In the first half of 2014, the level of work at the Office continued apace with high numbers of applications and record levels of titles in force. In parallel, the CPVO had to prepare the implementation of a new set of administrative policies adopted by the EU institutions and to implement cuts in staff following general EU policy. Our priority in this respect is nevertheless to continue providing high-quality services to the industry for which the Office was created.

As has been announced in earlier versions of this newsletter, the EU institutions are working on a draft plant reproductive material (PRM) regulation which includes new tasks for the Office. During the first half of 2014, the European Parliament (EP) voted against the first draft and it is foreseen that the Commission will prepare a new draft taking into account comments made by the EP as well as comments from the Council after the first reading. The reaction of the EP will certainly produce a delay but the work to find a new text will continue during the year and as an optimist I believe that new tasks will in the end be transferred to the CPVO.

After decreases in the application fee and annual fee (2013 and 2014), the Administrative Council has decided, based on a proposal of the CPVO, to increase the fees for technical examinations as from 1 January 2015. The increases reflect the higher costs that examination offices have when carrying out distinctness, uniformity and stability (DUS) tests on behalf of the CPVO. It is, however, the Commission that will decide on the proposed new fees and a decision can be expected early autumn.

As a last point, the EU was the only intergovernmental organisation party to the UPOV convention but I am now happy to note that a second intergovernmental organisation has become member of UPOV, namely the Organisation Africaine de la Propriété Intellectuelle (OAPI). I look forward to a fruitful exchange of views and experiences with this new member. With these words, I wish you a pleasant reading of this edition of the CPVO Newsletter.

Martin Ekvad
CPVO president

GENERAL NEWS

Number of applications received remains high

The Office has received during the first 6 months of the year 1 725 applications which is almost the same as in the first half of last year (1749; -1.3 %). While the Office saw a clear increase in applications in the agricultural sector (+43 applications; +8 %), a decrease was observed in the other sectors: -11 applications for fruit (-10 %), -45 applications for ornamentals (-5.5 %) and -11 applications for vegetables (-3.3 %). When interpreting these figures, one has to bear in mind that 2013 was the record year in the nearly 20 years’ history of the Office. On 4 August 2014, the Office received the 50 000th application for CPVR.

Presentation of the CPVR system to universities

The president of the CPVO was invited to give a presentation on the Community plant variety rights (CPVR) system at the Centre d’Etudes Internationales de la Propriété Intellectuelle (CEIPI), University of Strasbourg (France), on 23 January 2014. The presentation was attended by students and professors of the CEIPI. On 1 October 2014, an agreement of cooperation was signed between the CPVO and the CEIPI and a roundtable on the challenges and opportunities of the CPVR system will be organised in Strasbourg on this occasion (see programme on the CEIPI website).

The president of the CPVO was invited to give a presentation on the CPVR system and to attend the students’ graduation ceremony of the Masters in intellectual property (Magister Lcventinvs) of the University of Alicante (Spain) on 21 June 2014. An agreement of cooperation was signed between the CPVO and the University of Alicante on the same date. The university intends to launch in the future a 2-day module on plant variety rights that will be offered to students of the Magister Lcventinvs. Experts from the CPVO, examination offices and members of the Board of Appeal will participate in the module.
Clients’ survey about electronic needs

The CPVO launched between 29 January and 28 February 2014 a survey on the needs and expectations of our clients about electronic tools, mainly e-invoicing and e-payment, but also interactive management of their financial and administrative data. All clients with an active account were invited to participate in the survey. The participation rate was around 29 % (195 answers). Almost 71 % of these would be interested in receiving invoices electronically (most of them gave a preference to PDF format). Some 66 % would be in favour of receiving one single invoice per file, whereas 34 % would prefer invoices grouped for several files by fee type and applicant. While only 14 % of our clients would be interested in using a specific financial address for paper format, 31 % would appreciate the use of a specific e-mail address for the sending of e-invoices. Of our clients, 56 % already use the CPVO website to check their financial information at least once a year and 20 % regularly print their invoices through this client portal. On the question about the possibility of online payments, 80 % of our clients prefer to keep bank transfers as the only means of payment. As a follow-up of the results of this survey, the CPVO is developing an e-invoicing system and will also enhance the clients’ website to allow them to manage their own financial and administrative data. The project for other means of payments has been postponed.

For any further information on this topic, please send your questions and requests to the following e-mail address: cpvobank@cpvo.europa.eu

Focus on...

