

# **NOTES FOR APPLICANTS**

***Disclaimer:***

***The notes for applicants were elaborated with the intention to provide an easy-to-understand guidance on the application procedure. The CPVO takes all care to always provide through these notes updated information to applicants. If however information contained in the Notes for applicants are not in line with the legislation the legislation prevails.***

<b>1. A UNIFORM PLANT VARIETY RIGHT THROUGHOUT THE ENTIRE EUROPEAN UNION .....</b>	<b>4</b>
<b>2. COMMUNITY PLANT VARIETY OFFICE.....</b>	<b>4</b>
<b>3. LANGUAGES .....</b>	<b>4</b>
<b>4. PUBLICATIONS .....</b>	<b>4</b>
4.1 OFFICIAL GAZETTE OF THE OFFICE .....	4
4.2 ANNUAL REPORT .....	5
4.3 THE OFFICE'S WEBSITE.....	5
<b>5. APPLICATION FOR A CPVR: WHEN? WHERE? HOW? BY WHOM? .....</b>	<b>5</b>
5.1 WHEN?.....	5
5.2 WHERE? .....	6
5.3 HOW? .....	6
5.4 BY WHOM? .....	7
<b>6. ORIGINAL DOCUMENTS.....</b>	<b>8</b>
<b>7. FEES: WHAT FOR? HOW MUCH? HOW? WHEN TO PAY?.....</b>	<b>8</b>
<b>8. PROCEDURAL ASPECTS.....</b>	<b>9</b>
8.1 FORMS OF ACKNOWLEDGEMENT OF RECEIPT .....	9
8.1.1 <i>The application is complete 'R-Form'</i> .....	9
8.1.2 <i>The application is not yet valid 'No-Form'</i> .....	9
8.1.3 <i>The 'C-Form'</i> .....	9
8.2 PUBLICATION.....	10
8.3 TECHNICAL EXAMINATION.....	10
8.4 "TAKE-OVER" OF TECHNICAL REPORTS .....	10
8.5 CLOSING DATES FOR TESTING SEASONS .....	10
<b>9. VARIETY DENOMINATIONS.....</b>	<b>10</b>
<b>10. DECISION MAKING PROCESS .....</b>	<b>11</b>
<b>11. COMMUNITY PLANT VARIETY RIGHT .....</b>	<b>11</b>
<b>12. APPEAL .....</b>	<b>12</b>
<b>13. RESTITUTIO IN INTEGRUM CLAIM .....</b>	<b>12</b>
<b>14. SURRENDER OF RIGHTS/WITHDRAWAL OF APPLICATIONS .....</b>	<b>13</b>
14.1 SURRENDERS.....	13
14.2 WITHDRAWALS .....	13
<b>15. ENFORCEMENT OF RIGHTS .....</b>	<b>13</b>
<b>16. CUMULATIVE PROTECTION PROHIBITED .....</b>	<b>14</b>
<b>17. REQUEST FOR CERTIFIED COPIES OF EXAMINATION REPORTS, APPLICATIONS AND GRANTING DOCUMENTS.....</b>	<b>14</b>
17.1 REQUEST FOR CERTIFIED COPIES OF EXAMINATION REPORTS FOR THE PURPOSE OF EXCHANGE OF EXAMINATION RESULTS AMONGST PLANT VARIETY RIGHTS AUTHORITIES .....	14
17.2 REQUEST FOR CERTIFIED COPIES OF APPLICATIONS AND GRANTING DOCUMENTS FOR PRIORITY PURPOSES OR FOR LEGAL PROCEEDINGS .....	14
17.2.1 <i>For priority purposes</i> .....	14
17.2.2 <i>For legal purposes (for example, for infringement cases)</i> .....	15

# **ANNEXES**

**Annex I**      **Notes on the completion of the application form**

**Annex II**     **Fees structure**

**Annex III**    **Fees relating to technical examinations**

## 1. A uniform plant variety right throughout the entire European Union

A Community Plant Variety Right<sup>1</sup> ("CPVR") is an intellectual property right, like a patent, but designed for plant varieties of which material is produced and commercialised. In the past, plant breeders had the opportunity to apply for national plant variety rights in most of the Member States of the European Union. Such protection was and is limited to the territory of each individual Member State; application for protection had to be made to the competent authority in each of these Member States.

Since 27 April 1995, plant breeders may ask for protection throughout the European Union by a single application to the Community Plant Variety Office ("the Office"); protection may be granted by a single decision of the Office.

## 2. Community Plant Variety Office

The Office is an independent body of the European Union. It is exclusively responsible for the implementation of the regime of CPVRs.

The Office is located in Angers in France following a decision taken by the Council of the European Union. The Office is operational since 15 June 1995 and can be reached at the following address:

<b>Community Plant Variety Office</b>	
Post:	CS 10121 FR - 49101 ANGERS CEDEX 02 FRANCE Phone: +33-2-41 25 64 00 E-mail: <a href="mailto:cpvo@cpvo.europa.eu">cpvo@cpvo.europa.eu</a> Website: <a href="https://cpvo.europa.eu">https://cpvo.europa.eu</a> or <a href="http://cpvo.europa.eu">cpvo.europa.eu</a>
Visits:	3 Boulevard Foch 49100 Angers France

## 3. Languages

Applications to the Office and supporting documents shall be filed in one of the official languages of the European Union. The language in which the application is filed initially defines the language of proceedings before the Office. The applicant or titleholder may later ask for the recordal of a different language of proceedings, especially if there's a transfer of application, right or representative. Forms such as application form and general technical questionnaires are available in English, French, Spanish, German and Dutch. The certificate of the grant of a right will be issued in the language indicated by the applicant on the application form. Any of the official languages of the European Union may be used by a party for proceedings.

## 4. Publications

### 4.1 Official Gazette of the Office

Yearly, 6 issues of the Official Gazette of the Office are published (one every even month), on the website of the CPVO. It contains details of applications for CPVRs, and grants of CPVRs, proposals for variety denominations, withdrawals of applications, decisions, termination of protection, appeals, a list of the applicants for and holders of CPVRs, original breeders of varieties and procedural representatives, proposed denominations and approved denominations and other relevant information. Provisional protection starts, according to Article 95 of Regulation 2100/94, as from the publication date of the Gazette.

