The year 2015 is an exciting and challenging time for the Community Plant Variety Office (CPVO) as we celebrate 20 years of protecting EU plant variety rights (PVR). Since our inception in 1995, the CPVO has worked hard for all EU citizens, particularly for our breeders. Ensuring that PVR are protected throughout the EU, processing over 50,000 plant applications since our creation, the CPVO is bustling with activity.

The year 2014 marked a second consecutive record year for CPVO plant applications. We received over 3,600 applications, a 10% increase on 2013 - also a record year. Indeed in 2013, the CPVO processed 3,296 (22%) of the 15,200 worldwide plant variety applications.

The removal of the plant reproductive material (PRM) legislation from the European Commission’s 2015 work programme, announced in mid-December, came after a thorough discussion amongst EU institutions and stakeholders. While I am most conscious of the overall objections to the proposed legislation, I firmly believe that the PRM proposal to enhance the powers of the CPVO would allow us to use our expertise to modernise and enhance the EU system of protecting PVR in neighbouring activities. I was delighted to learn that the CPVO’s enhanced role was not disputed during the first reading of the PRM legislation, and I intend to work with interested bodies, to enhance the CPVO’s duties by reforming our basic regulation.

The year 2014 was not just a record year for applications. It was also one of many firsts! I travelled to Chicago to encourage increased cooperation with our US counterparts (the United States Department of Agriculture). As both the USA and the EU are International Union for the Protection of New Varieties of Plants (UPOV) members, this should allow us to increasingly use the same data for the United States Department of Agriculture (USDA) and CPVO applications — cutting the administrative burden of our clients.

In November, the CPVO teamed up with the University of Alicante to introduce a module on PVP to their IP masters programme. This follows already established university collaboration with the Centre d’Etudes Internationales de la Propriété Intellectuelle (CEIPI) in Strasbourg, France, and the University of Wageningen, in the Netherlands. These involvements highlight the importance the CPVO attaches to the creation of PVR experts among our young and our commitment to continue to attract the brightest minds to the field of PVR.

In December, the CPVO and Queen Mary University of London joined forces to improve our EU PVR national case-law database. Together, we are working to compile and format all plant variety case-law across the EU. Such an improved database will allow us to develop a greater understanding of the national implementation of PVR, while also fostering a culture of PVR excellence.

Finally, I would like to invite you to read our newsletter and to follow and engage with us on Twitter. Wishing you and yours a very happy and prosperous New Year.

Martin Ekvad
CPVO President

The CPVO supports the Charlie Hebdo victims

President Martin Ekvad and Vice-President Carlos Godinho are pictured on their way to the Charlie Hebdo solidarity march. Approximately 45,000 people took part in the Angers Charlie Hebdo solidarity march on 11 January 2015.

Speaking from the event, the Presidency said: ‘The CPVO were deeply saddened by the brutal and inhuman attack on the office of Charlie Hebdo. This is a time of profound sadness, not just for France, but for all those who value the European ideals of mutual respect, tolerance, freedom of speech and freedom of the press. Our thoughts are with the victims, their families and friends at this difficult time.’
The CPVO finished the year 2014 with a record number of applications

During the last six months of 2014, the CPVO received 1,901 applications which is 353 (22.8%) more than in the same period of 2013. The different crop sectors contributed differently to this increase: for agricultural crops the Office received 494 applications (+184, +59.4%). This is the biggest relative increase in the nearly 20 years' history of the Office. For ornamentals, 1,019 applications (+175, +20.7%) were received and for fruit varieties 150 applications (+6, 4.2%) were filed. Only for vegetable crops was the number of applications received in the second half of the year lower than in the previous year: 238 applications (−12, −4.8%).

When looking at the figures for the entire year, the numbers are particularly impressive for agricultural crops with +227 applications (+28.4%) and for ornamentals +131 applications (+7.9%). By contrast, for fruit crops the application numbers dropped by 6 (−2.4%) and for vegetables by 23 (−3.9%). In total, the Office received by the end of the year 3,626 applications (+10%). It is believed that the high application numbers are partly due to the increased examination fee becoming applicable to new applications filed as from 1 January 2015.

