



**CPVO**

Community Plant Variety Office

# Annual report 2010







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# 1. INTRODUCTION BY BART KIEWIET, PRESIDENT OF THE CPVO

## 1.1. The state of the Community plant variety protection (PVP) system



Bart Kiewiet

As far as the number of applications is concerned, 2010 saw a slight increase compared with the previous year. Around 2886 applications for Community plant variety rights were registered, in the order of 3% more than the year before. This might be a sign that the breeding sector is recovering from the effects of the economic crisis that hit the economies of Europe and North America.

Another performance indicator of the CPVO is the number of protected varieties. This parameter gives a positive image of the Community system. In 2010, the total number of valid Community plant variety rights grew by more than 800 titles compared with the previous year and reached the level of 17 610 titles.

Apart from the execution of its core tasks, the CPVO has developed other activities relevant for the proper functioning of the Community plant variety protection system. Some examples are given below.

## 1.2. Enforcement

Enforcement of Community plant variety rights is foremost the responsibility of the right-holders. This does not mean that the CPVO has no role to play in this respect. It is indeed of direct interest for the CPVO that rights granted under the Community PVP system are enforceable and respected. The CPVO contributes to the enforceability of Community PVPs in different ways, in the first place by granting rights based on a comprehensive technical assessment of candidate varieties. New quality requirements for DUS testing in the European Community adopted by the Administrative Council (AC) should, where possible, further improve the quality of variety testing. Furthermore the CPVO has developed, and will continue to do so, various activities which aim to increase awareness of the implications of the Community PVP system among the relevant target groups. As an example of such activity, the seminar that the CPVO, in close cooperation with the Greek Ministry of Agriculture, organised in Athens in April 2010, can be mentioned. The purpose of the seminar was to give general information about the Community plant variety protection system with emphasis on enforcement issues. In this respect, it should be mentioned that Greece does not have a national plant variety protection system. This implies that breeders can only protect their varieties in that country through the Community system. The feedback from the participants was a clear indication that the seminar served its purpose.

## 1.3. Farm-saved seed

Breeders have great difficulties in collecting the remuneration to which they are entitled for the use of farm-saved seed of protected varieties. This phenomenon affects negatively the value of the protection and could have as a consequence that breeders will be less inclined to apply for plant variety rights under the Community system. In order to have a clearer



picture about the farm-saved seed situation in the EU, especially as regards the collection of said remuneration, the CPVO has initiated a study on the subject. The study was performed by a former member of the staff of the Bundessortenamt, Dr Hans-Walter Rutz.

The study has resulted in a report that was discussed during a seminar in June 2009 in Brussels. As a follow-up, the CPVO has created a working group, composed of representatives of all the stakeholders with the purpose of analysing the relevant legislation and proposing amendments to this legislation that might improve its effectiveness.

The working group focused on three topics: (1) the possibilities for breeders to acquire information on the use of farm-saved seed; (2) the definition of 'small farmer'; and (3) the definition of 'own holding'.

In its last meeting in December of the report year, it was concluded that, although the definitions under 2 and 3 are open to different interpretations, they should, for the time being, not be changed since no agreement could be reached about an alternative definition. As far as the issue mentioned under 1 is concerned, an agreement has been reached about the modalities of a modification of the relevant legal provisions that would provide breeders with better instruments to collect information about the use of farm-saved seed. The conclusions of the working group will be presented to the relevant organisations of breeders and farmers as well as to the Administrative Council of the CPVO and the European Commission. These conclusions will also be communicated to the company responsible for the ongoing evaluation of the Community plant variety protection system.

## 1.4. International cooperation

The CPVO is in itself the embodiment of international cooperation at the European Union level. The representation of the Member States in the Administrative Council ensures that the CPVO has direct contact with the relevant national authorities on a policy level. The network of technical liaison officers is the basis for the technical cooperation between the CPVO and the Member States.

Participation in the activities of UPOV enables the CPVO staff to share knowledge and experience with colleagues from all over the world. The test guidelines developed in the framework of the UPOV organisation are the basis for the test protocols issued by the Administrative Council of the CPVO.

Agreements for the takeover of technical reports have been concluded with Australia, Japan and Mexico. Negotiations with Vietnam will probably in 2011 lead to the conclusion of a memorandum of understanding as regards the mutual takeover of test reports.

Taiwan has expressed a wish to have cooperation with the CPVO especially as regards the DUS testing of orchids (*Phalaenopsis*). After an in-depth study of the legal and technical implications, in which also Naktuinbouw, the competent EU examination office, was involved, it has been decided that, for varieties of *Phalaenopsis* that are

candidates for EU protection and are already tested in Taiwan, a shortened DUS examination will be performed. The Taiwan authorities have expressed that they will follow a similar policy in respect of varieties tested in the EU that are candidate for protection in Taiwan.

## 1.5. Multi-beneficiary programme

At the beginning of March 2009, the Office signed a contract with the Enlargement DG, which has given continuity to the activities of the Office with EU candidate countries in the framework of its competences.