The webpage « Plant material submission to entrusted Examination Offices – S2/S3 Publication », published on the CPVO website provide applicants with a consolidated version of the closing dates for applications and the submission requirements for plant material per species and according to the examination offices which are

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<sup>1</sup> Created by Council Regulation (EC) No 2100/94 of 27.7.1994 on Community plant variety rights (OJ No L 227, 1.9.1994)

currently entrusted to carry out the DUS technical examination on behalf of the CPVO.  
For species without an entrusted examination office in the EU, the S3 publication contains information about cooperating authorities in third countries.

The content of this S2/S3 publication is updated on a daily basis. In addition, once per year (mid-February), the content is extracted and published in a pdf document on the CPVO website.

## 4.2 Annual Report

Every year the Office publishes an Annual Report which gives an account of the main activities of the Office for the previous year and contains in its Annex a list of protected varieties on the 31<sup>st</sup> of December together with the names of holders of CPVRs, original breeders of varieties and procedural representatives. Whereas the annual report is available in paper format, the annex is exclusively published in electronic format on the CPVO website

If you would like to receive the Annual Report, please contact the Office or consult the Publications Office website (<https://publications.europa.eu>).

## 4.3 The Office's Website

The address is <https://cpvo.europa.eu>. This site contains, amongst other information, the structure of the Office, contacts, relevant legislation, notes for applicants, forms, applications and granted rights, and a regular update of the latest news.

As from March 2007, users can consult their files through the CPVO user portal 'MyPVR'.

As from March 2010, e-applications can also be filed through MyPVR for all species. If this is your first online application, create your provisional account yourself on the restricted access area. You will receive afterwards a "client sheet" for checking as well your definitive login. Then, please follow the instructions given online for the e-applications.

# 5. Application for a CPVR: When? Where? How? By whom?

## 5.1 When?

A CPVR can be granted only if the variety is novel. The variety will not be novel if variety constituents or harvested material of the applied-for variety were physically transferred for the purpose of commercial exploitation with the breeder's consent:

- within the European Union for more than one (1) year before the date of application;
- outside the European Union for more than four (4) years or, in the case of trees and vines six (6) years, prior to the date of application.

The applicant is expected to have taken reasonable precautions to ensure that sales or comparable disposals have not taken place earlier than mentioned above.

The following types of disposal of material of the variety will not damage novelty:

- disposals to an official body for statutory purposes, or to others on the basis of a legal relationship, solely for production, reproduction, multiplication, conditioning or storage, provided that the breeder preserves the exclusive right of disposal and that no further disposal is made to others;
- disposals of material which has been produced from plants grown for experimental purposes or for the purpose of breeding, or discovering and developing other varieties and which is not used for further reproduction or multiplication, (unless reference is made to the variety for purposes of that disposal and a physical transfer took place);
- disposals due to, or in consequence of, the fact that the breeder has displayed the variety at an official or officially recognized exhibition.

When assessing the date of first disposal of the applied-for variety or the evidence provided by the applicant to substantiate the request to change that date, the CPVO will check on what date the **physical transfer** has taken place by means of delivery of the variety constituents or of the harvested material for the purpose of commercial exploitation.

As a general principle, the date of the **physical delivery** of variety constituents or of the harvested material – as indicated on the delivery/dispatch/shipment note - will determine the first date of commercial exploitation of the variety under Article 10 of the Basic Regulation. However, in case the applicant requests for a different date,

any documentary evidence in the possession of the CPVO will be taken into account, such as contracts entered into for the purpose of transferring ownership of the plant material in question.

## 5.2 Where?

There are two possibilities to file an application for CPVRs **either** by filing online using the online application facilities, **or** on paper, paper forms to be sent to the Office by surface mail.

Detailed information concerning the e-application system is available on the website (online help).

In case of paper filing, please follow the instructions below:

You may apply directly to the Office or to one of the national agencies of the Member States listed in the CPVO Gazette (Part B). The choice of the addressee is entirely up to the applicant. A date of application and a priority date may be allocated on the basis of the first date of receipt at either office. If the application is sent via a national agency, you should, however, be aware of the following:

- The national agency's role is limited to a "letter box" and to the transmission of the received documents to the Office.
- You must inform the Office directly that you have filed an application at a national agency by sending an article 49 notification to the Office. Not doing so could result in the allocation of a later application date.
- The application, the technical questionnaire, if applicable the confidential technical questionnaire and the photographs, shall be filed in original (no need to provide copies) at the national agencies. Only the original set of documents suffices when filing directly at the Office.
- Payment of the fees has in all cases to be made directly to the CPVO bank account.

## 5.3 How?

Forms may be downloaded from the Office's Website (see above) or ordered from the Office (when ordering please do not forget to indicate the language and species for which you need the forms). Your attention is drawn to the following forms:

### **a. Application form**

Serving as the basis for the giving of the application date, along with the technical questionnaire; please read the 'Notes on the completion of the application form', complete it very carefully, answer all questions and state 'not applicable' if so the case. Annex I gives useful explanations on the completion of this form.

### **Service of titles of protection from the Office and obligation to provide an e-mail address**

As from April 2014, titles are exclusively served electronically on holders or their representatives if any. To enable the Office to effect service of the e-titles, all **applicants who have not appointed a representative and all representatives must provide an e-mail address** in the application form.

### **b. Technical questionnaire**

The Technical Questionnaire is serving as basic information necessary for carrying out the technical examination. The Office's Administrative Council has adopted test protocols for the most important species. Where the Administrative Council has not yet adopted such test protocols for certain genera and species of the plant kingdom, the general technical questionnaire of the Office should be used. In case of ornamental species, specific technical questionnaires for the crop type should be used (for example Pot Plants). For the most important species the technical questionnaires may be downloaded from the Office's Website. If the technical questionnaire you are looking for is not available online, please contact the Office.

### **c. Technical questionnaire (Confidential part)**

With this form, breeders of hybrid varieties can request confidential treatment of data relating to components.

#### **d. Proposal for a variety denomination**

A proposal for a variety denomination does not have to be made when filing your application, but it should be made as soon as possible thereafter to avoid delays in granting a CPVR (please be aware that each proposal has to be published in the Office's gazette allowing 3 months for objections). Under the Council Regulation 2100/94 and the implementing rules found in Regulation 874/2009, the Office must reject an application where no proposal for a variety denomination has been received even if all other procedures, e.g. completion of the technical examination, have been completed.

The centralized database on variety denominations (called 'Variety Finder') is provided on the website and can be used by applicants for the purpose of testing similarity of denominations.

