

**CPVO**

Community Plant Variety Office

Newsletter

Issue 3, Spring 2012

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EDITORIAL

As you will note from this newsletter, the Office is busy with a number of interesting activities. However, as regards the number of applications, there is a slowdown and it seems as if the record year of 2011 will remain unsurpassed. The number of applications is back to normal and it is expected that the Office will receive fewer applications in 2012 than in 2011. The number of titles in force will almost certainly grow this year as a large number of DUS reports will be finalised by the examination offices taking into account the many applications last year. The number of titles in force is a sign that breeders are happy with the protection awarded and is also good for maintaining a stable income for the Office, since the annual fees represent almost half of its revenues. In fact, at its meeting in March this year, the CPVO Administrative Council (AC) began a discussion on whether it would be opportune to change the fee structure. Presently, the Office uses the income from annual fees to finance part of the technical examinations and part of the administrative work in relation to the processing of applications and some argue that there should be a more direct correlation between a fee and the cost for which the fee is collected. The discussions will continue at the November meeting.

The European Commission is busy drafting a proposal to change the legislation on the marketing of plant reproductive material. It is expected that the Office will take on new tasks in this respect which will most probably trigger further discussions on the financing of the Office. I look forward to participating in these discussions. As was mentioned in Newsletter No 2, the European Commission is in the process of evaluating the Community

plant variety rights system. It will present an action plan on how to follow up the evaluation report to the Member States in Autumn 2012.

The Office is constantly striving to increase the efficiency of communication with stakeholders through IT means. A pilot project concerning the exchange of documents with stakeholders has been initiated this spring. It is foreseen that this project will contribute to handling in- and outgoing documents in a more automated manner.

It is with pleasure that I note that efforts are being made in other parts of the world to create regional systems for the protection of new plant varieties. I believe that such initiatives are very important for the breeding industry and growers. As you will see in this newsletter, I have expressed support for initiatives in this respect in international

meetings concerning the ASEAN network as well as the African organisation ARIPO.

When I took up the post of President of the Office, I decided that it was important for me to get a more complete understanding of how the examination offices work and how they are organised. Since September 2011, I have visited a number of them and these have proved to be good occasions not only for me to get first hand information on how each of them conducts DUS tests but also to discuss issues of mutual interest.

Apart from the activities mentioned in the editorial, the Office is involved in a number of interesting and important activities and I hereby invite you to learn about these projects by reading this third CPVO newsletter.

Martin Ekvad
CPVO President

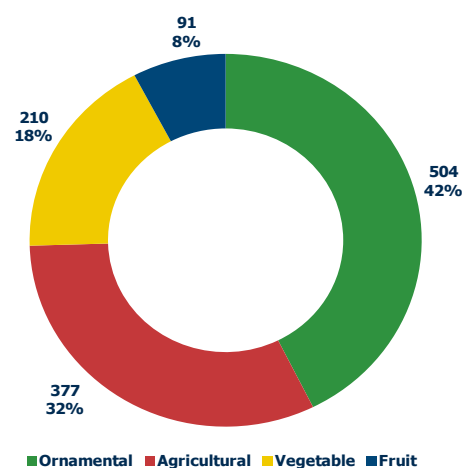
> General news

Decrease in application numbers beginning of 2012 compared to 2011

In the first five months of 2012, the Office received 1182 applications for Community plant variety rights. This corresponds to a drop of 17.57% compared to the same period of 2011, a record year during which 1434 applications were filed in the first five months. For ornamentals, the number of applications decreased by 28.31% (199 fewer applications); for vegetables, the decrease was 7.89% (18 fewer applications) and for agricultural crops 13.13% (57 fewer applications). Only for fruit applications, an increase in number of 31.88% (22 more applications) has been recorded.

The drop in application number may represent a balance to the high application number filed in 2011. Likewise, it seems possible that applicants are waiting for the reduced application fee currently under discussion.

Shares in application numbers per crop sector from 1/1/2012 to 31/5/2012



Creation of an ad hoc working group of legal experts at the CPVO

In the framework of the evaluation of the European Union system for the protection of plant varieties, some issues of a legal nature have been raised by various stakeholders. Some of these put into question some of the core principles of the basic regulation and also, in some cases, of the UPOV Convention.