Common approach on European agencies (roadmap)

The CPVO, as a decentralised agency of the European Union, has to implement some specific rules and good practices and to harmonise them with the ones used in other EU institutions and bodies. This ongoing process has been reinforced with the implementation of the roadmap for the regulatory agencies (see Newsletter No 4, autumn 2012, ‘In brief’). This document gives instructions for a common approach in many fields, and a list of actions to be undertaken in the agencies, in a wide range of areas, such as international activities, communication, relations with stakeholders or conflicts of interest, to enhance the implementation of EU policies. Many actions also relate to programming and evaluation of activities, performance measurement and annual reporting. A new framework financial regulation for the agencies was created to give a legal framework to this new reporting environment. In this perspective, the Inter-Agencies Performance Development Network worked, through specialised working groups, on the drafting of several documents which will give useful guidelines, handbooks and best practices to reach the goals of the roadmap. These documents were presented to the Heads of Agencies and the Heads of Administration Networks during their meeting on 5 and 6 June 2014 in Brussels. The mission of the performance development network will continue through a meeting of all working groups in September and its plenary meeting early 2015.

INTERNATIONAL COOPERATION

Visit to the Slovakian and Czech examination offices in March 2014

On 20 March, the president and the vice-president had a meeting with the Slovakian examination office (Central Controlling and Testing Institute in Agriculture - UKSUP) and visited the testing station located in Želiezovce. Apart from visiting the premises, they also attended presentations made by the director of the testing centre and by DUS examiners and exchanged information on different technical subjects.

On 21 March, the president and the vice-president visited the Czech examination office (Central Institute for Supervising and Testing in Agriculture - ÚKZÚ) in Brno and attended several presentations concerning the organisation and performance of DUS testing in the Czech Republic. The presentations were followed by a useful exchange of views on different technical matters. In the afternoon, they had the opportunity to visit a testing station specialised in the DUS tests of fruit species.

CPVO participation in CIOPORA annual general meeting on 2 April 2014

The president, the vice-president and the head of the technical unit attended the annual general meeting of CIOPORA, which took place in The Hague (the Netherlands) on 2 April. This meeting always constitutes a good occasion to maintain close relations with clients and to get direct feedback from the stakeholders on the EU plant breeders’ rights system.

Visit of non-EU delegations in March 2014

The Office has regular exchanges with plant breeders’ rights authorities in other countries. A delegation from the Serbian Ministry of Agriculture, Forestry and Water Management visited the CPVO on 13 March and a group of students from the UC Davis Plant Breeding Academy, California (United States), on 15 March to get information on the functioning of the CPVR system. The visitors were informed about the CPVR system and received explanations about EU legislation, enabling them to better understand the application procedure and granting process.
Visit of a European Parliament member on 15 May 2014

Mr Alain Cadec, Member of the European Parliament, visited the CPVO on 15 May 2014. He was received by the president of the CPVO who presented to Mr Cadec and his delegation the mission and activities of the CPVO.

Visit of COMESA seed catalogue delegation on 23 June 2014

The CPVO received a delegation from the Common Market for Eastern and Southern Africa (COMESA) Secretariat on 23 June 2014. COMESA is in the process of assessing whether it is appropriate to set-up a common catalogue for varieties for its 19 Member States and possibly cooperate in plant variety rights issues. The delegates expressed their interest in the set-up of the CPVR system, the CPVO's structure and organisation and its cooperation with the Member States.

Croatian examination office visited on 6 June 2014

The president of the CPVO visited the Croatian Centre for Agriculture, Food and Rural Affairs on 6 June 2014. The president was guided through the premises of the Croatian examination office and its ISO-certified laboratory. The Croatian examination office stated they are interested in applying for entrustment for some agricultural species.

> LEGAL AFFAIRS

Board of Appeal of the CPVO case A004/2013 Sprint Horticulture Pty Ltd v CPVO

By decision on 4 April 2014 in case A004/2013, the Board of Appeal of the CPVO (BoA) dismissed the appeal lodged against the CPVO and ordered the appellant to bear the costs of the appeal proceedings. After the Examination Office concluded a lack of uniformity of the variety in question and issuing therefore a negative report, the CPVO rejected the appellant’s application for plant variety protection on the basis of non-suitability of the material submitted for the purpose of the DUS examination. Thus, the appellant contested the decision before the BoA with a view to obtaining a complementary examination for its variety. The BoA did not endorse the appellant’s claim that uniformity problems resulted from external factors, such as damage, inappropriate trial conditions or the impact of diseases during the trial. On the contrary, it concluded that there was a fundamental problem with the material submitted. The submitted material is tested as representative of the variety for which protection is sought. The method of propagation of the material (in this case micro-propagation) should not have an influence on the trial results, if the trial is conducted with due care. It is the applicant’s responsibility to ensure that the variety does not change during the propagation process and to ensure that the submitted material is suitable for the test. The full text of the decision is available in the case-law database on the CPVO website.