Increase of technical examination fees as from 1 January 2015

In order to better reflect the real costs of distinctness, uniformity and stability (DUS) testing by the examination offices, the CPVO Administrative Council (AC) proposed to the European Commission a new set of costs for examinations. The new structure simplifies and reduces the number of cost groups. These fees were formally approved in December 2014 and are applicable as from 1 January 2015. The fee structure (cost per growing period) is available online at the CPVO website.

The President of the CPVO meets EU Health Commissioner, Vytenis Andriukaitis

Shortly after the confirmation of the new European Commission, Martin Ekvad met Health Commissioner Andriukaitis. It was an excellent opportunity to brief the Commissioner on the activities of the CPVO and the challenges we face. The potential reform of the PRM and the CPVO’s basic regulation were addressed. As the PRM was formally removed from the Commission’s 2015 work programme, after this meeting, the CPVO will now work to ensure that the reform of the basic regulation becomes a Commission priority.

Particular attention was also given to the threat that the proposed mandatory staff cuts pose to the efficiency of the CPVO and the service the CPVO provides to EU citizens. The CPVO was most relieved to learn that the Commissioner was supportive to their plight as he voiced agreement that small, self-financed agencies should not be subject to blanket staff reductions.

Making PVR an educational centrepiece

On 1 October, the CPVO and the Centre d’Études Internationales de la Propriété Intellectuelle (CEIPI) signed an agreement to co-host a series of PVR lectures. This complements the cooperation already established with the University of Wageningen (the Netherlands), the University of Alicante (Spain) and our ongoing partnership with Queen Mary College in London (United Kingdom).

This is an exciting time for the CPVO. Ensuring that PVR will be included in the CEIPI’s intellectual property (IP) curriculum will allow us direct dialogue with aspiring IP experts.

Working to develop PVR protection in and outside the EU

The President of the CPVO, Martin Ekvad, met with representatives from the Directorate-General for Trade and the Directorate-General for Health and Food Safety, in November, to discuss to what extent the EU can raise awareness of PVR in the EU and how to enhance PVR outside the EU. This was also an excellent opportunity to highlight some of the issues raised in the Transatlantic Trade and Investment Partnership (TTIP) discussions. There was common agreement that improved cooperation and sharing of PVR expertise between the Directorate-General for Trade and the CPVO are essential in order to protect and improve global IP protection for PVR.
Focus on...

One key - several doors principle

On the occasion of the strategic discussion launched by the CPVO in 2005 on the future of DUS testing in an enlarged EU, the ‘one key - several doors principle’ was identified by participating Member States and stakeholders as a key objective.

It implies that a variety which has undergone a DUS examination, resulting in a final DUS report (the key), should not be examined a second time for DUS, either for national listing, or for national plant breeders’ rights (PBR), or for Community PVR (the several doors). The single report which has been produced should form the basis for any subsequent decisions to be taken by a Member State of the EU and/or the CPVO, irrespective of whether the report is positive or negative.

The purpose is to make the variety testing system within the EU more efficient, to avoid unnecessary duplicated costs for breeders and authorities and to stimulate collaboration between examination offices.

The one key - several doors principle can function only if the technical reports have been produced by examination offices (EOs) which fulfill well-defined quality requirements and that the variety in question has been examined according to these requirements. In order to ensure this, EOs are today audited by the CPVO quality audit service (QAS) and a report is submitted to the AC of the CPVO as a basis for a decision on entrustment of the EO in question. As a consequence the ‘being entrusted’ status of an EO is essential for the CPVO when implementing the one key - several doors principle.

The CPVO is of the opinion that the one key - several doors principle should become the rule for variety testing within the EU. A deviation from that rule, for example, if a breeder is willing to have his variety of DUS tested by different authorities, should be well founded or in case a national authority will not use the first initiated DUS test as the unique basis (the key) for its decision, the reasoning for that should be clear and transparent.