In order to discuss such legal issues of importance for the plant variety rights system,

the CPVO Administrative Council members and observers supported the establishment of an ad hoc working group composed of five or six legal and technical experts. This group will meet when necessary with a view to report back to the AC.

The first meeting of the group is foreseen for 6 June 2012 in Paris.

Report on the implementation of the Strategic Plan

Created in 2009, the 'Strategic Plan 2010–15' identified ambitious strategic goals and policy objectives for the Office. In the plan, the Office also committed itself to providing updates on the achievement of these goals and objectives at the end of 2011, 2013 and 2015, thereby allowing the Administrative Council and other stakeholders to understand the evolution of the Office and its impact on plant variety rights in Europe and beyond.

The purpose of this report is to show the progress of the Office at year-end 2011 in relation to each of the defined objectives: number of titles granted and of new

applications and their worldwide spread, and impact of Community plant variety rights (CPVR) on the global plant breeders' rights (PBR) picture.

The report shows how the Office is concentrating its effort to optimise the system by a tight management of its costs. It gives also the cost of holding a CPVR for a breeder in the long term. There are also statistics on various activities (international cooperation, variety denominations database and actions for a better enforcement of PBR).

The detailed report is available on the [CPVO website](#).

Evaluation of the CPVR system, state of affairs

The European Commission is currently preparing a plan of action in response to the evaluation of the CPVR system. The proposed measures and the findings will be presented to the Member States during a Council working party.

The other stakeholders will be informed in the DG Health and Consumers consultative working group on seeds.

Cooperation and exchange of information with the European Patent Office



On 27 April 2012, Dr Siobhán Yeats, a director at the European Patent Office (EPO) in the biotech sector, visited the CPVO. An exchange of views on general issues concerning intellectual property protection for plants and biotechnological inventions took place. The latest developments in the procedure to adopt a unitary patent were also discussed.

Mrs Yeats also gave a presentation to the technical and legal experts of the Office on the patent application procedure and on the jurisprudence of the EPO as regards the granting of patents on plant material. The visit is in line with the CPVO policy to strengthen cooperation and the exchange of information between the two organisations.

> International cooperation

Visit from a Japanese delegation to the CPVO in January

On 13 January 2012, a delegation from Japan visited the CPVO. The main reason was to acquire information concerning the setting up of a regional system for the intellectual property protection of new plant varieties. There has been an initiative to create a regional system amongst some ASEAN countries for some years, and the CPVO has in the past and will in the future support this initiative.



International plant variety protection symposium in Taiwan

In the beginning of March, the President of the CPVO participated in an international plant variety protection symposium in Taiwan in which he was asked to give the keynote speech on the subject of 'International cooperation on plant variety right protection and its outlook'. Other speeches were given by Mr Marien Valstar, from the Dutch authorities and a member of the CPVO Administrative Council, Mr Kenji and Mr Masato from the Japanese organisations MAFF and NCSS respectively and Taiwanese officials. A lunch

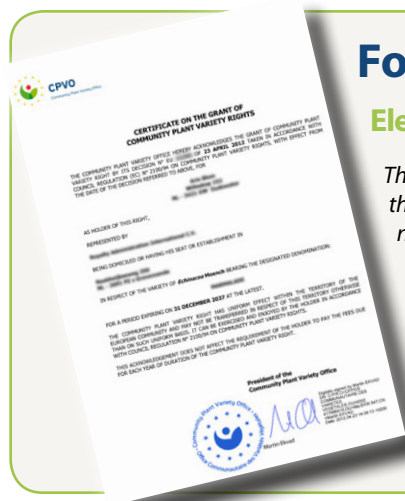
was organised in which the deputy minister Yu-Tsai Huang participated. Following the symposium, discussions were held on possible improvements as regards DUS testing on an international level in general and between the Netherlands, Japan, the CPVO and Taiwan in particular. Delegates also had the opportunity to visit the 2012 Taiwan orchids show and some nurseries. In 2011, breeders from the Netherlands and Taiwan accounted for around 50 applications for Community protection for varieties of orchids.