A provisional designation (breeder's reference) MUST be indicated at the time of application.

#### **e. Notification form**

This is only to be used if you filed through the national agencies and are hence required to inform the Office directly.

#### **f. Details of Payment**

Serving as information for the Office in order to establish the purpose of any payments made by you to the Office. It is strongly recommended to use this form. You can indicate the name of the bank, the name of the payer if different from the applicant or the representative and the total amount transferred to the Office. Please do not indicate your bank account details on this form. The CPVO's accountancy will approach you if in need of further details.

#### **g. Submission of colour photographs for certain applications**

It is an obligation, at the time of application, to provide colour photographs annexed to the technical questionnaire for varieties of all fruit and ornamental species. Since the use of photographs is deemed necessary for the conduct of the technical examination, applicants are requested to provide a photograph of the plant as a whole, and where pertinent a close-up photograph of the flower/fruit or any other relevant part of the plant (see the explanatory note available on the website of the office).

### **5.4 By whom?**

An application for Community Plant Variety Rights may be filed by any natural or legal person or anybody ranking as a legal person under the law applicable to that body. An application may be filed jointly by two or more such persons.

If there are two or more applicants acting in common, which have not notified a procedural representative to the Office, the first named applicant shall be deemed to be designated as procedural representative in all proceedings (including surrenders of titles) before the Office unless the Office is in receipt of information to the contrary.

Applicants from outside the EU must appoint a representative domiciled or seated or established within the territory of the European Union. The procedural representative form is available on the website.

#### **The procedural representative**

- **Applicant based outside the EU**

If you do not have a domicile, legal seat or establishment within the European Union, you are required to appoint a procedural representative residing within the European Union in order to receive any communication from the Office. Under these circumstances, the procedural representative may not be your employee. A form for this purpose is available on the CPVO's website.

- **Applicant based within the EU**

If you have a domicile, legal seat or establishment in the European Union, you are not obliged to appoint a procedural representative but you may do so if you wish. Under these circumstances, the procedural representative may be your employee. You can make use of the form available on the CPVO website.

#### **The legal representative**

Where the applicant is a legal person (e.g. a company) rather than a natural person (an individual), the Office must be informed of the name and address of the natural person who is empowered under the applicable national legislation to represent the legal person.

### **The original breeder and the entitlement to apply**

If the breeder is not the applicant, a deed of assignment MUST be provided.

The breeder (assignor) must have assigned their rights to the entitlement to apply for CPVRs and to hold CPVRs in the name of the applicant (assignee). No application date will be attributed without supporting evidence as to how the entitlement was transferred from the breeder to the applicant.

## **6. Original documents**

### Online applications:

With the 2014 revised reception procedure, online applicants only need to append to the online application scanned deeds of assignments and scanned representative forms (credentials). The office may however request an original if in doubt as to the accuracy of the document.

### Paper applications:

Application forms filed by parties to proceedings need to bear an original signature in ink.

As to all other forms and supporting documents, including deeds of assignment and procedural representative forms (or credentials such as powers of attorney) they can be provided in copy.

You can thus send the Office any of the following documents either preferably electronically posted in the user area 'MyPVR' or as an attachment to an e-mail (to be sent exclusively to the following office address: [cpvo@cpvo.europa.eu](mailto:cpvo@cpvo.europa.eu) or in paper copy:

- an objection to the grant of a CPVR
- a notice of appeal against a decision of the Office,
- a written statement setting out the grounds of appeal,
- a document sent in support of an application for a CPVR already filed, including a proposal for a variety denomination (NB – not an application form itself, new CPVO applications must either be filed online or on paper and, paper applications must be sent by post, or be hand delivered to the office),
- a document sent in response to a letter from the Office setting a deadline for reply,
- a declaration of surrender of a CPVR
- a declaration of withdrawal of an application.

In case of doubt, the Office may insist on providing original paper documents or certified copies thereof.

## **7. Fees: What for? How much? How? When to pay?**

In December 2016 the Fees Regulation<sup>2</sup> was modified (by Commission Implementing Regulation (EU) n° 2016/2141 of 6<sup>th</sup> December 2016) with regard to the amounts to be paid for annual fees and fees relating to the technical examination. The relevant amounts and details are shown in Annex II.

You must pay the relevant amount in EURO by bank transfer to the following bank account:

### **CREDIT AGRICOLE DE L'ANJOU ET DU MAINE:**

<b>Code banque</b> <b>17906</b>	<b>Code guichet</b> <b>00032</b>	<b>Numéro de compte</b> <b>15866548000</b>	<b>Clé RIB</b> <b>44</b>
<b>IBAN International Bank Account Number</b> <b>FR76 1790 6000 3215 8665 4800 044</b>		<b>BIC Bank Identification Code   SWIFT</b> <b>AGRIFRPP879</b>	

The Office will not accept neither cash payments nor cheques.

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<sup>2</sup> Commission Regulation (EC) n° 1238/95 of 31 May 1995, amended by Reg.(EC) n° 329/2000 of 12/02/2000, n° 569/2003 of 29/03/2003, n° 1177/2005 of 21/07/2005, n° 2039/2005 of 14/12/2005, n°572/2008 of 20/06/2008, n°1294/2014 of 04/12/2014 and n°2016/2141 of 06/12/2016 (see our website <https://cpvo.europa.eu> for more details).



**All** bank charges relating to payments made to the Office must be paid by the remitter, except if you make use of a cross-border credit transfer with reduced bank charges. This system applies to bank transfers made in EURO for a maximum of € 50.000 within the European Union, indicating CPVO's IBAN and BIC (see here above).

Time limits for the payment of fees are also shown in Annex II.

Particular attention should be paid to the application fee, which covers the administrative processing of your application (including the granting of the right) within the Office. You are required to proceed as follows: when you file your application for a CPVR, you should also instruct your banking establishment (or post office) to transfer the application fee of **€ 800 in case of paper applications or € 450 in case of online applications** to the Office's bank account. It is also strongly recommended to fill out the form "Details of Payment" in particular if you make a payment for several applications.

For all subsequent fees in relation to your application, the Office will send you sufficiently in advance a debit note, upon which the due date of payment will be clearly indicated.

As regards the examination fee to be paid please note that for the first growing period the fee shall be due and payable no later than the closing date for the receipt of the material for the technical examination. Please note that if the due date indicated on the debit note has passed and the application is not withdrawn by the applicant, the examination fee remains due irrespective of whether the plant material for testing has been delivered and accepted by the examination office or not. **The fee that is paid will not be refunded.**

In case of multi-annual testing, the examination fee for each subsequent growing period shall be due and payable no later than one month prior to the anniversary of the aforesaid date.