In order to reach a common understanding of this principle amongst EU examination offices, the CPVO has prepared a document on the various detailed aspects of the one key - several doors principle. This document was discussed with the EOs and the stakeholders over the last years.

> INTERNATIONAL COOPERATION

CPVO international relations strategy adopted on 9 October 2014

The international relations strategy was adopted by the Administrative Council (AC) members during last AC meeting. It aims at making interested actors aware of the actions the CPVO is taking in this respect. The CPVO felt it was important to play this role and to explain the PVR system internationally. The breeders will certainly benefit from it if more and more countries develop their systems up to the level of the Community plant variety rights (CPVR) system.

CPVO participation in European Seed Association (ESA) annual meeting, Lisbon, Portugal (13 October 2014)

The Vice-President represented the CPVO in the European Seed Association (ESA) annual meeting. This meeting is always a good opportunity to maintain close relations with clients and to get direct feedback from the stakeholders on the Community plant breeders’ rights system. This year the ESA annual meeting registered a record year of participants with more than 900 registrations.

UPOV meeting welcomes latest member - OAPI, Geneva, Switzerland (13 to 17 October 2014)

As mentioned in Newsletter No 7, the African Intellectual Property Organisation (OAPI) became the second intergovernmental organisation and the 72nd member to join the UPOV. OAPI operates a PVR system which covers the territory of its 17 member states: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comores, Congo, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, the Ivory Coast, Mali, Mauritania, Niger, Senegal and Togo. The CPVO offers its congratulations to the OAPI and looks forward to working together to broaden international cooperation in the field of PVR.
**Draft ARIPO plant varieties protocol nearing conclusion**

On 29 October 2014, the President of the CPVO travelled to Zimbabwe to share the CPVO’s knowledge of regional PVR systems and to assist the African Regional Intellectual Property Organisation (ARIPO) to develop their own system of regional PVR. The Zimbabwe-based workshop was a resounding success.

The ARIPO PVR proposal has now entered the final stages of drafting. It is expected that the draft protocol will be presented for adoption at a diplomatic conference in August 2015.

**Bringing plant breeders’ rights to Tanzania (24 November to 3 December 2014)**

In November, the President of the CPVO participated in a plant breeders’ rights training course in Tanzania organised by the University of Wageningen. The aim of this course was to help countries implement PVR systems which adhere to the UPOV principles.

Martin Ekvad welcomed the move towards the introduction of a Tanzanian PVR system: ‘in Africa alone, almost 200 million people are undernourished. Africa needs to increase its agricultural productivity and I believe that PVR could contribute to the answer. PVR encourages crop research and development - for example creating more productive crops, with greater resistance to disease and crop failures.’

A well-functioning PVR system is helpful for both local breeders and EU breeders who seek to invest in developing countries, which can lead to increased global food security and more effective global trade.

**Reducing bureaucracy for our breeders through enhanced EU–US cooperation**

On 8 December, the President of the CPVO travelled to the USA to create greater awareness of EU plant variety rights and to foster closer working relations between the CPVO and our US counterparts.

Martin Ekvad’s mission targeted the US Plant Variety Protection Board of the USDA, where he presented the CPVO’s EU system of PVR, highlighting the advantages of the system, such as the assessment of applications, the online application system and the Variety Finder database. The exchange of views showed that whilst the EU and US systems operate differently, there are many common denominators.

**Train the trainer course for Iberoamerican countries, Montevideo, Uruguay (15 to 19 December 2014)**

The Vice-President participated as a speaker in the course organised by the UPOV with the assistance of the Spanish Agency for International Development Cooperation (AECID), the Spanish Ministry of Agriculture and the World Intellectual Property Organisation (WIPO). He was invited to give presentations on the CPVR system, the conditions and limitations of breeders’ rights and on denominations.