This programme was initially set up for Turkey and Croatia. In 2008 it was extended to the former Yugoslav Republic of Macedonia and, since 2009, it has been open to all countries of the western Balkan region. Albania and Serbia have expressed interest in participating in its activities.

The duration of this programme was scheduled until the end of the year 2010, but it is not excluded that it will get a follow-up in 2011.

## 1.6. Quality Audit Service

The Quality Audit Service, created in September 2008, coordinated the drafting of the entrustment requirements and proposed a framework for operating an audit programme. After the approval by the CPVO Administrative Council of the entrustment criteria and of the assessment approach, technical experts were identified for participating in audit visits. Three examination offices participated in a test assessment. At the same time, the launch of the audit visits was prepared by establishing the sequence of assessments and by arranging the first series of audits. An advisory panel was created with the aim of reviewing the audit process whenever this is needed. The first audits were performed in 2010 resulting in entrustment decisions by the Administrative Council.



Taiwanese delegation at CPVO, May 2010



DUS trials on avocado, Mexico

## 1.7. Social report 2010

The social report for 2010 was presented to the Administrative Council in its meeting on 16 February 2011. The AC confirmed the conclusion of the report:

'The CPVO has a good working climate with very low absenteeism. Part-time possibilities are well taken up and allow a more flexible work organisation and better reconciliation of work and family life. The investment into training has been rather limited until now, which is in line with the limited needs identified in the career development reports.'

## 1.8. The protection of biotechnical inventions

Although the CPVO and the national plant variety protection authorities have the monopoly as regards the protection of plant varieties per se, this does not mean that plant varieties cannot be the object of patent protection as well. In line with the provisions of the so-called 'biotech directive', inventions related to plants or plant material, the scope of which are not limited to a single variety, can be protected in the EU by a patent. Breeding companies make more and more use of this form of intellectual property to protect the result of their breeding programmes.

Although this development might lead to a decrease in the number of applications for plant variety protection especially in the vegetable and agricultural sectors, I think that plant variety protection will for many breeders remain the best legal instrument to protect their varieties. It is relatively cheap, fast, effective and tailor-made for the output of the breeding industry: plant varieties.

In order to share the experience as regards the application of respectively the patent system and the plant variety protection system, a meeting was organised for representatives of the CPVO and the European Patent Office. One of the issues discussed was the notion of hybrids. The Board of Appeal of the European Patent Office has in two of its decisions expressed the view that hybrids do not fall under the definition of plant varieties and are thus not excluded from patent protection. The CPVO has argued that this view is not in line with the opinion and practice of the authorities responsible for the application of plant variety protection systems, such as the CPVO.

The CPVO follows with great interest the ongoing discussions about certain aspects of the patent system in respect of 'bio inventions' and is prepared, when considered opportune, to contribute to these discussions.

Angers, February 2011

**Bart Kiewiet**

*President of the CPVO*

# 2.

## FOREWORD BY UDO VON KRÖCHER, CHAIRMAN OF THE ADMINISTRATIVE COUNCIL

### 2.1. Introduction



Udo von Kröcher

The fact that the annual number of applications for Community plant variety rights has increased compared with the number achieved in 2009 is, in my opinion, a sign that the breeding industry is gradually recovering from the economic crisis. I hope that the recovery is of a structural nature and will result in a further strengthening of the Community plant variety protection system. The financial situation of the CPVO has remained sound. With a free reserve of around EUR 6 million, it is even necessary to carefully follow the financial developments of the CPVO. A further increase of the free reserve is in my opinion undesirable and should be answered by measures regarding the fee levels.

The Administrative Council said farewell to a number of its (alternate) members. I would like to thank them for the contributions they made to the activities of the CPVO.

The Administrative Council is not only the governing board of the CPVO, it is also an important informal meeting place for those who have responsibilities for their national plant variety protection and listing systems. Its members appreciate the way in which its meetings are prepared by the CPVO staff.

I would like to thank all the CPVO staff members for their dedication to the mission of this agency.

### 2.2. Analysis and assessment of the authorising officer's report

The President of the Community Plant Variety Office presented the authorising officer's report for the year 2010 to the Administrative Council at its meeting in Brussels on 16 February 2011.

The Administrative Council analysed and assessed the report and came to the following conclusions.

In 2010, the system encountered a 5 % increase in applications. Thanks to this and to the growing number of titles in force, the financial result is positive of EUR 1.3 million. The reserve increased by EUR 0.54 million, amounting to EUR 6.14 million.

The Administrative Council is looking forward to the results of the internal audit, not available at the date of the meeting. It takes note that a new risk assessment took place in April 2010. It will pay attention to the forthcoming recommendations of the internal auditor that will be presented at the next meeting of the Administrative Council.

The Administrative Council takes note of the information on *ex post* verifications, negotiated procedures and the confirmation of instructions.

The Administrative Council is satisfied with the declaration of the authorising officer that his report gives a true view and that he has reasonable assurance that the resources assigned to the activities described in his report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The Administrative Council is satisfied that the President of the CPVO is unaware of any matter not reported which could harm the interests of the CPVO.

