peter de Langhe. Mr Rannacher further explained that Mr de Langhe had verbally agreed with him to transfer ownership of the variety Pink Sachsenstern to him but he could not produce any written evidence of entitlement. Said verbal agreement was confirmed by Mr Rannacher's representative in Belgium. However, Mr Rannacher was not able to provide documentary evidence of the transfer of ownership. Notwithstanding the foregoing, the application for a CPVR was not refused at that time.

On 25 May 2009 Mr de Langhe filed an objection to the grant of the plant variety right for Pink Sachsenstern on the grounds that it was not distinct from the variety Fluostern, for which the former had filed an application with the CPVO on 10 October 2007. It emerged, inter alia, that Pink Sachsenstern and Fluostern are the same variety and the Office accepted that any documentary evidence (apart from a written agreement) could be submitted to support the transfer of rights, in accordance with Article 50(1)(d) of the basic regulation. The Office finally concluded that the evidence provided was not sufficient.

On 17 January 2011, the Office rendered three related decisions: refusal of the applications for Pink Sachsenstern and Fluostern, admission of Mr de Langhe's objection to the application for Pink Sachsenstern and rejection of Mr Rannacher's objection to the application for Fluostern.

Following the above decisions, three appeals (namely A006/2011, A007/2011 and A008/2011) were lodged by Mr de Langhe and Mr Rannacher.

### **Arguments raised by the parties**

On 30 July 2012 the CPVO received a joint letter from the parties (following an amicable settlement) stating that all rights to Pink Sachsenstern/Fluostern would be transferred by Mr de Langhe to Mr Rannacher, appeals A006/2011 and A008/2011 would be withdrawn, Mr de Langhe's objection would be withdrawn, and the parties jointly asked the Board of Appeal to annul the Office's decision to refuse a Community plant variety right for Pink Sachsenstern (R860) and grant the CPVR, or remit the case to the Office for a decision.

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

The Board of Appeal found appeal A007/2011 to be admissible.

The Board of Appeal assessed whether the processing of the application for Pink Sachsenstern could be continued, whether the current rules allowed the continuation of the application and whether the appeal against the refusal for the application for Pink Sachsenstern still required processing.

The letter sent by the parties on 30 July 2012 established that Mr Rannacher was the person entitled to the variety Pink Sachsenstern. Therefore, in accordance with what is laid down in Article 54 of the basic regulation and the suspensory effect of the appeal (Article 67(2) of the basic regulation), the application procedure could be continued. There was no need to discuss the appeal against the refusal of the application. No obstacle to the granting of CPVR for the variety Pink Sachsenstern existed anymore.

The Board of Appeal concluded that the application for the variety Pink Sachsenstern should be remitted to the CPVO for further prosecution. Since the decision rendered by the Board of Appeal followed from the settlement reached by the parties after the appeal had been lodged, the parties should each bear their own costs.

## **17.3. Disputes concerning the costs of proceedings to be recovered under Article 92 of the Rules of Procedure of the General Court and Article 145 of the Rules of Procedure of the Court of Justice**

Under Article 92 of the Rules of Procedure of the General Court and Article 145 of the Rules of Procedure of the Court of Justice, if there is a dispute concerning the costs of the proceedings to be recovered, an application by the party concerned may be lodged in order for the General Court/Court of Justice to make an order.

### **17.3.1. New applications concerning the costs of proceedings to be recovered**

On 7 February 2013 two applications concerning the costs of the proceedings to be recovered in Cases T-187/06 DEP I and C-38/09 P-DEP were lodged by the CPVO, respectively with the General Court and the Court of Justice. Indeed, since there was no agreement between the CPVO and Mr Schröder on the recoverable costs of proceedings in both cases, the CPVO asked the General Court and the Court of Justice to make an order concerning the costs to be recovered.

### 17.3.2. Rulings of the General Court in 2013

#### **Order of the General Court delivered on 26 September 2013 (Case T-187/06 DEP I) — Sumcol 01**

With its judgment of 19 November 2008 concerning the variety Sumcol 01 (T-187/06) the General Court dismissed the action against Decision A003/2004 of the Board of Appeal of the CPVO and ordered that the losing party bear the costs. On 15 April 2010 the Court of Justice dismissed the appeal against Decision T-187/06 and ordered that Mr Schröder bear the costs (C-38/09 P). Since there was no agreement between the CPVO and Mr Schröder on the recoverable costs of proceedings, the CPVO asked the General Court to decide on the expenses.