**> LEGAL AFFAIRS**

**Seminar on the interface between patents and PVR (24 June 2015)**

Taking into account the ongoing discussion in the EU and the pending decisions from the enlarged Board of Appeal of the European Patent Office regarding the ‘Broccoli II’ and ‘Tomatoes II’ cases, where there are issues concerning the interface between patent and plant variety protection for plant material and related inventions, the CPVO has proposed to organise a seminar on the topic. It will take place in Brussels, on 24 June. Member States as well as breeders’ associations will participate.

The adoption of this protocol will allow a regional PVR system to be implemented in the ARIPO countries adopting the protocol. This protocol will mark an important step in the ARIPO’s journey towards UPOV membership.

The ARIPO members are listed below: Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Sierra Leone, Liberia, Rwanda, São Tomé and Príncipe, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.
Decisions reached by the Board of Appeal

As regards appeal procedures, 2014 has been quite active. Two relevant cases have been the following ones.

‘Banana Cream’ appeal case (A008/2013)
The Examination Office could not observe any of the differences indicated by the applicant with the reference variety ‘Leumayel’. As a result a final negative report was sent to the CPVO. Against the decision to reject the application for CPVR, the applicant lodged an appeal asking the Board of Appeal to confirm the distinctness of the candidate variety or, alternatively, to perform a further technical trial including plant material of ‘Leumayel’ supplied from at least a source different from its holder. The Board of Appeal found that the identity of the reference variety is doubtful. Therefore, a new DUS test has to be undertaken with samples of the reference variety ‘Leumayel’ taken from at least three different sources to be included in the trial, including one sample from the holder of the CPVR for ‘Leumayel’; in order to check in particular whether ‘Leumayel’ has or does not have lateral flowering branches. The decision is available in the case-law database on the CPVO website.

‘Oksana’ appeal case (A007/2013)
During the application proceedings several objections for lack of novelty were filed. The result of the DUS test was positive, but the Examination Office stated that it was confirmed during the trial examination that the plant material submitted by the applicant and the plant material of the ‘Nojabrskaja’ variety kept in the reference collection of the Examination Office since 1982 were identical. Consequently there had not been a problem of distinction but of novelty. The UPOV variety description is not likely to allow the comparison of a variety with itself but with another one, namely the most similar one. This is the reason why the variety was not compared to itself but to the closest known variety ‘Grafin von Paris’. The CPVO rejected the application for ‘Oksana’. The Board of Appeal upheld the decision of the Office as well as decisions OBJ13-086, OBJ 13-087, OBJ 13-090. The appeal was rejected and the appellant ordered to bear the costs pursuant to Article 85.1 BR. The full text of the decision is available in the case-law database on the CPVO website.

Pending cases before the General Court

Regarding the cases appealed to the European Court of Justice there are several pending cases. The ruling from the Court of Justice on ‘Lemon Symphony’ (C-546/12P) is expected in 2015; but the opinion (conclusions) of Advocate-General Sharpston was delivered on 13 November 2014. The Advocate-General concluded that the appeal should be dismissed as in part unfounded and in part inadmissible, essentially following the position taken by the CPVO. The opinion of the Advocate-General is available at www.curia.europa.eu

Working group on legislative matters, Paris (15 September 2014) and Brussels (8 January 2015)
The ad hoc working group on legislative matters (LWG) established in 2012 has concluded the tasks for which it was created. The previous meeting was held on 15 September 2014, in Paris. The purpose of the said LWG has been to exchange views on legal matters and to make concrete proposals for changes to the legislation. The eighth and last meeting took place in Brussels on 8 January 2015 where nine subjects were discussed such as the concept of sale regarding the novelty’s requirement, the improvement of the provisional protection regarding CPVR applications, the protection of products obtained directly from material of the protected variety. Moreover, another important issue discussed was the EDV’s concept and the registration of EDVs. Twenty items in total were discussed and consensus was reached regarding the implementation of legislative changes in relation to five of them; for instance, the limitation of breeder’s exemption by way of contract and the establishment of specialised chambers of national courts with exclusive jurisdiction to deal with infringement of CPVRs at national level. A final report will be presented to the AC of the Office in March 2015. The said report will include an analysis of each of the 20 points and proposals on new legislation the LWG has agreed on.

