The CPVO has just entered into its 19th year of existence and it can be concluded that there have been important developments and progress since the Office opened its doors in Rue de la Loi in Brussels in 1995. I will save the historical review until the celebration of the 20th birthday of the Office but it suffices to say that the idea of giving an EU agency the task of administering EU-wide plant variety rights whilst maintaining the technical work at authorities and other bodies in Member States has proved to be very successful. For this reason, the concept has been taken on in the draft PRM Regulation which the Council and the European Parliament are presently reviewing. It is proposed that, in the process of granting market authorisation for plant reproductive material, administrative tasks will be given to the CPVO whilst technical work will remain in the Member States.

Following the Lisbon Treaty, the European Parliament (EP) is now fully involved in the legislative procedure concerning activities of the CPVO and, in December last year, I made a presentation to the EP Committee on Agriculture and Rural Development in order to present the activities of CPVO in light of coming legislation involving the CPVO and taking into account the fact that the EP has commissioned a study on the fully self-financed agencies (CPVO and OHIM) on financial aspects. Since the activities of the CPVO is a new policy area on which the Members of the EP will need to take decisions, the CPVO will explore ways of keeping the EP abreast of its activities. As to the activities of the CPVO in the last year, you will see from the statistics published below that 2013 shows a record year in terms of number of applications and titles granted in one calendar year. The number of titles in force is also at its highest ever. The cost calculation exercise has been finalised which, in practice, means that the CPVO will pay more for technical examinations to the examination offices from 1 January this year. This increase is foreseen to be reflected by increases in fees for technical examinations as from 1 January 2015. On the other hand, and as announced in Newsletter 5, the annual fee decreased from €300 to €250 as from 1 January this year, which should be good news for the breeding industry. With these introductory remarks, I wish you all a very successful and happy new year and a pleasant reading of this edition of the CPVO Newsletter.

Martin Ekvad
CPVO President

> General news

Record number of applications received in 2013

In the second half of 2013, the Office received 1,548 applications for Community plant variety rights which represents an increase of 146 applications (+10%) as compared to the same period of 2012. However, this increase was not observed in all crop sectors: in absolute numbers the rise was particularly remarkable for ornamentals for which 844 applications were received (+136 applications; +19%) and in relative numbers for vegetables for which 250 applications were received (+49 applications; +24%). For fruit species the application numbers were on the increase to 144 which are 8 applications more (+5%). By contrast, for agricultural crops only 310 applications were received which are 47 applications less (−13%) than in the second half of 2012.

When looking at the figures for the entire year, the increase in application numbers is even more prominent: the Office received in total 3,297 applications in 2013 (+429 applications; +14.9%). Also here, the crop sectors contributed in different degree to this number: for ornamentals, 1,655 applications (+249 applications; +17%), for vegetables, 587 applications (+139 applications; +31%), for fruits, 255 applications (+22 applications; +9%) and for agricultural crops, 800 applications (+19 applications; +2%) were received.

Shares in application numbers per crop sector from 1/7/2013 to 31/12/2013

<table>
<thead>
<tr>
<th>Crop Sector</th>
<th>Number of Applications</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Agricultural</td>
<td>844; 55%</td>
<td></td>
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<tr>
<td>Fruit</td>
<td>250; 16%</td>
<td></td>
</tr>
<tr>
<td>Ornamental</td>
<td>144; 9%</td>
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<tr>
<td>Vegetable</td>
<td>310; 20%</td>
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</tbody>
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Shares in application numbers per crop sector from 1/7/2013 to 31/12/2013

- Agricultural: 844 (55%)
- Fruit: 250 (16%)
- Ornamental: 144 (9%)
- Vegetable: 310 (20%)
Reduced annual fee as from 1 January 2014

The Commission Regulation (EC) No 1238/95, regarding the fees payable to the CPVO, has been amended by the Commission Implementing Regulation (EU) No 623/2013 of 27/6/2013, published in the Official Journal of the European Union (L 177) on 28 June 2013. This decrease is in line with the CPVO strategy of keeping its financial reserve at a reasonable level while charging a fair price to its clients. The Office shall charge €250, instead of €300, for each year of the duration of the Community plant variety right. This new tariff will apply for the new titles granted from 1 January 2014. For the existing titles, the new annual fee has been applied since the invoicing of annual fees for titles with an anniversary date falling after 1 January 2014.