The CPVO asked to fix the recoverable costs at EUR 10 824.40 plus EUR 2 000.00 for disbursements regarding the procedure on the fixing of costs.

The General Court stated that, according to Article 91(b) of the Rules of Procedure of the General Court, recoverable costs are expenses incurred for the purposes of the proceedings. According to Article 19 of the Statute of the Court of Justice of the European Union, every European institution can seek the assistance of a lawyer. The remuneration of the lawyer forms part of the necessary costs for the purposes of the proceedings. However, although the expenses for the assistance of a lawyer cannot be completely excluded from the amount of recoverable costs, the total amount due can be investigated.

The General Court found that the assistance of an external German-speaking lawyer was duly justified since no legally qualified staff members at the CPVO had German as their mother tongue and therefore a German lawyer was required for these proceedings in order to best defend the interests of the CPVO. Besides, Case T-187/06 was the first case on CPVRs brought before the General Court and concerned important legal and practical matters for the CPVO, although the economic interests encountered were not so high. The General Court noted that the case entailed difficulties and complexities because of the subject of the case, the claims of Mr Schröder (complicated and lengthy) and the issues at stake. Therefore, a considerable amount of time was necessary in order to prepare the defence and attend the hearing.

The General Court decided on the reimbursement of costs based on praetorian criteria taking into consideration the precise information that the parties provided. The General Court decided that an amount of EUR 10 000.00 should be paid by Mr Schröder as recoverable costs to the CPVO.

### 17.3.3. Rulings of the Court of Justice in 2013

#### **Order of the Court of Justice, delivered on 10 October 2013 (Case C-38/09 P-DEP) — Sumcol 01**

By appeal lodged with the Register of the Court of Justice on 28 January 2009, the defendant sought the annulment of the decision of the General Court in Case T-187/06, which dismissed the action brought against the decision of the Board of Appeal of the CPVO in proceeding A003/2004. The Court of Justice ruled on that appeal (Case C-38/09 P) by rejecting the action as partially inadmissible and partially not founded and ordered the defendant to bear the costs of the appeal proceedings. Since no agreement was reached on the recovery of costs, the CPVO brought an action before the Court of Justice. The CPVO asked the Court of Justice to fix the amount of recoverable costs at EUR 28 287.59 (Case C-38/09 P-DEP).

According to Article 144(b) of the Rules of Procedure of the Court of Justice and in light of Article 184.1 of the same rules, recoverable costs are considered the ‘expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.’ In addition, and according to a constant jurisprudence and Article 19 of the Statute of the Court of Justice of the European Union, the European institutions have the discretion to decide on their representation and assistance by a lawyer or an external agent before the Court of Justice.

Concerning the remuneration of the lawyer, the Court of the Justice stated that it was authorised to determine the amount up to which that remuneration may be recovered from the losing party.

In this case the dispute was an appeal which, by definition, is limited to questions of law. The Court of Justice found that the preparation of the defence for the appeal did not need work of considerable magnitude, taking into consideration the volume of the defence documents and that the lawyer was already familiar with the case.

The Court of Justice decided to fix the total of EUR 9 942.54 as recoverable costs.

### 17.4. Further appeals to the Court of Justice in 2013

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

## 17.4.1. Rulings by the General Court in 2013

### Order of the General Court delivered on 21 October 2013 (Case T-367/11) — Southern Splendour

#### Background

On 27 September 2006 Plant Marketing International Ltd (PMI) filed an application for a CPVR at the CPVO for the plant variety Southern Splendour of the species *Cordyline* Comm. Ex R. Br. PMI later explained that Lyder Enterprises Ltd was the owner of the plant variety and PMI was just the representative of the owner.

On 11 January 2008 the intervener Liner Plants Ltd submitted a written objection before the CPVO for the said variety. The intervener claimed that the 'deed of assignment and acceptance of agreement micro-propagation and production of weaned plants' of 10 October 2002 provided by the alleged owner did not transfer the ownership of the said plant variety.

On 7 December 2009 the CPVO decided to accept the objection and refuse the application for the plant variety Southern Splendour on the grounds of lack of novelty and entitlement.

The applicant lodged an appeal against the abovementioned decision (R972).

The Board of Appeal dismissed the appeal (A007/2010) on the grounds of insufficient evidence as to the applicant being the breeder and did not rule on the novelty of the variety.

After the decision of the Board of Appeal the applicant brought two actions before the New Zealand High Court in order for it to be determined if there was indeed a valid transfer of the right. Lyder asked the General Court to accept the action as admissible, annul the decision of the Board of Appeal and stay the proceedings until the decision of the New Zealand Court.