If you are not able to submit the plant material required for the technical examination or if you wish to stop the procedure for other reasons, you may consider withdrawing the application before the due date of the debit note to avoid paying the examination fee. **If the withdrawal of an application is made after the due date of the respective debit note, the fee remains payable, and the fee that is paid will not be refunded.**

The due date of payment reflects the date by which the payment of the fee must reach the Office's bank account. Payments, therefore, should be made sufficiently early so as to compensate for bank payment processing time.

In case of refusal of an application for non-payment of the examination or take-over fee, the fee remains due.

## **8. Procedural aspects**

### **8.1 Forms of acknowledgement of receipt**

#### **8.1.1 The application is complete 'R-Form'**

Once your application has reached the office and all requirements according to Art. 50 of Council Regulation 2100/94 are fulfilled, the Office sends an acknowledgement of receipt to the applicant or if a procedural representative has been appointed, to the latter giving the date of application and the file number of the application. Please read this form carefully because, even though an application date has been allocated, **additional information may be required by the Office, when an 'R-Form' with remark(s) has been issued.** The file number should be used in all correspondence with the Office in respect of that specific variety.

#### **8.1.2 The application is not yet valid 'No-Form'**

A 'No-form' is issued and sent to the applicant (or to the procedural representative) when the application does not fulfil the requirements laid down in Art. 50 of Council Regulation 2100/94. All missing information is specified in such a 'No-Form'. An application date will only be allocated when all deficiencies are remedied within one month from the date of issue of the 'No-Form'.

#### **8.1.3 The 'C-Form'**

A 'C-form' is issued and sent to the applicant when the application fees were received 15 days after the issuance of the 'R-Form'. The Office informs of the updated application date given as a result of late payment.

A 'C-Form' can also be sent to update the applicant on the file reception. If, for instance, all, none or part of the remedying information is sent in, the Office issues a C-Form, indicating either that all is now valid and complete or indicating what remains missing.

## 8.2 Publication

The Office publishes on its website an Official Gazette every even month, which indicates the changes in the register of the Office over a period of two months.

Only applications which are valid and complete (i.e. having been allocated an application date) and for which fees have been paid will be published in the Gazette. The publication of an application is important since it leads to the "provisional protection" conferred by Article 95 of Council Regulation 2100/94.

## 8.3 Technical examination

If no impediment is found in the application, the Office arranges for technical examination.

The technical examination of a variety for distinctness, uniformity and stability is conducted by the examination authorities who are entrusted by the Administrative Council of the Office to test allocated species.

The decision as to where such an examination of an individual variety should take place depends on the following criteria: geographical origin of the variety; origin of the applicant; practical experience and completeness of the reference collection of a possible examination authority in relation to the species to be tested. This decision is taken exclusively by the Office.

When such an examination authority has been selected, the applicant receives a request from the Office for the submission of plant material, indicating the type of material, the quantity and quality required, and the place where it has to be submitted. All questions related to the technical examination are clarified between the applicant and the Office, not between the applicant and the examination authority. Any agreement made directly between the applicant and the examination office without the involvement of the Office is not binding on the Office and may jeopardise the entire procedure.

Please be aware that the non-submission of material may lead to the refusal of the application.

For certain species under particular well-defined conditions a postponement of testing might be allowed by the CPVO. Details can be found on the CPVO-website under "postponement of testing rules".

The applicant receives an interim report when there is more than one growing period, at the end of each growing period. For all technical examinations a final report is issued when testing is concluded. Applicants then have 2 months within which to comment on these reports to the Office.

## 8.4 "Take-over" of technical reports

If a technical examination has already been carried out, or is in the process of being carried out on a variety already benefiting from national plant variety rights or entered for national listing in a Member State of the European Union, the Office may consider the examination reports of the responsible authorities to be a sufficient basis for a decision on your application for a CPVR. However, this only applies to reports from examination offices of the European Union which were entrusted by the Administrative Council of the Office or in case there is no DUS expertise for a particular species available within the EU, a take-over of DUS reports can be envisaged from examination offices of any country member of the International Union for the Protection of New Varieties of Plants (UPOV) and where the technical examination was carried out under the same conditions as mentioned under point 8.3.

## 8.5 Closing dates for testing seasons

The Office determines closing dates and dates for the submission of plant material. A closing date is the latest date by which a complete application (the application must have obtained an application date!) has to be filed at the Office in order to ensure the technical examination of this application in the next growing season. These closing and submission dates are published on the webpage "Plant material submission to Entrusted Examination Offices – S2/S3 Publication".

## 9. Variety denominations

These rules, as laid down in the document 'Guidelines of the Administrative Council on Article 63' available on the website of the Office, are very important rules which are based on Article 63 of the Council Regulation on Community Plant Variety Rights.

The procedure for approval of a variety denomination follows different steps. When the Office receives a proposal for a variety denomination, this denomination is checked. If there is an impediment against this denomination the applicant is informed and has the possibility to comment or to submit a new proposal of a variety denomination. In case there is no impediment, it will be published in the Official Gazette. According to Article 59(4)(b) of the Council Regulation 2100/94, objections to the proposed variety denominations may be made within three months of their application. If neither an objection is received nor an observation from other examination authorities, the variety denomination is ready to be approved. This approval takes place at the same

time as the decision to grant the title of protection. Once the denomination is approved and the variety is granted a right, this variety denomination MUST be used for all commercial purposes.

If a trademark is associated with the denomination, the variety denomination must be easily recognisable as such.

## 10. Decision making process

Once the technical examination is finalized, the applicant is given the opportunity to submit written comments on the examination report and the variety description. If this time period has elapsed and if no impediments on respect to the variety denomination have been identified the Office will decide on the application. The decision is taken under the authority of the President by a Committee consisting of two technically qualified members, one legally qualified member and one member in charge of the approval of the variety denomination proposal.

## 11. Community Plant Variety Right

Once the right is granted, it is valid for a maximum duration of 25 years, or 30 years for vine, trees, potatoes, varieties of the species *Asparagus officinalis* L. and of the species groups flower bulbs, woody ornamentals, and woody small fruits, provided the annual fees are paid. It has to be noted that except for trees and vines, the maximum of thirty years protection is subject to a reduction in full years for any period of protection effective in a Member State prior to the grant of the Community plant variety right.