Board of Appeal of the CPVO case A006/2013 Neath Investments Ltd v CPVO

The BoA, by its decision on 13 January 2014, rejected the appeal and ordered the appellant to bear the costs of the appeal proceedings. In essence, the CPVO had cancelled the appellant’s title after the latter’s representative failed to pay the annual fee for the maintenance of the protected variety within the due time limit. The BoA rejected the appellant’s claim that he did not receive the reminder for payment sent by the CPVO as a registered letter with acknowledgement of receipt. When a notification is sent by mail, the CPVO has the burden of proof that the letter has reached its destination. In the case at hand, the CPVO provided the BoA with a signed acknowledgement of receipt of the letter sent. According to settled case-law of the Court of Justice of the European Union, sending a registered letter with acknowledgement of receipt is a suitable method of giving notice as it enables the starting point of a time limit to be determined. What is more, a valid notice is not subject to effective knowledge of the person concerned; it is sufficient that the letter has been communicated to its recipient and that the latter is in a position to take cognisance of it. This method of giving notice offers the sender the proof that its letter has reached its destination, through the signature either of the recipient or of the person designated by him and whose identity is confirmed. The decision is available in the case-law database on the CPVO website.

Working group on legislative matters: a revision of the existing legislative framework

The ad hoc Working Group on Legislative Matters (LWG) was established in 2012 and since then has organised six meetings with the purpose to exchange views on legal matters and to form concrete proposals for legislative changes on several matters raised in the evaluation report of the CPVR system as well as by its members. The last meeting of the LWG took place in Paris, on 19 May 2014; whereas the next meeting is scheduled to take place on 15 September 2014, in Brussels. The agenda of the LWG includes 20 items. The aim of the LWG is to finalise the analysis of the said items by the end of 2014 and to present a detailed report to the Administrative Council of the CPVO at its annual meeting in March 2015. On three subjects the LWG has agreed to propose changes in the legislation, namely the establishment of specialised courts for plant variety rights infringements, the supplementary application of national law regarding infringements and the use of variety denominations for essentially derived varieties (EDVs). For the time being the LWG is continuing its work on the improvement of the provisional protection, the novelty requirement and recognition and enforcement of judgments in civil and commercial matters.

Visit of the U.S. Department of Agriculture (USDA) on 4 April 2014

A delegation of the USDA visited the CPVO on 4 April 2014. The CPVO and the USDA gave a presentation on their respective plant variety systems. The presentations were attended by the USDA delegation and CPVO staff. Opportunities for cooperation between the CPVO and the USDA were also discussed.
OHIM Observatory on infringements of IP rights

In February 2014, the Observatory on Infringements of Intellectual Property Rights at the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) held two meetings of the Enforcement Working Group (EWG) and the Legal Working Group (LWG). It was the first time that the CPVO attended an EWG meeting. The new Custom Regulation 608/2013, which allows for a better control of small consignments, was presented.

As to the LWG, the following topics were covered: review of the draft studies on cost and damages and on storage and destruction in Member States and of the study on best practices for inter-agency cooperation (at national level), setting-up of a case-law database, presentation of the proposed directive on trade secrets and on cooperation activities with third countries.

Regarding the case-law database, the observatory suggested that patent offices be approached to constitute a subgroup where they would be the main contact points for the collection of cases. The CPVO explained that it had organised a network of national case-law providers and offered to contribute with its freely accessible database and work with the observatory on a common set (where possible) of keywords.

The CPVO participated in the meeting with the European Commission delegates in third countries, held on 17 and 18 March in Alicante, during which delegates introduced intellectual property reforms/state of affairs in their respective jurisdictions, while different services of the Commission presented new legislative developments regarding different intellectual property rights and the CPVO made a general presentation on the CPVR system.

The next meetings of the EWG and the LWG will take place in Brussels on 22 and 24 September respectively.

Bilateral meetings with examination offices

The CPVO has started a series of bilateral meetings with examination offices in order to evaluate the collaboration, to discuss shortcomings which might have occurred in the way of working together and in particular to identify ways to move forward. In 2014, such meetings will be held with those examination offices which are responsible for the majority of technical examinations within the European system. The first meetings in this context were held with Naktuinbouw (the Netherlands), GEVES (France) and the Bundessortenamt (BSA) (Germany). Meetings with NIAB/FERA (United Kingdom) and OEVV (Spain) will follow later this year.