#### Order of the General Court

The order on Southern Splendour (Case T-367/11) was rendered by the General Court on 21 October 2013. The General Court stated that new pleas in law are allowed only if they are based on matters of law or facts that come to light in the course of the procedure and therefore dismissed the request of the applicant to annul the decision of the Boards of Appeal of the CPVO on Joint Cases A001/2010, A005/2010 and A006/2010 because the plea was not included in the form of order sought in the application before the General Court.

The General Court stated that the CPVO and the Board of Appeal were competent to decide on the entitlement of the applicant to apply for a CPVR and to interpret the

contract provided by the applicant. The plea in law concerning the lack of competence was rejected as manifestly lacking any foundation in law.

The General Court also dismissed the claim that the Board of Appeal of the CPVO erred in law in Decision A007/2010. The Board of Appeal had taken into account the disputed evidence and qualified it as unsworn declarations with limited probative value in the absence of other evidence to corroborate it.

The General Court also refused the request made by the applicant to stay the proceedings until the decision on the entitlement of the New Zealand High Court is rendered. The General Court cannot annul or alter a decision on grounds which come into existence subsequent to the adoption of the contested decision. In addition, facts not submitted by the parties before the CPVO cannot be submitted at the stage of the action brought before the General Court. The General Court cannot re-examine whether the application for a CPVR met the conditions of Article 11 of the basic regulation on the basis of evidence that was not submitted before the Board of Appeal.

Therefore, the General Court dismissed the action as partially manifestly inadmissible and partially manifestly lacking any foundation in law and ordered Lyder Enterprises Ltd to pay the costs of the proceedings.

#### 17.4.2. State of affairs of the further appeals lodged with the Court of Justice

Case No before the General Court	Contested decision No	Variety denomination	Date of General Court ruling	Date of further appeal to the Court of Justice	Case No before the Court of Justice	Date of Court of Justice ruling
T-95/06	A001/2005	Nadorcott	31.1.2008	N/A	N/A	N/A
T-187/06	A003/2004	Sumcol 01	19.11.2008	29.1.2009	C-38/09 P	15.4.2010
T-187/06 DEP I	Non-payment of recoverable costs of the proceedings T-187/06	Sumcol 01	16.9.2013	N/A	N/A	N/A
N/A	N/A	Sumcol 01	N/A	7.2.2013	C-38/09 P-DEP	10.10.2013
T-133/08	A007/2007	Lemon Symphony	18.9.2012	28.11.2012	C-546/12 P	Pending
T-134/08	A006/2007	Lemon Symphony	18.9.2012	28.11.2012	C-546/12 P	Pending
T-135/08	A003/2007 and A004/2007	Gala Schnitzer	13.9.2010	15.11.2010	C-534/10 P	19.12.2012
T-177/08	A005/2007	Sumost 01	18.9.2012	28.11.2012	C-546/12 P	Pending
T-242/09	A010/2007	Lemon Symphony	18.9.2012	28.11.2012	C-546/12 P	Pending
T-367/11	A007/2010	Southern Splendour	21.10.2013	N/A	N/A	N/A

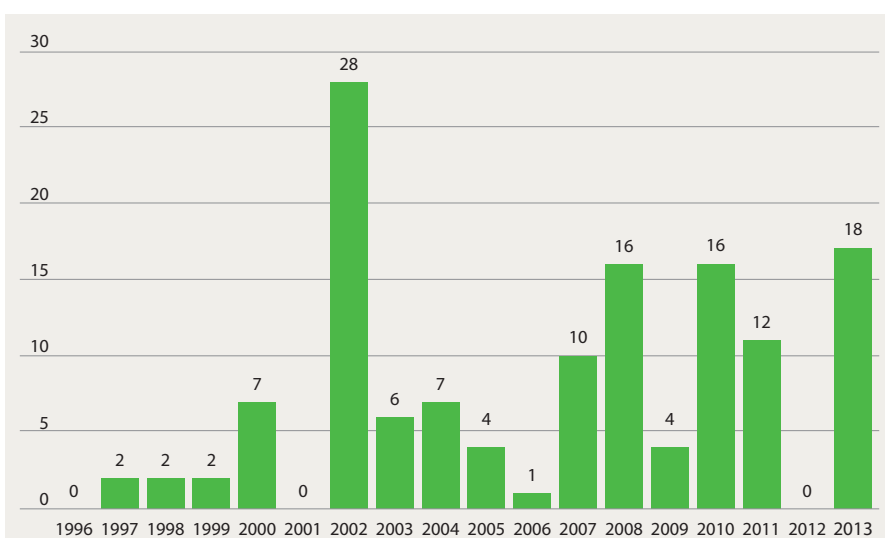
## 17.5. Appeals received by the CPVO and decisions reached by the Board of Appeal since its inception (statistics)