In order to have the information on the maximum protection period available in an easily accessible format, the S2/S3 publication on the CPVO website provides this information in the column **Category**, encoded by a letter A, B, or C.

**Category A:** tree and vine species in the sense of Articles 10 (1)(b) and 19 (1) of Council Regulation (EC) 2100/94:

- Six years Period of Grace for Novelty for Commercialisations outside the European Union
- Duration of the Community plant variety rights: 30 years without any deduction of periods of protection in another country prior to the grant of the Community plant variety right

**Category B:** Genera or species for which the Council has provided for an extended period of protection pursuant to Article 19 (2) of Council Regulation (EC) 2100/94:

- *Asparagus officinalis* L., potatoes, small woody fruit crops, ornamental flower bulbs, woody ornamentals
- Four years Period of Grace for Novelty for Commercialisations outside the EU
- Duration of the Community plant variety rights: 30 years with deduction of the longest period of national protections in an EU Member state prior to the grant of the Community plant variety right. The deduction shall be made in full years for a maximum period of five years.

**Category C:** Genera or species not falling in category A or B:

- Four years Period of Grace for Novelty for Commercialisations outside the EU
- Duration of the Community plant variety rights: 25 years without any deduction of periods of protection in another country prior to the grant of the Community plant variety right

**Categories "A or B", "A or B or C" and "B or C":**

- Genera comprising species belonging to more than one of the categories referred above. For details, please refer to the species in question

**Category "\*\*":**

- Classification into the categories referred above pending.

## 12. Appeal

According to Article 67 of Council Regulation 2100/94, the following types of decisions of the Office are appealable:

**Nullity** - Art. 20,

**Cancellation** - Art. 21,

**Objection** - Art.59,

**Refusal of a CPVR application** - Art. 61

**Grant of a CPVR application** – Art. 62,

**Denomination Approval/Refusal** - Art. 63,

**Denomination amendment** - Art. 66,

**Decisions on fees in case of non-payment** - Art. 83,

**Decisions on apportionment of costs after legal proceedings** - Art 85,

**Decision on an entry or deletion in the register** - Art. 87,

**Public access decisions not to grant access to documents or to visits to trials** - Art. 88,

**Decision on a compulsory license application** - Art. 29

**Consequences of a change in holdership of a Community plant variety right** - Art. 100,

(in the last two types of decisions, actions can alternatively be filed directly before the CJEU, pursuant to Art. 74).

Appeals are to be filed with the Board of Appeal Registry of the CPVO.

### Time limits:

- The **Notice of Appeal shall be filed within two months** of service of the appealable decision by the addressee of the decision or by any other person directly and individually concerned by the decision within two months of publication of the decision.
- The **Statement setting out the Grounds of Appeal shall be filed within four months after the aforesaid service or publication.**

The **Board of Appeal Registrar will acknowledge receipt of the Notice of Appeal**, will request the sending of the Statement of the Grounds of Appeal within the indicated timeframe, and will send a **debit note of one third (€500) of the appeal fee (€1500)**.

If there are two parties to the appeal proceedings, the Appellant and the Office, an Interlocutory Revision by the Committee who took the decision is called. If the Committee finds the appeal admissible and well-founded, it will rectify the decision.

The remaining two thirds (€1000) of the appeal fees shall be due if the Committee does not rectify the decision, and if the appeal is remitted to the Board of Appeal.

If there are more than two parties to the appeal proceedings, there's no interlocutory revision, and the appeal is forthwith remitted to the Board of Appeal.

All Board of Appeal decisions are available in the PVR Case Law Database on the CPVO website.

## 13. Restitutio in Integrum claim

According to Article 80 of Council Regulation 2100/94, any party to proceedings before the CPVO who has been unable to observe a time limit vis-à-vis the Office shall upon application have his right or means of redress restored, if he can demonstrate that he had taken all due care as required under the particular circumstances, and provided the following conditions for a 'restitutio' claim are fulfilled:

1. file a written application before the CPVO within two months after the cause of non-compliance ceases and, in any case, within 1 year from the expiry of the not-observed time limit;
2. indicate the right lost and provide grounds and supporting documents showing all due care to respect the time limit had been taken in the particular circumstances;
3. complete the omitted act within the two-month limit after the cause of non-compliance ceases.

The following time limits cannot be the object of a 'restitutio' claim:

1. the time limit to apply for a restitutio claim

2. the time limits in relation to priority claims for an earlier application made, Article 52 (2), (3) and (5) of Council regulation 2100/94

A decision of the Office not to grant restitutio is *not appealable*.

In appeal proceedings, restitutio claims are to be filed with the Board of Appeal Registry.

## 14. Surrender of rights/Withdrawal of applications

Surrenders and withdrawals can be sent electronically to the Office preferably via the dedicated module that is available online from the dashboard of the user area 'MyPVR'. It can also be a duly signed declaration annexed to an e-mail or if the document is uploaded via the menu 'Send documents' of MyPVR, a simple letter without signature is sufficient (as defined in the 'terms and conditions' of MyPVR, the user is authenticated via a login and a password). Surrenders and withdrawals can also be sent by post or hand delivered.

Only the holder can surrender their rights. The holder can authorise a representative to surrender by proxy, if so the case the credentials provided to the office must explicitly refer to an authorisation given to the representative to surrender in the name of the holder. The Office always sends confirmations of surrenders and withdrawals.

There is no possible recall of a surrender or a withdrawal declaration after midnight of the day of the request (CPVO local time).

### 14.1 Surrenders

In order to avoid liability for the next annual fee, a request for surrender needs to reach the Office **before** the anniversary of the date of the grant of the CPVR. Once the anniversary date of the grant of the CPVR has passed, **the annual fee is due**.

The CPVO can only record a surrender on the date of receipt of a valid request, effective one day after the request was received, as stipulated in the Article 19.3 of the Basic Regulation.

### 14.2 Withdrawals

For applications withdrawn after the due date of the payment of the examination fee (irrespective of whether plant material has been delivered and accepted by the examination office for the test or not), the fee paid for the technical examination will not be refunded. To avoid this situation, the withdrawal of an application should reach the Office **at the latest on the due date of the payment** of the examination fee as indicated on the respective debit note.