In any case, the title holders or their representatives have to refer to the amount charged on the debit note sent by the CPVO.

Study on the fully self-financed agencies

As mentioned in the editorial, the European Parliament commissioned a study on the fully self-financed agencies (CPVO and OHIM) on financial aspects which was published in 2013. Focus was placed on how the agencies determine their fees, the treatment of budgetary surpluses and the discharge procedure. The report highlights some challenges self-financed agencies face and looks into ways on how to come to terms with those challenges. In the opinion of the CPVO, the determination of fees and the discharge procedure works well. As regards the treatment of budgetary surpluses, the CPVO together with its Administrative Council has established a plan on how to reduce the surpluses and keep them on a reasonable level. It remains to be seen if the study will materialise in concrete proposals from the side of the European Parliament.

Focus on...

Price of DUS tests

The Office regularly (actually every 2 or 3 years) organises the so called ‘Cost Calculation Exercise’ with the Examination Offices performing the DUS-tests of the candidate varieties. This first aim of this exercise is to determine the remunerations to be paid by the CPVO to Examination Offices. The calculation and negotiation were based on an average of real and full cost of examinations in the last 3 years (2010–12). The new scales of remunerations proposed by the CPVO and accepted by the examination offices show a maximum increase of 10%. The CPVO objective is to keep a fair remuneration for the DUS-tests.

The second aim of this cost calculation exercise is to determine the examination fee invoiced to the applicant. The last review of fees relating to technical examinations was made in 2008 and applicable from 1 January 2009. A proposal for a review of the fees level, together with a simplification of the structure of the fees groups, will be transmitted to the European Commission in 2014 and be possibly applicable from 1 January 2015.

> INTERNATIONAL COOPERATION

UPOV seminar on essentially derived varieties, 22 October 2013, Geneva (Switzerland)

On 22 October, the CPVO participated in the abovementioned UPOV seminar. The seminar included the following Sessions:
I - technical and legal views on “predominantly derived”, “essential characteristics” and “differences which result from the act of derivation”; the relationship between Article 14(5)(b)(i) and (iii) of the 1991 Act of the UPOV Convention and the possible impact on breeding and agriculture;
II - existing experience in relation to EDVs; and
III - the possible role of future UPOV guidance on EDVs in cases before the courts.

Martin Ekvad was the moderator of Session III 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 at http://www.upov.int.

Martin Ekvad, new Chair of the UPOV Administrative and Legal Committee as from October 2013

In its 47th ordinary session on 24 October 2013, the Council of the International Union for the Protection of New Varieties of Plants (UPOV) elected Martin Ekvad (European Union), Chair of the Administrative and Legal Committee of UPOV for a term of 3 years ending with the 50th ordinary session of the Council in 2016.
**CPVO participation in other international events**

Carlos Godinho, Vice-President of the CPVO, participated as speaker in the following events:

- **XII Training Course on Plant Variety Protection for Latin American Countries**, Montevideo (Uruguay) from 11 to 15 November 2013
  The course was organised by UPOV, WIPO, the Spanish Ministry of Agriculture and the United States Patent Office. The course was attended by officials from almost all Latin American countries, directly or indirectly involved in PVR.
- **Seminar on the benefits of plant variety protections systems in line with the UPOV Convention**, Kandy (Sri Lanka) on 25 and 26 November 2013
  This event was organised by UPOV, the Japanese Ministry of Agriculture (MAFF), the United States Patent Office and the Department of Agriculture of Sri Lanka (DOA). 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. The seminar was attended by officials from Sri Lanka, India, Maldives and Afghanistan.