> TECHNICAL NEWS

A possible development of the rules on the suitability of variety denominations

The Office regularly faces discussions as to the suitability of denomination proposals in case of possible similarity with existing denominations. Considering that the same issue arises in the trademark world, the Office requested Office for Harmonization in the Internal Market (OHIM) colleagues to give a detailed explanation on how the matter is dealt with at their level.

Training was organised at the beginning of September 2014 with the opportunity to exchange useful information on the interaction between trademarks and variety denominations. The Office concluded that — while recognising that the object of the rights is different in both IP systems - a more structured approach in respect of the notions of visual, aural and conceptual similarity could improve the current CPVO guidelines on variety denominations. The principle of a modification of the guidelines will be proposed to the CPVO AC of March 2015. If agreed, a working group including Member States, breeders’ associations and the Commission will be organised in order to set up a concrete proposal.

Closure of the multi-beneficiary programme

Since 2006, the CPVO has participated in the so-called multi-beneficiary programme. This programme was set up by the European Commission to prepare candidate countries for their accession to the European Union. The participation of the CPVO in this programme ended in November 2014.

In the second half of last year, the programme enabled crop experts from Albania, Croatia, the former Yugoslav Republic of Macedonia, Kosovo (this designation is without prejudice to positions on status and is in line with UNSCR 1244/99 and the International Court of Justice opinion on the Kosovo declaration of independence) and Serbia to be trained in DUS testing of fruit crops, medical plants, barley, potato and nut varieties by the plant variety rights authorities, the Bundessortenamt (Germany), the Groupe d’Etude et de contrôlet des Variétés et des Semences (GEVES) (France), the Centrally Ośrodek Badania Odmian Roslin Uprawnych (Coboru) (Poland) and the National Food Chain Safety Office (Hungary). The French GEVES provided training in the Gaia programme to Serbian experts. The CPVO held, in cooperation with the German Bundessortenamt, a workshop in Kosovo explaining the duties and structure of an examination office working on behalf of the CPVO and how the CPVO cooperates with its numerous examination offices spread out in the European Union when processing applications for Community plant variety rights. Furthermore, the CPVO held a workshop in Croatia on variety denomination.

Finally, the programme enabled experts from aforementioned countries and Turkey to participate in the annual crop experts’ meetings for ornamentals, fruit, agricultural crops and vegetables.
Open day at the Bundessortenamt for Calluna breeders (15 October 2014)

On 15 October 2014, the CPVO participated in an open day organised by the Bundessortenamt in Hanover (Germany) for breeders of Calluna varieties. The open day gave breeders an opportunity to familiarise themselves with the conduct of the technical examination as well as with the Bundessortenamt and the CPVO. The presentations and discussions in the meeting room were followed by a visit to the growing trial. The event was attended by some 30 participants; most of them were German breeders.

Vegetable open day, Valencia, Spain (24 October 2014)

Almost 80 participants from vegetable breeding/seed companies and examination offices in Spain and elsewhere in Europe attended the event co-hosted by the CPVO with the Oficina Española de Variedades Vegetales (OEVV) and the Instituto Nacional de Investigación y Tecnología Agraria y Alimentaria (INIA). There was lively discussion around the eight presentations made by representatives of the three aforementioned organisations and the ESA focusing on current issues in vegetable DUS testing and plant breeders’ rights. The sunny afternoon was spent visiting the vegetable trial facilities of INIA where the examiners explained the intricacies of DUS testing salad crops under their local conditions. The event finished with conclusions on how improvements can be made to the vegetable sector in the future.