## 15. Enforcement of rights

A holder of a CPVR is entitled to effect certain acts in relation to the protected variety. Others wishing to effect those acts must firstly obtain the authorisation of the holder, who may attach conditions and limitations to this authorisation. The acts in question are:

- (a) production or reproduction (multiplication),
- (b) conditioning for the purpose of propagation,
- (c) offering for sale,
- (d) selling or other marketing,
- (e) exporting from the EU,
- (f) importing to the EU,
- (g) stocking for any of the purposes mentioned under points (a) to (f).

The scope of the CPVR extends to harvested material of the variety (for example fruit and cut flowers which are imported into the EU) where these are obtained through the unauthorized use of variety constituents of the protected variety and where the breeder has not had the possibility to exercise his right at the place of production.

A derogation from the right is the so called "farm saved seed" exemption which is laid down in Article 14 of the Council Regulation and is applicable to certain agricultural species only.

Article 15 lists five categories of acts which do not fall under the scope of the CPVR, the most important ones are mentioned below:

- (a) acts done privately and for non-commercial purposes,
- (b) acts done for experimental purposes and
- (c) acts done for the purpose of breeding, or discovering and developing other varieties.

## 16. Cumulative protection prohibited

The CPVR system is not intended to replace national systems but rather to exist alongside them as an alternative, indeed, it should be emphasized that it is not possible to simultaneously hold both Community and national plant variety rights in relation to that variety. Similarly, a CPVR cannot co-exist with a patent. Any national plant variety right or patent granted within the territory of the European Union for a variety in relation to which a CPVR already exists, will be ineffective. Where a CPVR is granted in relation to a variety for which a national right or patent has already been granted, the national right or patent is suspended for the duration of the CPVR.

## 17. Request for certified copies of examination reports, applications and granting documents

### 17.1 Request for certified copies of examination reports for the purpose of exchange of examination results amongst plant variety rights authorities

In case applicants file an application for plant variety rights for a given variety **subsequent to the Community plant variety rights application**, applicants have to make the authority of the country in question aware of the fact that a previous application has been filed at the Community Plant Variety Office (CPVO). Said national authority might itself organise a technical examination, or it might consider the possibility to take over the DUS examination report from the Community Plant Variety Office, in the framework of international cooperation in variety testing.

The Community Plant Variety Office can provide certified copies of DUS examination reports and annexed variety descriptions (in case of positive reports) when the technical examination has been carried out on behalf of the CPVO. The UPOV common practice is that **such reports are only exchangeable between national authorities for a price of 350 Swiss Francs (the equivalent of 320 Euros) and cannot be transmitted directly to applicants.**

The CPVO should first receive an official request (UPOV form) from the national authority interested to take-over the report. The Office will then prepare the certified copy of the report and variety description, if available. The Office sends the corresponding debit note to the applicant or company mentioned by the national authority on the request. After reception of the payment, the CPVO sends the requested report to the national authority by electronic means.

### 17.2 Request for certified copies of applications and granting documents for priority purposes or for legal proceedings

#### 17.2.1 For priority purposes

If you wish to claim priority based on a Community Plant Variety application, please make a request to the CPVO in writing indicating the CPVO file number and the country where the subsequent application for the same variety was made.

The Office will acknowledge receipt of it and e-mail the related debit note of €20 for up to 10 pages and €1 per page thereafter.

For active files (*varieties for which no final decision has been taken yet*), priority documents may contain:

- a covering letter (a declaration) containing i.e. the country where the certified documents will be sent,
- certified filing documents,
- certified denomination proposal, if any,
- copies of photographs of the variety, if any,

- an extract of the Register, if deemed necessary, to reflect changes as compared to filing documents.

For granted files (*varieties for which a Community right has already been granted*), priority documents may contain:

- a covering letter (a declaration) containing i.e. the country where the certified documents will be sent,
- certified filing documents,
- copies of photographs of the variety, if any,
- certified copy of the certificate of the grant,
- an extract of the Register, if deemed necessary, to reflect changes as compared to filing documents.

### **17.2.2 For legal purposes (for example, for infringement cases)**

If you have to provide supporting documents to an authority in the form of a certified copy, for instance in infringement cases, please make a request to the Office. The Office may in such cases provide documents such as:

- the certificate,
- the decision,
- the variety description,
- the photographs,
- deeds of assignments,
- an extract of the register to reflect any updated situation.

# ANNEX I

## Notes on the completion of the Application Form

### GENERAL

Please print or type on line the information to be filled in the form. It is important to fill in all fields of the form, if not applicable, please state so. Mandatory fields or sections are marked with an asterisk (\*).

Please fill in for the whole document never using capital letters, except in the cases strictly provided where an initial capital is necessary (e.g. at the beginning of the sentence, first letter of forename and surname, etc.).

The following notes refer to the numbering of the points in the Application Form:

### POINT 01 - APPLICANT(S)

The natural person duly authorized to represent a legal person should be the person legally entitled to act on behalf of the legal person and whose signature is binding on the legal person.

### POINT 02 – PROCEDURAL REPRESENTATIVE

Where a procedural representative is mandatory (applicants not having a domicile, legal seat or establishment within the territory of the European Union), the procedural representative may not be an employee of the applicant. If the appointment of a procedural representative is not mandatory in your case, you may nevertheless appoint one. The person appointed may be an employee of the applicant. You may make use of the Office's form "Designation of a Procedural Representative". Please note that this form needs to be signed by the person duly authorized by the applicant.

### POINT 03 – BOTANICAL TAXON

Please indicate the botanical taxon of the candidate variety in full Latin name of the genus, species or subspecies to which the variety belongs.

Please indicate also the common name of the botanical taxon as above.

### POINT 04 – DESIGNATION OF THE VARIETY

The proposal for a variety denomination **needs not** be submitted at the time of application; however, if it is not made at that time, it is recommended that it be submitted as soon as possible thereafter.

In case it is made at a later stage, it should be proposed using the form "*Proposal for a variety denomination*".

A proposal for a variety denomination **must** be filed at the Office before receipt by the Office of the final results of the technical examination. However, a provisional designation (breeder's reference) **must** be submitted at the time of application.

Please be informed that the CPVO changed the format of variety denominations in order to be more in line with the International Code of Nomenclature of Cultivated Plants (ICNCP).

In practice, this means that each word of a variety denomination in the form of a fancy name will be written with an initial capital and that established abbreviations (at the beginning or at the end of the denomination) will be written entirely in capitals. Denominations in the form of a code remain entirely in capitals at all times.