Expert review meeting on the ARIPO draft legal framework on the protection of new varieties of plants in Zimbabwe

The President of the CPVO has been invited to attend a meeting in mid-June in Harare, where the African Regional Intellectual Property Organisation (ARIPO) has its head quarters. An expert review will be conducted of ARIPO's draft legal framework for the protection of new plant varieties. One of the main purposes of the meeting is to make progress on the draft text of the agreement that will create the regional system for a number of African countries. The meeting is organised by UPOV with financial assistance from the United States Patent and Trademark Office.

Fifth East Asia Plant Variety Protection Forum meeting in Thailand

At the end of May, the President of the CPVO gave a presentation on the impact of plant variety protection in the European Union at the fifth East Asia Plant Variety Protection Forum meeting, a network aiming to strengthen cooperation in the field of plant variety protection in the region. He supported the East Asian initiative to cooperate in a regional network with the aim to facilitate protection for new plant varieties in an international framework. This has benefit not only for breeders but also for growers, who can benefit from new varieties which are bred to suit conditions in the region.



Focus on...

Electronic signature of CPVO decisions from 23 April 2012

The CPVO is moving towards a paperless office. In this context, the President has decided that, from 23 April 2012, the original version of the decisions to grant Community plant variety rights and the certificates of protection will no longer be issued on paper but as electronic documents bearing an electronic signature.

In a transitional phase, a printout of these documents including the official variety description will continue to be sent on paper to applicants or their procedural representatives, together with details on how to access the original documents on the secure area of the CPVO website.

In the future, the Office intends to stop sending printouts as a matter of course, and will only supply them on request. A further announcement will be published before this new procedure is implemented.

> Legal affairs

Outstanding Board of Appeals and Court of Justice cases

- Article 67 of Council Regulation (EC) No 2100/94 provides that there is a right of appeal against certain decisions of the CPVO.

Since 1996, 117 appeals have been lodged with the Board of Appeal of the CPVO and published in its Official Gazette. Some 66 % of the appeal cases concern ornamentals. In mid-May 2012, seven appeals were ongoing. Further information on the Board of Appeal is available on the CPVO website.

- A further appeal to the Court of Justice of the European Union may be made in respect of decisions of the Board of Appeal. In the first instance, further appeals may be lodged with the General Court and in second instance with the Court of Justice. The further appeal may be lodged on grounds of lack of competence or of infringement of an essential procedural requirement or infringement of the Treaty, of Council Regulation (EC) No 2100/94 or of any rule of law relating to their application or misuse of power.

Four rulings were expected from the General Court in the mid 2012. One ruling from the Court of Justice is expected by the end of 2012. The four rulings already issued by both the General Court and the Court of Justice are available from the case-law database on the [CPVO website](#).

The table below summarises the cases lodged with the Court of Justice.

COURT OF JUSTICE OF THE EUROPEAN UNION					
1st instance : General Court			2nd instance : Court of Justice		
Case number	Variety denomination	Date Ruling	Case number	Variety denomination	Date Ruling
T-35/06	Nadorcott	31/1/2008			
T-187/06	Sumcol 01	19/11/2008	C-38/09	Sumcol 01	15/4/2010
T-133/08	Lemon symphony	Expected mid 2012			
T-134/08	Lemon symphony	Expected mid 2012			
T-135/08	Gala Schnitzer	13/9/2010	C-534/10	Gala Schnitzer	Expected end 2012
T-177/08	Sumost 01	Expected mid 2012			
T-242/09	Lemon symphony	Expected mid 2012			
T-367/11	Southern Splendour	Pending			