Report on UPOV biomolecular techniques (BMT), Seoul, South Korea (10 to 14 November 2014)

The UPOV BMT (biomolecular techniques) working group takes place every 18 months, this time at Seoul, South Korea. Perhaps due to this Far East destination, only three European countries participated in addition to the CPVO. There were a number of presentations dealing with the use, or potential use, of biomolecular techniques in the DUS test, the main focus was on the use of these techniques for the management of the ever bigger reference collections. The CPVO had collaborated with the United Kingdom and the Netherlands to give a presentation on the research and development (R&D) project on the common potato varieties database.

A new element was the joint workshop on molecular techniques with UPOV, ISTA and OECD. It was agreed to organise a survey in which each organisation describes their use of these techniques in order to identify fields of cooperation.

Report on UPOV TWA/43, Mar del Plata, Argentina (17 to 21 November 2014)

The 43rd UPOV working group took place very late this year in Argentina. There were a number of Asian countries participating for the first time as observers (Cambodia, Indonesia, Malaysia, Myanmar/Burma, Thailand). The discussion on the revision of the test guidelines for wheat will be continued in 2015. Further revisions put on the agenda for this TWA will be cotton, soybean, field beans, oats and red clover. As during the previous TWA meetings, the discussions on the revisions of the TGP documents continued. The working group received a presentation from New Zealand on fungal endophytes, subjects to PBR applications not only in New Zealand but also for CPVR. The CPVO agreed with the UPOV to give a presentation on the results of its R&D project ‘Endophytes in grasses’ as soon as the final results are available (2016). The next TWA will take place in July 2015 in Japan.

CPVO participation in IPM together with several examination offices (27 to 30 January 2015)

The CPVO exhibited in a joint ‘Plant breeders’ rights in Europe’ stand with the Bundessortenamt (Germany), the UK National Institute of Agricultural Botany (NIAB) and the Netherlands Inspection Service for Horticulture (Naktuinbouw) at the IPM 2015, from 27 to 30 January 2015 in Essen, Germany. With more than 1 500 exhibitors from over 50 countries and some 57 000 visitors, the IPM ESSEN (International Trade Fair for Plants, Technology, Floristry and Garden Features), the world’s leading trade fair for the horticultural industry, offers an excellent opportunity for the CPVO to promote the Community plant variety rights system, to meet its clients, to be informed on the latest developments in horticultural and plant breeding, and to enhance the close and efficient relationship with the examination offices performing the technical assessment of candidate varieties for Community plant variety rights.

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TO BE NOTED

The CPVO welcomes new assistant to the Presidency: Miss Aoife Kearney

The CPVO team are pleased to announce that Aoife Kearney, of Irish nationality, has been appointed to the position of Assistant to the Presidency. Prior to joining the CPVO, Aoife was a media and policy advisor in the European Parliament. A law graduate, she has extensive experience in the fields of communications and EU policy and legislation.

Following her appointment, Aoife said that she was: ‘honoured to join such a dynamic and ambitious agency, with a clear and focused aim: to make the PVR system work better across the globe by using our capabilities in data, technology, analytics and customer service… I am most grateful for the warm welcome I received from my colleagues and I look forward to the opportunities and challenges that lie ahead.’

We wish Aoife the best of luck and success in her new job.

Traineeship recruitment procedure

As part of the 2015 traineeship procedure, the CPVO will host a total of six traineeships from 1 March until 31 August. This opportunity aims at providing university graduates with a unique and first-hand experience of the role and work of the CPVO in an international, multilingual and multicultural environment. In return, the trainees will also benefit the CPVO by putting into practice the latest up-to-date skills and knowledge acquired during their studies.

In April 2015, further traineeship advertisements will be published on the CPVO website for the next six-month traineeship period starting on 1 September 2015. For further information on traineeships, please contact Vacances@cpvo.europa.eu

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The CPVO staff members
wish you a successful and happy New Year 2015.

Special thanks from the president to the contributors to this newsletter (Véronique Doreau, Carlos Godinho, Ghislaine Guillert, Aoife Kearney, Jean Maison, Francesco Mattina, James Moran, Sergio Semon, Dirk Theobald and Anne Wetz) and to the editorial team for their valuable work.

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