### 17.5.1. Number of appeals lodged per year between 1996 and 2013

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

**Graph 16**

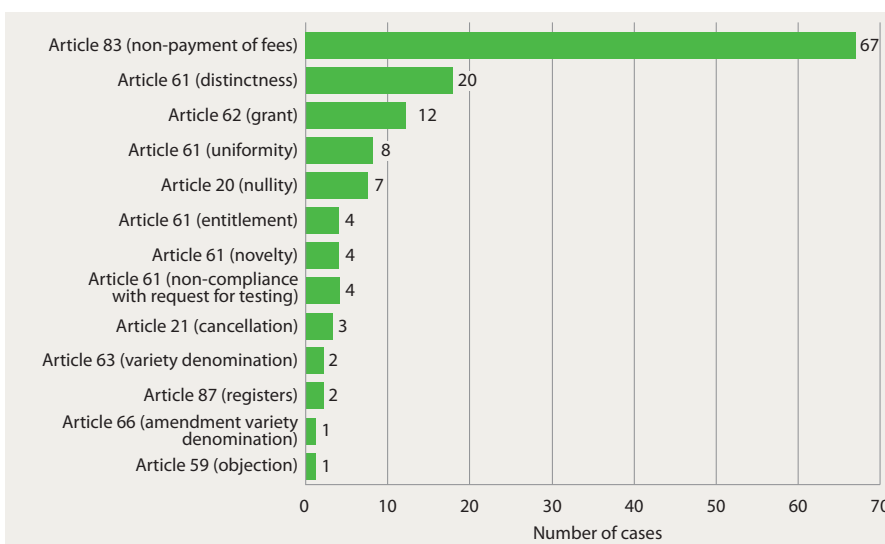
Number of appeal cases lodged per year with the CPVO between 1996 and 2013



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

**Graph 17**

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

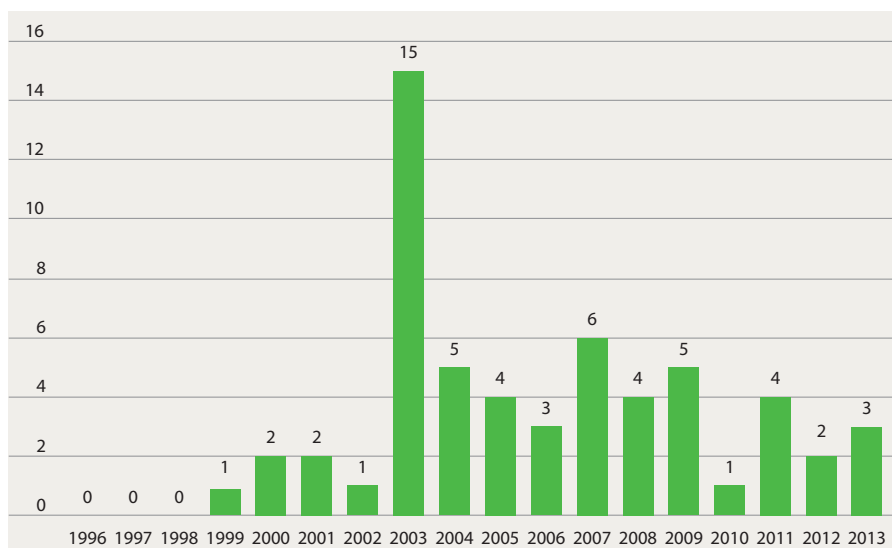


### 17.5.3. Decisions of the Board of Appeal of the CPVO per year

A total of 58 decisions were taken by the Board of Appeal of the CPVO between 1996 and 2013, distributed as detailed in Graph 18.