Preparation of candidate countries for their accession to the EU

Since 2006, the CPVO has been participating in the so-called multi-beneficiary programme aimed at preparing candidate countries for accession to the European Union. The programme initially set up for Croatia and Turkey was extended in 2009 to all countries of the western Balkan area.

In 2014, the multi-beneficiary programme was extended to Kosovo. In June, the programme enabled six experts from Albania, Bosnia and Herzegovina, Croatia, Kosovo and Turkey to participate in a training course on plant variety protection given by the University of Wageningen (the Netherlands). Furthermore, several workshops were conducted on DUS training of crop groups. The programme furthermore enabled experts from the beneficiary countries to participate in the seminar on the enforcement of plant variety rights and on farm-saved seeds held in Zagreb in June 2014. A seminar on the quality requirements that must be met for an examination office working on behalf of the CPVO was held for Serbian colleagues at the Czech examination office in May 2014.

Community trademarks in the CPVO Variety Finder

Since 15 May 2014, Community trademarks (CTMs) registered with the OHIM have been included in the CPVO Variety Finder and appear in the test results. Breeders can therefore assess themselves whether a denomination they intend to propose can be the subject of a potential impediment because of the existence of a prior right.

It should be noted that the Office does not reject a denomination proposal because of the mere existence of an identical or similar CTM registered for a similar product. The breeder is informed and it is their decision to proceed with their proposal or not. In case the CTM holder files an objection against the denomination proposal, the latter is refused if the prior right is established.

Training course on DUS principles and practices to Spanish examiners, near Madrid, 24 to 27 February 2014

This training action was attended by more than 30 participants from subcontracted DUS-qualified bodies, where numerous presentations were made by the CPVO, UPOV and the Spanish examination office. There was a great deal of exchanges of experiences between participants.

CPVO technical experts visit BioGEVES, 15 May 2014

On 15 May, the technical experts of the CPVO visited BioGEVES at Le Magneraud, close to La Rochelle (France). BioGEVES is the molecular biology and biochemistry laboratory of GEVES and conducts in that function varietal analyses for a number of species. The visit to BioGEVES was an opportunity for the CPVO experts to get an update on new techniques (for example, single-nucleotide polymorphisms (SNPs) replacing simple sequence repeats (SSRs)) used within the framework of DUS tests such as for the management of the reference collection or the verification of hybrid formulae. The visit was perceived as very informative and useful, especially in the light of discussions on CPVO co-financed R & D projects on the use of new techniques in DUS testing.
CPVO meeting with potato experts in Magdeburg, 17 June 2014

The third meeting of potato experts took place in Magdeburg (Germany) on 17 June. Magdeburg hosts the testing station for potato DUS of the German Bundessortenamt. Potato experts from the nine (entrusted) examination offices for the DUS test of potatoes and representatives of the breeders met in order to discuss the results of the ring test which had been conducted on light sprouts on height varieties at the nine testing stations. This was the last ring test meeting which took place in the framework of the CPVO co-financed R & D project “A European potato database as centralised collection of varieties of common knowledge”. Further issues relating to this project were discussed such as the use and application of molecular data for the management of the reference collection. The project will run until the end of 2015.

CPVO participation in the UPOV technical working parties

The Office regularly participates in most technical working groups of UPOV. The recent participations were the following.

The 47th Technical Working Party for Ornamentals (TWO) meeting was held from 19 to 23 May 2014 in Naivasha, Kenya. The meeting was attended by 47 participants coming from 16 UPOV Member States, CIOPORA as an organisation representing breeders as well as observers from three countries that are not UPOV members. During the meeting, a number of general technical documents were discussed on which ornamental experts provided their input. A major part of the meeting was devoted to the elaboration of 16 guidelines for the conduct of the DUS test concerning ornamental crops.

The 45th Technical Working Party for Fruit Crops (TWF) meeting was held from 26 to 30 May 2014 in Marrakesh, Morocco. A number of technical documents were discussed including the “Revision of document TGP/7: Source of propagating material” and “Partial revision of the test guidelines for mandarins (Citrus L. — Group 1)” prepared by experts from the European Union. The group visited Domain Tabouhanit (an over 400-hectare orchard of citrus, nectarines, olives and grapevine in the neighbourhood of Marrakesh), Essoussi Nurseries (the nursery produces certified plants of olive trees and almonds, plantlets of carob and pomegranate) and the Laboratory of Plant Biotechnology of the Regional Centre of the Institut National de Recherches Agronomiques (INRA) in Marrakesh for multiplication of date palm trees using organogenesis techniques.