**> LEGAL AFFAIRS**

**General Court case T-367/11: Lyder Enterprises Ltd v CPVO**

By Order of 21 October in an action brought against the decision of the Board of Appeal of the CPVO of 4 May 2011 (Case A007/2010), concerning the refusal of a CPVR for the plant variety Southern Splendour, the General Court dismissed the action and ordered Lyder Enterprises Ltd to pay the costs of the proceedings. The General Court did not accept new pleas in law not raised in the form of order proceedings. The General Court also dismissed a claim that the CPVO and the Board of Appeal lack competence to examine the entitlement to a CPVR. Finally, as regards a request made by the applicant to stay the proceedings until a decision on the entitlement pending before the New Zealand Court was rendered, the General Court stated that it cannot annul or alter a decision on grounds which came into existence subsequent to the adoption of the contested decision. Moreover, facts not submitted by the parties before the CPVO, cannot be submitted at the stage of the action brought before the General Court. The full text of the order is available in the case-law database on the CPVO website.

**Board of Appeal of the CPVO cases A003/2007 and A004/2007: SNC Elaris and Brookfield New Zealand Limited v CPVO**

By decisions of 20 September 2013 in cases A003/2007 and A004/2007, the Board of Appeal of the CPVO upheld the appeals and ordered the CPVO to bear the costs of the appeal proceedings. In essence the Board of Appeal had to determine whether the candidate variety ‘Gala Schnitzer’ was distinct from the reference variety ‘Baigent’ on the basis of an additional characteristic. According to the Protocol applicable, namely Section III of TP/14/1, in order to allow an additional characteristic for assessment that would help establish distinctness of a candidate variety, applicants should make a claim providing data in support of said request in the technical questionnaire or during the test period. The applicant did not make such a claim. The mention of the other characteristic ‘fruit width of stripes’ was only made when the final technical examination report was issued and the authorisation to use it was given by the President of the CPVO around 1 year after the technical examination was completed. The Board of Appeal, therefore, held that it was not permitted to determine the distinctness of the variety on the basis of an additional characteristic. Moreover, the DUS test was flawed since the additional characteristic was tested only during one test period, 2005, and not two as indicated in the applicable guidelines. As a result the candidate variety was found to be not legally distinct from the reference variety. The decision is available in the case-law database on the CPVO website.

**European Observatory on infringements of intellectual property rights**

The Office for Harmonisation in the Internal Market (OHIM) was entrusted with the task of animating the European Observatory on infringements of intellectual property rights by Regulation (EU) No 386/2012 which became effective in June 2012. The Observatory has set up five working groups, dealing respectively with public awareness, enforcement, legal issues, statistics and economics, and IP in the digital era. The CPVO participated in the legal working group and in the plenary session which met at the end of September and October 2013 respectively.

During the meeting of the legal working group, OHIM provided an overview on EU-funded projects IP KEY (China) and ECAP III (ASEAN countries), OHIM also presented draft country guides for Brazil, China, India, Turkey and Russia. Three draft reports on possible best practices were presented. In addition, the final reports that cover the areas of inter-agency cooperation with respect to IP enforcement, costs and damages in infringement actions and storage and destruction of infringing goods will be adapted in the light of the comments received from the working group.

During the plenary session, the CPVO expressed its wish to be a full-fledged member of the Observatory and not just an observer and argued that plant variety rights should also be of a subject matter. Specific focus was made on the scope of the breeders’ rights including essentially derived varieties and the exceptions relating to the breeders’ exemptions and the farm-saved seed exemption.
> **TECHNICAL NEWS**

### Increase in the use of the CPVO Variety Finder database

The chart below shows the number of tests for similarity performed in the database by national, 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.