In practice

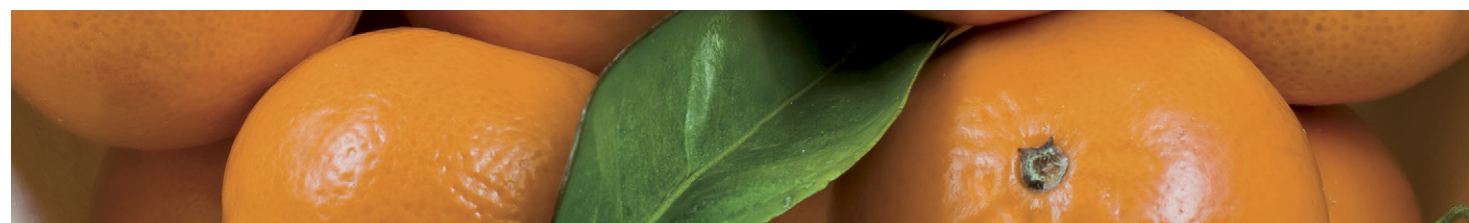
Decision of the Board of Appeal of the CPVO on the 'Rogbret' appeal case (A009/2011)

On 21 April, an appeal was lodged against the decision of the CPVO to reject the application for the Daphne 'Rogbret' due to lack of uniformity.

At the hearing on 17 January 2012 before the Board of Appeal of the CPVO, the appellant put forward that the differences observed in the expression of the variegation in the plants were due to growing conditions. He confirmed that the candidate variety had indeed showed some susceptibility to reverse mutation but to a far lesser degree than what was observed during the DUS examination and concluded that customers were satisfied with the variety. He requested that another DUS testing be organised.

The CPVO stated that the examination was conducted in accordance with the technical rules of the CPVO and that the reverse mutations observed had persisted in off-type plants in 2011.

On those grounds, the Board of Appeal dismissed the appeal and rejected the request for a new DUS examination.



CPVO compliance with Regulation (EC) No 45/2001 on data protection

For the purpose of protecting individuals with regard to the processing of personal data and the free movement of such data, the CPVO applies 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.

In order to ensure and measure compliance with that regulation, the European Data Protection Supervisor (EDPS) — an independent supervisory authority devoted to protecting personal data and privacy and promoting good practice in the EU institutions and bodies — monitors, among other things, the EU

administration's processing of personal data.

In 2011, the CPVO was monitored in the EDPS annual survey measuring compliance with Regulation (EC) No 45/2001 in EU institutions and bodies. The EDPS concluded that he was satisfied with the efforts made by the CPVO in 2011 to implement the regulation and with the results achieved. In total, 90 % of the processing operations listed in the inventory had been finalised by the end of 2011.

If you have any questions about the processing of your personal data, please contact the CPVO (dpo@cpvo.europa.eu).

To be noted

The online application website has been translated into four languages: German, English, French and Dutch. The application form is also available in these four languages. The technical questionnaires, however, are in English only, as it is the case for the paper version.

So far, nearly 2 000 electronic applications have been received by the CPVO and the Office expects to receive about 50 % of its applications online in 2012. Promotion has been identified as a key issue for a wider use of the system. After two workshops held in the Netherlands and in France in 2011, a session will be organised in Hannover in Germany on 4 July 2012 in cooperation with the Bundessortenamt, Ciopora and the German breeders' associations. Breeders, applicants and their representatives from Germany and Austria will be invited.

> Technical news

A possible development of the rules for suitability of variety denominations

On various occasions, the CPVO has received feedback from some of its stakeholders stating that the CPVO's interpretation of these rules is perceived to be too strict or not very clear. For this reason, the Office organised a meeting on 11 May 2011 in Brussels in order to inform stakeholders which considerations are taken into account by the Office when interpreting the applicable rules. As a follow-up to this meeting, the working group met a second time on 19 January 2012 and discussed the proposals for amendments of the explanatory notes drafted by the Office. Comments and conclusions made during the meeting were summarised in a document and reviewed by participants. Some parts necessitate a redrafting and a new version will be proposed by the Office before the summer 2012.

The guidelines as to the suitability of variety denominations interpreting Article 63 of Regulation (EC) No 2100/94 on Community plant variety rights have been approved by the Administrative Council (AC) of the Office and have been complemented with explanatory notes. It turns out that most of the modifications proposed affect the explanatory notes, which are not subject to approval by the AC, but it is the intention of the Office to present a new draft in its November session. Modifications in respect of the guidelines themselves also need a parallel update of Commission Regulation (EC) No 974/2009 as to the suitability of denominations in the frame of marketing directives and the Office will investigate with the Commission possibilities to make progress in that respect.