The 48th Technical Working Party for Vegetables (TWV) meeting was held from 23 to 27 June in Paestum, Italy. More than 30 participants from countries around the world attended this annual meeting. Several vegetable guidelines were discussed as were various items of relevance in the sector, in particular the CPVO presentation on disease-resistance testing in vegetable DUS examinations. The CPVO will host the 49th TWV in Angers, France, on 15 to 19 June 2015.

RESEARCH & DEVELOPMENT projects

Since January 2014, the president of the CPVO has granted subventions to the following R & D projects, following a positive opinion from the experts’ group and the R & D advisory group.

• “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, OEV, GEVES). 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 is the CPVO and the project partners the selected entrusted examination offices and the European Seed Association (ESA). The project was initiated in March 2014 and it is expected to be finalised in December 2014.

• “Creation of a Common Maize Database for DUS studies”

The project was approved in March 2014 by the president of the CPVO; it is coordinated by the Central Institute for Supervision and Testing in Agriculture (UKZÚZ), Czech Republic. The aim of the project is to establish a common maize database for DUS studies through a partnership between the Czech Republic, Hungary, Slovakia and the CPVO. This database should contain harmonised morphological descriptions of maize lines and hybrids according to the CPVO technical protocol from all participating countries. It will be updated regularly and will be available for electronic consultation for each partner and the CPVO. The project is expected to be concluded at the end of 2015.
> **QUALITY AUDIT NEWS**

**Administrative Council decision (March 2014) regarding audit fees**

The assessment programme consists of triennial audits at all entrusted examination offices and of additional audits for scope extension or surveillance. It has so far been financed entirely from the CPVO budget. An Administrative Council working group developed a proposal for sharing the audit costs with examination offices. In its March meeting, the Administrative Council members decided to implement an audit fees system, based on a 50 % recovery of the costs of the assessment programme. While no starting date has been defined yet, the implementation will be linked to a cost calculation exercise in order to provide an opportunity for the examination offices to prepare for the launch of the system.

The fee itself will be determined combining a standard rate and a test volume related component. A flat fee will be defined for surveillance and scope extension audits.

> **IT NEWS**

**Sharing the CPVO online applications system is underway**

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 Groupe d’étude et de contrôle des variétés et des semences (GEVES) in France and Naktuinbouw in the Netherlands.

The pilot project is reaching its end and after some consistent developments of its online application system and a testing phase with some breeders, it is foreseen to release the facility in September 2014. Breeders should be able to file applications online for a few species in the Dutch or French procedure and reuse the same data in order to file an application at CPVO. If it is foreseen to start with a few species. If it turns out to be successful, the Office will offer the possibility to use the system to other EU Member States in 2015.

> **IN PRACTICE**

**Electronic service of CPVR certificates, decisions and official variety descriptions**

The CPVO is progressively moving towards a “zero paper” Office. In 2012, the CPVO president decided that decisions to grant CPVR and certificates of protection would no longer be issued on paper but as electronic documents bearing an electronic signature. As from 23 April 2012, parties to proceedings were sent paper copies of the official digital reference documents to their correspondence address. As from 22 April 2014, parties to proceedings are sent a hyperlink by e-mail to their corresponding e-mail address allowing for the downloading of their CPVR certificates, decisions and the official variety descriptions. These documents can be downloaded one by one, or zipped and downloaded in one go, for a 30-day period. After that period, digital reference documents remain available on the CPVO website.

> **IN BRIEF...**

**New data protection officer as from 2 April 2014**

Mr Gerhard Schuon has been appointed, as from 2 April 2014, as new data protection officer (DPO) for the CPVO replacing in this function Mme Véronique Doreau who acted as part-time DPO over the last 7 years. Mr Schuon is a German citizen. He works at the CPVO as quality audit team leader and he will act as part-time DPO as well.

Mr Schuon will continue the work to improve the level of compliance of the CPVO with Regulation (EC) 45/2001. One of his first tasks in this respect will be to deal with the high number of implementing rules which will need to be processed following the adoption of the new staff regulations last January 2014. He will also focus on the data protection reform (see new legislative texts proposed by the Commission: http://ec.europa.eu/justice/data-protection/).

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

Reproduction of articles is authorised, except for commercial purposes, provided that the source is mentioned.

**Newsletter readership survey**