![Chart showing increase in use of CPVO Variety Finder database](chart.png)

### Enhanced cooperation in denomination testing with the Royal General Bulb Grower’s Association (KAVB)

With about 1 600 members, this Dutch association is active in the flower bulb sector. The 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 that the CPVO receives applications or requests for advices from Member States for ornamental bulb propagated species, which have been first registered or applied for registration 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 cooperated for several years in the framework of the exchange of data and information. During its meeting of 2 October 2013, the Administrative Council of the CPVO agreed to the principle that the Dutch association joins the enhanced cooperation in denomination testing for a test period of 1 year. The KAVB will ask the CPVO for advice after having checked in the Variety Finder the suitability of denomination proposals. 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.

### Report on technical experts meetings held at the CPVO

In 2013, the CPVO held meetings with agricultural, fruit and vegetable crop experts as well as its annual meeting with all examination offices working on behalf of the CPVO.

The **agricultural experts meeting** took place on 8 and 9 October and was attended by 30 experts. The main focus was laid on the revision of the technical protocols for barley, durum wheat and linseed/flax and on the future programme of the elaboration of CPVO technical protocols for species where a UPOV technical guideline already exists. The CPVO reported to the experts about the six R & D projects with relevance to the agricultural sector.

The **fruit experts meeting** which took place on 9–10 October was attended by representatives of the CPVO’s entrusted examination offices for fruit, CIOPORA and representatives of countries participating in the multi-beneficiary programme. Clarifications were agreed upon regarding the acceptance of plant material to be provided for DUS testing, requesting submission of reference varieties and quarantine issues. Further progress was made on potential strategies to rationalise the DUS examinations for fruit crops, including the works on the R & D project on reducing the number of observation cycles for fruit varieties. The Spanish delegation to the meeting presented their project on harmonisation of methodologies for morphological characterisation and molecular identification of Spanish apple collections. Participants were also familiarised with the agenda of the apple open day scheduled on 18 December 2013. Technical protocols for pomegranate, pummelo, and raspberry were discussed.

The **vegetable experts meeting** took place on 2 and 3 December. Discussions continued on the issue of disease resistance characteristics in CPVO vegetable protocols. The results of a survey on the matter formulated by the CPVO and distributed by ESA amongst its members were analysed. Ways were discussed to improve collaboration between entrusted examination offices in vegetables were discussed as well as the following protocols: tomato rootstocks, endive, watermelon, pepper, vegetable marrow/squash.

Finally, on 4 December 2013, the Office held its 17th **Annual meeting with its examination offices**. During this meeting, mainly procedures on cooperation were discussed such as the reporting and the centralisation of testing of ornamental species with low application numbers, the public access to documents and the status of plant material submitted for DUS testing. Furthermore the so-called ‘one key — several doors principle’ was a subject. This principle aims at avoiding repetition of technical examinations when for a given variety a DUS examination either for listing or for plant variety rights registration purpose took place by using the results of that examination in all following procedures.

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**Cooperation with OHIM**

Since 2013, OHIM has been considering variety denominations that were granted plant variety rights as an absolute ground for refusal in case of identical or similar trade mark is proposed for similar products. Such denominations are made available via the CPVO Variety Finder database. On 12 and 13 February 2014, the CPVO will give in Alicante a training to the relevant OHIM colleagues as to the content and use of the CPVO Variety Finder.
Apple open day, 18 December 2013

The Office organised in cooperation with INRA-IRHS (French Institute for Research in Horticulture and Seeds) and GEVES (Groupe d’Étude et de contrôle des Variétés Et des Semences) an apple varieties open day on 18 December 2013 in Angers. Breeders, applicants, procedural representatives, users or examiners of fruit varieties protected by a national or Community plant variety rights title of protection and/or registered in the official French catalogue of fruit varieties and species were invited. The event was well attended, with the participation of 31 organisations and companies from nine countries active in the apple sector.