GEVES visited the CPVO technical unit in April

On 26 April 2012, a group of some 15 staff members of the French examination office, GEVES, paid a visit to the CPVO. The French colleagues mainly familiarised themselves with the work of the technical unit where the largest part of the processing of applications for Community plant variety rights is done. The visit provided a valuable opportunity to improve their understanding of the functioning of the CPVO and will thus help to enhance collaboration between the institutions. Breeders should also benefit in the long run, as GEVES is in close contact with them. GEVES was returning a visit of the CPVO's technical unit to their variety testing facilities last year.

Cooperation with the Office for Harmonization in the Internal Market (OHIM)

The Office intends to investigate possible cooperation with the Office for Harmonization in the Internal Market (OHIM) in Alicante. During the first quarter of 2012, the CPVO paid a visit to OHIM where it had the opportunity to explain in detail how variety denominations are assessed for suitability in the framework of Article 63 of Regulation (EC) No 2100/94. An OHIM delegate visited Angers in return and explained their procedures concerning registration of a Community trademark. It was underlined in particular that the denomination of varieties granted Community plant variety rights or listed in the EU Common Catalogue were not considered so far as an absolute ground to refuse the registration of a trade-mark in class 31 but that investigations in this respect were currently being carried out by the legal services.

This cooperation would materialise with the regular exchange of information from the respective databases. The CPVO would have access to information about trade-marks registered in class 31 while OHIM would, from its perspective, be able to have access to denominations registered in the Common Catalogue and at the CPVO. Further details of this cooperation need to be discussed, in particular during a visit by the Vice President of OHIM to the CPVO on 21 June.

New and revised technical protocols (TPs) adopted in March

Meeting on 20 and 21 March 2012 in Brussels, the CPVO Administrative Council adopted the new technical protocols for *Gaura* L. and *Buddleja* L. as well as revisions of five existing protocols for *Oryza sativa* L., *Hordeum vulgare* L. *sensu lato*, *Solanum lycopersicum* L., *Spinacia oleracea* L. and *Hydrangea* L. These protocols are published on the [CPVO website](#).



New R & D project on vegetable species



The CPVO has agreed to co-finance a three-year R & D project entitled 'Harmonisation of resistance tests to diseases for DUS testing – 2'. This collaborative project between the Czech Republic, Germany, Spain, France, Hungary, the Netherlands, the United Kingdom and the European Seed Association (ESA) will focus on harmonising the tests for resistance to selected host/pathogen combinations in the DUS testing of lettuce, pea and pepper, so that these can eventually be integrated into the corresponding CPVO test protocols. This is a follow-up project to the successful original 'Harmonisation of resistance tests to diseases for DUS testing' a few years earlier. The level of CPVO financing will be EUR 150 000 over the three years and the project will commence mid-2012.

Activities to prepare candidate countries for their accession to the EU

In the framework of the so-called multibeneficiary programme of the European Commission, the CPVO is preparing plant variety rights authorities in Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Turkey for their countries' accession to the EU. For this purpose, a workshop for Croatian experts on describing Citrus and other fruit varieties was conducted at the Spanish Instituto Valenciano de Investigaciones Agrarias in Valencia on 7 and 8 February. On 17 and 18 April, a fact-finding mission on the plant breeding and plant breeders' rights situation in Bosnia and Herzegovina was conducted in order to adapt the programme for this country. On 20 June, a special seminar will be held in Zagreb, informing breeders and growers on the consequences of Croatia's accession to the EU in 2013.

> Quality audit

First triennial cycle of audits coming to an end

The audit programme is approaching the end of the first triennial cycle. By the end of April, a total of 23 assessment visits had been carried out. Eight recommendations in relation to the entrustment of examination offices were submitted to the members of the CPVO Administrative Council on 20 March 2012.

A proposal concerning the financing of the quality audit scheme was also presented at the meeting. The decision to finance the assessment missions from the CPVO budget, dating back to 2009, was due for review and the implications of adopting a cost-sharing

approach had been evaluated. The members of the AC agreed to extend the current approach for another audit cycle. It was explained that due to the large differences between examination offices, notably in terms of size and CPVO-related activities, it was impossible to present an equitable and administratively proportionate audit fee system at this stage.