We kindly ask you to adopt this new format in the application form (online or on paper) and in the form "Proposal for a variety denomination" too.

This form may be provided via [MyPVR](#) or by email at [registry@cpvo.europa.eu](mailto:registry@cpvo.europa.eu).

### POINT 05 – BREEDER(S)

If the person of the breeder is not the same as the person of the applicant:

- either the breeder **is** an employee and the entitlement to the Community plant variety right must be determined in accordance with the national law applicable to the employment relationship, details of the national law must be given.
- either the breeder **is not** an employee, the relevant documentary evidence referred to should be attached, either in the form of the original or a copy certified by the issuing authority.

If the applicant and the original breeder are different persons, please note that the necessary documentary evidence as to how the entitlement got vested in the applicant has to be attached. It can be provided as a copy of the original.

Please note that should the copy of the original deed leave a doubt, the Office would require an original paper deed of assignment or a certified copy thereof.



**POINT 06 – DETAILS OF ALL OTHER APPLICATIONS FOR PLANT VARIETY RIGHTS OR OFFICIAL VARIETY LISTS CONCERNING THIS VARIETY MADE IN A MEMBER STATE OF THE EU OR OUTSIDE THE EU**

All prior applications made for the same variety with other authorities even with the CPVO (in case of re-filing) are concerned.

Please fill in all columns (if applicable). The information provided under this point might enable applicants to save some costs (take-over instead of technical examination).

Please note that:

For the “**Country**” column should be entered using the following [ISO](#) codes:

EU member states:

AT = Austria	EE = Estonia	IE = Ireland	PL = Poland
BE = Belgium	ES = Spain	IT = Italy	PT = Portugal
BG = Bulgaria	FI = Finland	LV = Latvia	RO = Romania
CY = Cyprus	FR = France	LT = Lithuania	SE = Sweden
CZ = Czech Republic	GR = Greece	LU = Luxembourg	SI = Slovenia
DE = Germany	HR = Croatia	MT = Malta	SK = Slovakia
DK = Denmark	HU = Hungary	NL = Netherlands	

On 29<sup>th</sup> July 2005, the European Union became a [UPOV](#) member.

UPOV member states non-EU members:

OAPI = African Intellectual Property Organization	GB = United Kingdom	PA = Panama
AL = Albania	GE = Georgia	PE = Peru
AR = Argentina	GH = Ghana	PY = Paraguay
AU = Australia	IL = Israel	RU = Russian Federation
AZ = Azerbaijan	IS = Iceland	RS = Serbia
BA = Bosnia and Herzegovina	JO = Jordan	SG = Singapore
BO = Bolivia	JP = Japan	TN = Tunisia
BR = Brazil	KE = Kenya	TR = Turkey
BY = Belarus	KG = Kyrgyzstan	TT = Trinidad and Tobago
CA = Canada	KR = Republic of Korea	TZ = United Republic of Tanzania
CH = Switzerland	MA = Morocco	UA = Ukraine
CL = Chile	MD = Republic of Moldova	US = United States of America
CN = China	ME = Montenegro	UY = Uruguay
CO = Colombia	MK = North Macedonia	UZ = Uzbekistan
CR = Costa Rica	MX = Mexico	VC = Saint Vincent and the Grenadines
DO = Dominican Republic	NZ = New Zealand	VN = Viet Nam
EC = Ecuador	NI = Nicaragua	ZA = South Africa
EG = Egypt	NO = Norway	
	OM = Oman	

“**Date**” should be written in DAY/MONTH/YEAR format e.g. 02.05.2018 = second of May 2018.

Please indicate the date of the application, not the date of the granting or listing or patenting of the variety.

“**Authority**”: you may indicate the authority by using the relevant abbreviation, e.g.:

- INOV = *Instance Nationale des Obtentions Végétales* / FR
- BSA = *Bundessortenamt* / DE
- PVRO = *Plant Variety Rights Office* / GB
- RvP = *Raad voor Plantenrassen* / NL, etc.

**POINT 07 - PRIORITY**

A claim for priority must be based on the earliest previous application for a property right, filed by you or your predecessor in title, in a Member State of the EU or in a Member of UPOV.

In order to qualify for a right of priority, this earliest previous application must have been filed within the 12 months prior to this application and must still exist.

Please note that copies of the previous application, certified by the responsible authority, must be received by the Office within 3 months of the date of application. They may be provided via [MyPVR](#) or by email at [registry@cpvo.europa.eu](mailto:registry@cpvo.europa.eu).

### **POINT 08 – HAS THE VARIETY BEEN EXPLOITED OR OTHERWISE EXPLOITED?**

Please tick the box 'yes' or 'no' of **all three questions** 08.01, 08.02 and 08.03. If the question 08.03 is not applicable, please state so. In the case of a 'yes', please specify the exact date and country. The indication of a year only, e.g. "2017", is not sufficient.

A CPVR can only be granted if the variety is novel. The variety will not be novel if it has been sold, or otherwise disposed of, or with the breeder's consent:

- within the European Union earlier than one year before the date of application;
- outside the European Union earlier than four (4) years or, in the case of trees and vines six (6) years, prior to the date of application.

The applicant is expected to have taken reasonable precautions to ensure that sales or comparable disposals have not taken place earlier than allowed.

The following types of disposal of material of the variety will not damage novelty:

- Disposals to an official body for statutory purposes, or to others on the basis of a legal relationship, solely for production, reproduction, multiplication, conditioning or storage, provided that the breeder preserves the exclusive right of disposal and that no further disposal is made to others.
- Disposals of material which has been produced from plants grown for experimental purposes or for the purpose of breeding, or discovering and developing, other varieties and which is not used for further reproduction or multiplication, unless reference is made to the variety for purposes of that disposal.
- Disposals due to, or in consequence of, the fact that the breeder has displayed the variety at an official or officially recognized exhibition.

Please be informed that the first disposal information provided in the application form amount to a declaration. If you were to request the Office to amend said information, you would need to fulfil the conditions for entries in the Registers and such requests must be made in writing accompanied by supporting documents.

### **POINT 09 – TECHNICAL EXAMINATION**

Please note that if a technical examination either in relation to national listing or an application for a national property right has already been carried out or is in the process of being carried out, the information about the place of such examination is mandatory.

### **POINT 10 – LANGUAGE**

Please note that both for communication in the proceedings with the Office and for the certificate issued in the event of the grant of a Community Plant Variety Right, the selected language can be chosen amongst the 24 official languages of the EU.