After an introduction to the Community plant variety rights system and the DUS examination of apple varieties in France, breeders and their representatives gave their opinion on the situation. The audience particularly took note that breeders consider mutation breeding as a very important complement to hybridisation breeding. Discussions focused on the DUS testing of varieties issued from mutations which is more difficult. Various ideas for an improvement of the said DUS testing were discussed, in particular the necessity for an enhanced cooperation with breeders, the importance of ensuring that reference and candidate varieties are fully comparable and possible developments of the technical protocol. The threshold for minimal distance as it is set today was not considered to be too low, although there may be various understanding of this concept. Finally, perspectives offered by molecular techniques were presented.

The Office will in 2014 investigate possible options to implement in the procedures the ideas proposed during the open day and make proposals to the relevant expert groups.

Preparation of candidate countries for their accession to the EU

The CPVO is charged with the preparation of candidate countries for their accession to the EU with regard to the Community plant variety rights system. For this purpose, crop experts from Albania received in August and September practical training in the conduct of the technical examination of tomato, cabbage and onion varieties at the Polish examination office COBORU and the Czech examination office UKZUZ.

As in every year, experts from Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Turkey were invited to participate in the crop experts’ meetings held at the CPVO.

On 12 November 2013, the Office gave a presentation in the congress ‘Intellecutal Property Rights in Plant Breeding’ in Antalya, Turkey.

Croatia, EU member since July, still profits from the special funding provided for EU candidate countries until November 2014.

The Kosovo under UNSC Resolution 1244/99 will be integrated in the scheme of preparatory activities for EU accession as from February 2014. The Office will meet with the Kosovar authorities on 5 February 2014 to identify particular needs and to agree activities.

Since June 2013, the CPVO has received two new candidatures for R & D projects. One of these has already been approved by the CPVO President and the other is now under assessment by the Advisory Group, after having received a positive advice from the Experts Group:

*“A European potato database as centralised collection of varieties of common knowledge”*

The CPVO has decided after consultation of the experts group and the advisory group, to finance a new project on an EU database for potato varieties which is the follow up of the already finalised project “Construction of an integrated microsatellite and key morphological characteristic database of potato varieties in the EU Common Catalogue”. The new project was initiated by the CPVO and involves the nine entrusted examination offices for potato and the European Seed Association (ESA), the total cost of the project is 684 780 with a duration of 2 years. The aim of the project is to set up and to maintain an EU database for potato varieties, containing morphological and molecular data, pictures and to keep a collection of DNA samples from those varieties.

The complete and maintained database as a centralised collection of morphological and molecular data of varieties of common knowledge would be an important tool for examination offices to organise the DUS tests in an efficient manner by providing reliable results for a crop without living reference collection. The use of a centralised database would improve quality and would supposedly reduce costs of the DUS test compared to the maintaining of several DBs on national level. Furthermore, beside its purpose for the DUS test, a part of the database (molecular profiles) could be used by titelholders in enforcement situations.

*“Effect of seed priming on vegetable DUS tests”*

The project will look at the effect of seed priming on the DUS test of eggplant and tomato rootstocks varieties in nominated examination offices entrusted for those species (Naktuinbouw, OEUV, GEVES). Although these are not amongst the most important vegetable species applications-wise in the Community plant variety rights system, commercially they are mostly primed. The R & D project will also study the possible effect that seed priming might have in the reduction of the germination rate over time. The project coordinator shall be the CPVO, with other project partners being ESA and the selected entrusted examination offices. If approved, the starting date of the project is foreseen to be March 2014, and it will be finalised by December 2014.

RESEARCH & DEVELOPMENT projects

Participation in forthcoming events
IT NEWS

IT priorities for 2014 and upcoming years

The CPVO IT strategy for the coming years focuses in particular on the development of a range of e-services applications designed to provide a web-based ‘one-stop-shop’ for applicants and other partners when interacting with the Office. A number of projects are already underway, underpinned by a new exchange platform which allows secure exchanges between the CPVO and its partners. Amongst others, 2014 should see the development of systems for electronic invoicing and online payments. A paperless system will be put in place progressively.