**Graph 18**

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



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

Year	Appeal case number and date of decision of the Board of Appeal
<b>1999</b>	A002/1998 of 14.9.1999
<b>2000</b>	A001/1999 of 25.1.2000 A002/1999 of 19.5.2000
<b>2001</b>	A002/2000 of 27.3.2001 A004/2000 of 6.12.2001
<b>2002</b>	A005/2000 of 28.5.2002
<b>2003</b>	A005/2002 of 2.4.2003 A001/2002, A002/2002 and A003/2002 of 1.4.2003 A018/2002 of 14.5.2003 A008/2002, A009/2002, A010/2002, A011/2002, A012/2002 and A013/2002 of 15.5.2003 A017/2002 of 3.4.2003 A023/2002 of 8.10.2003 A031/2002 of 8.12.2003 A021/2002 of 9.12.2003
<b>2004</b>	A003/2003 and A004/2003 of 4.6.2004 A005/2003 and A006/2003 of 28.9.2004 A001/2004 of 16.12.2004

<b>2005</b>	A006/2004 of 15.6.2005 A005/2004 of 16.6.2005 A004/2004 of 18.7.2005 A001/2005 of 8.11.2005
<b>2006</b>	A003/2004 of 2.5.2006 A004/2005 of 13.10.2006 A007/2005 of 7.7.2006
<b>2007</b>	A001/2007 of 11.9.2007 A003/2007 and A004/2007 of 21.11.2007 A005/2007, A006/2007 and A007/2007 of 4.12.2007
<b>2008</b>	A011/2007 of 9.9.2008 A009/2008 of 2.12.2008 A001/2008 and A002/2008 of 4.12.2008
<b>2009</b>	A010/2007 of 23.1.2009 A004/2008 and A005/2008 of 21.4.2009 A010/2008 and A011/2008 of 8.10.2009
<b>2010</b>	A018/2008 of 15.3.2010
<b>2011</b>	A001/2010, A005/2010, A006/2010 and A007/2010 of 18.2.2011
<b>2012</b>	A009/2011 of 17.1.2012 A001/2012 of 10.10.2012
<b>2013</b>	A003/2007 and A004/2007 of 20.9.2013 (second decisions for the same cases further to remittal from the Court of Justice) A007/2011 of 23.4.2013

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

# 18. CONFLICTS OF INTERESTS

In 2013 two meetings of the DG Health and Consumers Interagency Task Force on Conflicts of Interest were held, in March and November.

During the March meeting, DG Health and Consumers introduced a new version of the background document on independence/perception of independence and declarations of interests for the ECDC, the EFSA, the EMA <sup>(4)</sup> and the CPVO, with a limited consideration given to the latter insofar as the CPVO has no role in risk assessment. The CPVO had nonetheless notified DG Health and Consumers in November 2012 of its guide to missions (dealing under Article 12 with gifts or payments offered to staff), Council Regulation (EC) No 2100/94 (in particular Articles 47 and 48 thereof, dealing with independence of the members of the Board of Appeal) and the CPVO rules on working methods, which address, under Article 8, the question of independence of members of staff. The DG Health and Consumers background document is to be updated accordingly.

In November 2013, draft guidelines 'on the prevention and management of conflicts of interest in EU decentralised agencies for members of the management board, executive directors, experts in scientific committees or other similar bodies and members of boards of appeal' were reviewed. Each of the four abovementioned agencies gave an update on their activities in this field.

The CPVO reported that:

- there should be increased transparency (more documents to be published on dedicated areas of the website and agreement to introduce a new chapter in the annual report);
- the declarations of interests of members of the management will be updated;
- potential issues of conflicts of interest raised by examination offices are not measured through key performance indicators but addressed on a bilateral basis, pursuant the designation agreement of entrusted examination offices and audit procedures, and reported to the Administrative Council;
- provisions on conflicts of interest were reinforced in the procurement procedure (framework service contract).

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<sup>(4)</sup> This document is meant to reflect the policies and activities in the field of independence and prevention of conflicts of interests of the four agencies for which DG Health and Consumers is the parent/partner DG: the European Centre for Disease Prevention and Control (ECDC), the European Food Safety Authority (EFSA), the European Medicines Agency (EMA) and the CPVO. The main chapters of that document deal with: declarations of interests, selection/nomination of experts, procedure for screening declarations of interests, transparency and data protection, conflicts of interest policy for staff, annual activity report, monitoring/auditing functions.



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Oficina Comunitaria de Variedades Vegetales

Odrůdový úřad Společenství

EF-Sortsmyndigheden

Gemeinschaftliches Sortenamt

Ühenduse Sordiamet

Κοινοτικό Γραφείο Φυτικών Ποικιλιών

Community Plant Variety Office

Office communautaire des variétés végétales

An Oifig Chomhphobail um Chineálacha Plandaí

Ured Zajednice za zaštitu biljnih sorti

Ufficio comunitario delle varietà vegetali

Kopienas Augu šķirņu birojs

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