

Postponement of testing rules

Further to the agreement from the CPVO Administrative Council on 27 March 2003 on the implementation of article 56 (4) of Council Regulation 2100/94 which states that *“Each examination office shall begin the technical examination, unless the Office has otherwise provided, no later than on the date on which a technical examination would have begun on the basis of an application for a national property right filed on the date on which the application sent by the Office was received by the Examination office”* and of article 56 (6) which states that *“The Administrative Council may determine that the technical examination for varieties of vine and tree species may begin at a later date”*, the Office was requested to draw up a set of rules to clearly indicate which cases would be permissible. The Office was furthermore requested to establish a detailed list of species which should be covered by such rules.

The submission dates for the delivery of plant material are set by the CPVO in conjunction with the examination offices, and are adhered to by most applicants when sending in plant material for DUS testing. In the case of fruit trees and grape vines however, there are situations every year when plant material for some varieties cannot be sent in when required ; the main reasons are :

Situation I :

The variety has been bred and maintained overseas, whence at the time of submission (normally during the European winter), the phenomenon of the opposite season of the year is encountered in the Southern Hemisphere, which means that the plants are in a different stage of development.

Situation II

Even if the variety is European-bred, due to the perennial nature of these varieties, depending when the application is made, plant material at the correct stage of development may not be available (and in some cases the desired rootstock on to which it should be grafted may not be available).

Situation III

Now that the Office insists on virus-free plant material for certain species to be delivered to the examination office, applicants may face a lengthy process in having plant material of their variety certified as such by the competent official phytosanitary authority.

The proposed rules are as follows :

Situation I :

- i. If the applicant furnishes proof that Situation I is applicable for him, then it would be his responsibility to place the plant material in cold storage or any other suitable storage or adaptation means within the European Union or outside its borders, in the requested form for half a year, and then send it to the examination office twelve months after the original submission date.
- ii. Any delayed submission of plant material needs to be notified to the CPVO before the original deadline set by the Office in order to profit from the aforesaid derogation.
- iii. A final decision on granting such derogation is always taken on a case by case basis by the CPVO and notified to the applicant.
- iv. Any arrangements which may have been made directly between the applicant or his representative with the examination office without the involvement of the CPVO may jeopardize the procedure and lead to the rejection of the application.

Situation II :

- i. For first-time applicants allowance can be made for this in permitting a delayed submission and attention brought to them of the supplement of the Official Gazette for their future reference.
- ii. The CPVO maintains a list where an applicant has been allowed this possibility; any subsequent re-offence is not permitted.
- iii. In the case of *force-majeure* situations (e.g. severe flooding leading to the demise of plant material), applicants are compelled to furnish evidence of the occurrences.
- iv. Any delayed submission of plant material needs to be notified to the CPVO before the original deadline set by the Office in order to profit from the aforesaid derogation.
- v. A final decision on granting such derogation is always taken on a case by case basis by the CPVO and notified to the applicant.
- vi. Any arrangements which may have been made directly between the applicant or his representative with the examination office without the involvement of the CPVO may jeopardize the procedure and lead to the rejection of the application.

Situation III :

- i. A one-off reprieve is permitted for a delayed submission upon justification of the grounds, and attention be brought to the applicant of the supplement of the Official Gazette for their future reference.
- ii. The CPVO maintains a list where an applicant has been allowed this possibility; any subsequent re-offence would not be permitted.
- iii. Any delayed submission of plant material needs to be notified to the CPVO before the original deadline set by the Office in order to profit from the aforesaid derogation.
- iv. A final decision on granting such derogation is always taken on a case by case basis by the CPVO and notified to the applicant.
- v. Any arrangements which may have been made directly between the applicant or his representative with the examination office without the involvement of the CPVO may jeopardize the procedure and lead to the rejection of the application.

The following fruit botanical taxa (for which a Community plant variety right has been received to date) are covered by the aforesaid rules

Actinidia Lindl.

Annona cherimola Mill.

Asimina triloba (L.) Dunal.

Castanea crenata Siebold & Zucc.

Citrus spp

Cydonia oblonga Mill.

Diospyros kaki Thunb.

Ficus carica L.

Fortunella spp.

Humulus lupulus L.

Juglans regia L.

Malus Mill.

Mangifera indica L.

Mespilus germanica L.

Olea europaea L.

Persea americana Mill.

Pistacia spp.

Poncirus spp.

Prunus spp.

Punica granatum L.

Pyrus communis L.

Pyrus pyrifolia (Burm f.) Nakai var. *culta* (Mak.) Nakai.

Pyrus spp.

Vitis spp.