Sharing the online application system

The Office has a project to share its online application system with national authorities in the EU. The objective is to investigate under what conditions it would be possible to transfer the CPVO online application system to a neutral website (http://www.plantvarieties.eu) where it would be possible to apply for national listing or national plant breeders’ rights in the participating countries. The principle will be that, once a variety has been applied in any procedure in the EU, it is possible to reuse the information in order to file another application for another procedure for that same variety. A pilot project has been set up with the GEVES (Groupe d’Étude et de contrôle des Variétés Et des Semences) in France and Naktuinbouw in the Netherlands. During this pilot project, it turned out to be necessary to bring some modifications to the current software developed for the purpose of applications for Community plant variety rights in order to make it usable for national procedures purposes and in particular for national listing. A first version of the system was made available for a testing phase in the end of 2013 to breeders, who cooperated actively and sent many remarks. The Office will analyse them and decide on the follow up of the project in 2014.

IN PRACTICE

All technical questionnaires (TQs) available in E-version as from January 2014

The Office received in 2013 nearly two thirds of its applications via the online application system, this represents an increase of more than 30% compared to 2012. Until now, not all technical questionnaires in .pdf version on the website of the Office were available in the online application system but the Office has been computerising them gradually in the past years and it is now possible to file applications electronically for all species.

IN BRIEF...

Goodbye to our colleague Jean-Louis Curnier, IT Officer who will leave the CPVO for retirement on 3 March 2014

“In September 1997, I sat down at my desk to write a small IT program which I called ‘la moulinette’ … I look at my watch, and already almost 17 years have passed and it’s time to leave for retirement.

My work within the Office has been so captivating that I haven’t seen the time fly; although, I must say that an essential element contributed to that state of affairs: multiculturalism.

On my arrival, we were only 15, and yet we were already of 10 different nationalities. Today, we are a little bit more, but still have as many different cultures and different spoken languages.

Even if everyone doesn’t speak Molière’s language, we can all communicate with that of Shakespeare, and I was able to use the one of Cervantès with some colleagues.

Having the opportunity to work professionally in an environment as multicultural and as multilingual as the CPVO is an enormous privilege and a very rewarding experience. In addition, given the small size of the Office, it can be compared to a family company where all of the staff know each other and communicate whatever their function, country of origin or mother tongue.

Furthermore, it’s this staff that I would like to thank for all these years that have just flown by without my noticing, even though I really appreciated them.”

Visit of DG SANCO colleague, 9 October 2013

Mrs Charels, new colleague at the European Commission particularly dealing with the fruit sector, paid a visit to the CPVO on 9 October 2013. She was given a presentation of the Community plant variety rights system with a focus on particular issues currently under discussion in the fruit sector.

Visit of a delegation from the French National Shallot Association (CERAFEL), 11 December 2013

The CPVO met with representatives of the French National Shallot Association on 11 December 2013 in Angers. Discussions centred on the application of CPVO onion/shallot protocol (TP/46) by entrusted examination offices and on the impact this could have on the correct classification of recently tested varieties as either shallots or onions.

Reform of the Staff Regulations on 1 January 2014

The entry into force of the Reform of the Staff Regulations on 1 January 2014 aims to reflect the current economic crisis throughout Europe.

The main changes include a greater geographical balance when defining salary adjustments, in line with the real economic situation across the Member States, an increase in working hours to a 40 hours week, and an increase of the pensionable age to 66 for newcomers. Between 2013 and 2017, a progressive reduction in staff of 5% will apply to all EU Institutions, bodies and agencies.

Stay updated : to subscribe to this newsletter and to get more information on these subjects, go to the CPVO website.

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Editorial Team

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CPVO Newsletter | Winter 2013-14 | Issue 6 | p.6