The option of introducing cost sharing would nevertheless be looked into regularly, particularly in the context that auditing would include examination offices' work in areas other than plant variety protection.



Agenda

> 4 July 2012

Online application system information meeting at BSA, Hannover, Germany

> 5 July 2012

Open day for ornamental crops at BSA, Hannover, Germany

> 17 and 18 July 2012

Ring test potatoes, Roelofarendsveen, the Netherlands

> 18 and 19 September 2012

Ornamental experts' meeting, Angers, France

> 11 and 12 October 2012

Agricultural experts' meeting, Angers, France

> 16 and 17 October 2012

Fruit experts' meeting, Angers, France

> 27 and 28 November 2012

CPVO Administrative Council, Angers, France

> 4 and 5 December 2012

Annual meeting between the CPVO and its examination offices, Angers, France

> 5 and 6 December 2012

Vegetable experts' meeting, Angers, France

CPVO participation in

UPOV meetings

> 11 to 15 June 2012 - TWV - Venlo, the Netherlands

> 26 to 29 June 2012 - TWC - Chisinau, Republic of Moldova

> 30 July to 3 August 2012 - TWF - Beijing, China

> 06 to 10 August 2012 - TWO - Jeju, South Korea

> 2 November 2012 - UPOV symposium on the benefits of PVP for farmers and growers - Geneva, Switzerland

Other meetings

> 12 to 14 June 2012 - Expert review meeting on the ARIPO draft legal framework on the protection of new varieties of plants (UPOV-ARIPO), Harare, Zimbabwe

> 2 to 4 July 2012 - Woody Ornamentals Congress, Gent, Belgium

> 5 and 6 July 2012 - Hydrangea 2012 International Symposium, Angers, France

> 12 and 13 July 2012 - OECD Seed Schemes Annual Meeting, Helsinki, Finland

> 18 October 2012 - Heads of European agencies meeting, Stockholm, Sweden

In brief...



Term of office of Carlos Godinho, CPVO Vice-President, renewed

On 19 March 2012, the Council of the European Union, on the basis of a proposal from the European Commission drawn up after obtaining the opinions of the Administrative Council and the President of the CPVO, decided to renew the term of office of Mr Carlos Pereira Godinho as Vice-President of the CPVO for a period of five years with effect from 1 April. Mr Godinho, of Portuguese nationality, was first nominated as Vice-President of the CPVO in 2007.



Responsibilities for crops in the technical unit redistributed

As from 16 April 2012, Ms Urszula Braun-Młodecka has been appointed as technical expert for fruit crops. This new appointment entails a redistribution of responsibilities within the CPVO.

Ms Braun-Młodecka, who previously worked as a technical expert for ornamental crops, has taken over all fruit applications received as from 2009 onwards other than for Citrus and peach.

Publications



The English version of the CPVO *Annual report 2011* is now available on the [CPVO website](#). The French version will be released in June. To get a printed version of CPVO annual reports free of charge, please go to the [EU Bookshop website](#). The annex to the *Annual report 2011*, which is only published electronically, is also on the [CPVO website](#).

Welcome to ...



Muriel Lightbourne, new head of legal affairs from 1 January 2012

"After eight years at the international affairs department of the French patent and trademark office (INPI) and three years as the legal manager of the French plant varieties and seeds examination office (GEVES), joining the CPVO seemed both a logical move and a challenge.

I am particularly enthusiastic about following the appeals of decisions of the Office, or liaising with other European agencies, examination offices of UPOV or non-UPOV parties and stakeholders.

I strive to advise applicants/right holders about their best interests and those of the CPVO and appreciate working in the multilingual and friendly environment of the Office.'



Ninon Duval,

a French colleague, who joined the technical unit as assistant for agricultural, fruit and vegetable species in February 2012 for a period of eight months.

The CPVO Newsletter is here for you. Let us know what topics you would like to see covered in the coming issues, what has been good and what should be improved.

Please contact us at newsletter@cpvo.europa.eu



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