### **POINT 11 - APPLICATION FEE**

The application fee (either €800 for a paper application or €450 for an online application) should be transferred to the bank account of the Office.

Payment should be made **prior** to or **on** the date on which the application is filed.

A formal debit note will be available on [MyPVR](#) after you have received the formal acknowledgement of receipt of your application. The payment should be detailed on the attached form "*Details of payment*" individually for each variety.

Please be aware that the Office will not allocate a definitive application date when the payment has not reached the Office bank account or if the payment has not been identified by the Office due to incomplete information. A further consequence will be that the application will not be published in the CPVO's Official Gazette.

### **POINT 12 - ATTACHED DOCUMENTS**

Please indicate which documents are enclosed to the application.

### **POINT 13 – GENERAL REMARK**

Please feel free to add any additional information that could help to process the file in relation to the application. The additional remarks can be linked either to technical, administrative or financial matters.

## **ANNEX II**

### **Fees structure**

This fees structure refers to the fees Commission regulation (EC) No. 1238/95, amended by Regulation (EC) No. 329/2000, Regulation (EC) No. 569/2003, Regulation (EC) No. 1177/2005, Regulation (EC) No. 2039/2005 and Regulation (EC) No. 572/2008 and (EU) n°1294/2014.

#### **1. Application fee:**

**Paper application ..... EUR 800**

**Online application ..... EUR 450**

Payment due: Payment of the application fee shall be made **prior** to or **on** the date on which the application is filed at the Office. If this payment is considered not to have been received at the same time as the application by the Office, the applicant will be notified of this in the acknowledgement of receipt and will be required to pay the application fee within two weeks of the date of issue of the form. The Office will serve a reminder for unpaid fees after the expiry of these two weeks, as a consequence the provisional application date will be removed. If the application fee is received within one month of the date of issue of the reminder, the balance date of the fee will become the application date. If it's not received within one month of the date of issue of the reminder, the application will be deemed abandoned.

In order to assist the Office with the processing of the payment of the application fee, please ensure that the following details are included on the bank transfer form: the denomination, the species and the fee type (application fee) of all the applications included in the payment.

If there is insufficient space on the bank transfer form itself, please send these details, together with the details of your payment (Remitter's name and address, date of payment, total value of payment in Euro), directly to the Office either via e-mail or post.

#### **2. Examination fees (see Annex III)**


The examination fees are fixed under the current fees regulation. The fees due to be paid for each growing period depends on to which crop your variety belongs, the range is from 1 900 EURO as a minimum amount up to 3 900 EURO as a maximum. Each species is attributed to one of the existing 14 cost groups. The complete list of crops with the relevant cost group can be found on the webpage "Plant material submission to Entrusted Examination Offices – S2/S3 Publication".

#### **Examination fees are due:**

- a.) for each growing period
- b.) in the case of hybrids of certain agricultural crops, for each component of which an official description is not available and an examination is required,

#### **Payment due:**

**First growing period:** payment has to be made by the due date of the debit note which corresponds to the closing date for the receipt of the material for the technical examination. The payment must be done irrespective of whether the plant material has been delivered and accepted by the examination office for the test or not, unless the application is withdrawn by the applicant at the latest on the due date of the debit note.

 Attention is drawn to the fact that if payment is not received by that date at the latest, the application may be refused.

**Subsequent growing period(s):** payment has to be made by the due date of the debit note which corresponds to 1 month prior to the anniversary date of the closing date for the receipt of the material for the technical examination.

 If payment is not received by that date at the latest, the application may be refused.

A debit note will be sent to you by the Office for each growing period.

#### **3. Fees for taking over reports:..... EUR 320**

Where the Office makes use of a report on the result of a technical examination of a variety carried out previously for official purposes in a Member State an administrative fee of 320 EURO is due.

**Payment due:**

30 days after the date of issue by the Office of the report fee debit note.

**4. Annual fees**

For the annual fees that fall due as from 1 January 2017, the fixed annual fee is EUR 330 per variety and per year of protection.

**Payment due:**

The first annual fee shall be paid within 60 days of date of grant.

The annual fees due for the subsequent years shall be paid on the first day of the calendar month preceding the month in which the anniversary date of the grant falls.

**Example:**

Date of grant of a CPVR:	02.12.2019
Date by which 1 <sup>st</sup> annual fee must be paid:	31.01.2020

For the following years:

Date by which 2 <sup>nd</sup> annual fee must be paid:	01.09.2020
Date by which 3 <sup>rd</sup> annual fee must be paid:	01.09.2021

Etc.

A debit note will be sent to you by the Office each year.

The annual fee is charged for each year of the duration of the CPVR. That year begins on the anniversary of the date on which the CPVR was granted. Therefore, if the holder of the right wishes to surrender his right, the notification of surrender must be received by the Office before the start of the new year of protection. **The first annual fee is always due.**

Continuing the example above:

If the title holder wants to surrender the Right at the end of the 2<sup>nd</sup> year of protection, the notification of surrender **must reach the Office by 1<sup>st</sup> December 2021.**

Failure to notify the Office within the time limits prescribed will result in the following year’s annual fee being due for payment.

Please note that the Office will not refund any payments which have been effected in order to keep a right in force.

**5. Appeal fees:..... EUR 1 500**

1/3 of the appeal fee is due from the appellant on the date of receipt of the appeal by the Office. The remaining 2/3 is due, upon request of the Office, within 1 month after remittal of the case to the Board of Appeal.

The appeal fee will be refunded, in the event of an interlocutory revision by order of the President and in other cases by order of the Board of Appeal, except when the success of the appeal is due to facts unavailable at the time of the original decision.

# ANNEX III

## Fees relating to technical examinations

		<b>Fees</b>
<b>Agricultural group</b>		<b>(in EUR)</b>
1	Potato	2 050
2	Oilseed rape	2 150
3	Grasses	2 920
4	Other agricultural species	1 900
<b>Fruit group</b>		
5	Apple	3 665
6	Strawberry	3 400
7	Other fruit species	3 460
<b>Ornamental group</b>		
8	Species with living reference collection, greenhouse test	2 425
9	Species with living reference collection, outdoor test	2 420
10	Species with non-living reference collection, greenhouse test	2 400
11	Species with non-living reference collection, outdoor test	2 200
12	Species with special conditions	3 900
<b>Vegetable group</b>		
13	Species, greenhouse test	2 920
14	Species, outdoor test	2 660