**Udo von Kröcher**

*Chairman of the Administrative Council*

# 3.

## THE COMMUNITY PLANT VARIETY RIGHTS SYSTEM



The introduction of a Community plant variety system in 1995 has proved to be a successful initiative that has been welcomed by the business community seeking intellectual property protection for new plant varieties.

The fact that protection, guaranteeing exclusive exploitation rights for a plant variety, is acquired in 27 countries through a single application to the Community Plant Variety Office (the Office), makes the Community system for protecting new varieties very attractive.

The Community plant variety system is not intended to replace or even harmonise national systems but rather to exist alongside them as an alternative; indeed, it is not possible for the owner of a variety simultaneously to exploit a Community plant variety right (CPVR) and a national right or patent in relation to that variety. 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 rendered ineffective for the duration of the CPVR.

The legal basis for the Community plant variety system is found in Council Regulation (EC) No 2100/94 (hereafter 'the basic regulation'). On receipt of an application for a CPVR, the Office must establish that the variety is novel and that it satisfies the criteria of distinctness, uniformity and stability (DUS). The Office may arrange for a technical examination to determine DUS, to be carried out by the competent offices in Member States or by other appropriate agencies outside the Community. In order to avoid unnecessary duplication of work where such a technical examination is being — or has already been — carried out in relation to a variety for official purposes, the Office may, subject to certain conditions, accept the results of that examination.

Anyone may lodge an objection to the granting of a CPVR with the Office in writing and within specified time limits. The grounds for objection are restricted to allegations either that the conditions laid down in Articles 7 to 11 of the basic regulation are not met (distinctness, uniformity, stability, novelty or entitlement), or that the proposed variety denomination is unsuitable due to one of the impediments listed in Article 63. Objectors become parties to the application proceedings and are entitled access to relevant documents.

Except in two specific instances where a direct action against a decision of the Office may be brought before the Court of Justice, a right of appeal against such a decision lies with a Board of Appeal consisting of a chairman, appointed by the Council of Europe, and two other members selected by the chairman from a list compiled by the Administrative Council. The addressee of a decision, or another person who is directly and individually concerned by the decision, may appeal against it. After examining the appeal, the Board may exercise any power within the competence of the Office or refer the case to the Office, which is bound by the Board's decision. Actions may be brought before the General Court in Luxembourg against decisions of the Board. Decisions of the Board of Appeal and the Court are published on the Office's website.

The table in Chapter 18 shows the number of notices of appeal lodged with the CPVO and the decisions reached by the Board of Appeal.

Once granted, the duration of a CPVR is 25 years, or 30 years in the case of potato, vine and tree varieties. These periods may be extended by legislation for a further five years in relation to specific genera or species. The effect of a CPVR is that certain specified activities in relation to variety constituents or harvested material of the newly protected variety require the prior authorisation of the holder of the right, which authorisation may be made subject to conditions and limitations. Infringement of a CPVR entitles the holder of the right to commence civil proceedings against the perpetrator of the infringement.

Registers, which are open to public inspection, contain details of all applications received and all CPVRs granted by the Office. Every two months, the Office publishes its *Official Gazette of the Community Plant Variety Office*, which also provides this information as well as other material. Information on applications and titles in force are also found in a database accessible on the Office's website.

The European Commission has organised an evaluation of the CPVR system, which was started in 2010 and which will be finalised in 2011.

# 4. EVALUATION OF THE CPVO

## 4.1. Introduction — Legal basis

The CPVO's financial regulation (Article 25(5)) and its implementing rules (Article 13(2)(b)) require a regular assessment of the activities of the Office, at least every six years. The Administrative Council was informed in its October 2008 meeting that the Office was planning to organise such exercise in the year 2009. After a call for tender, the firm Ernst & Young was selected to perform the evaluation.

## 4.2. Purpose of the evaluation

The purpose of this evaluation was to assess the effectiveness and efficiency of the CPVO activities and functioning. The evaluation covered three topics:

- core activities involved in the Community plant variety rights granting process;
- CPVO secondary activities, which include assistance in the exercise of plant variety rights as well as policy guidance provided;
- CPVO communication and relations with the stakeholders.

## 4.3. Conclusions and recommendations

The report '2009 CPVO evaluation', delivered to the President of the CPVO, concludes that the Office is efficiently administering the EU system of plant variety rights, and the evaluators have included in their report a number of recommendations for an even more effective and efficient organisation of the CPVO, related to the following action priorities:

- *Strategy/prospective approach*
  - prioritisation of certain tasks,
  - study on indicators linked to core activities;
- *Organisation chart, processes and staff allocation*
  - workload measurement,
  - reorganisation of some parts of the structure (without loss of know-how and specialisation, appreciated by our stakeholders);
- *Monitoring*
  - delays in the process of applications,
  - indicators,
  - external communication,
  - anticipation on the effects of new projects,
  - more regular clients' surveys, etc.;
- *Communication*
  - elaboration of a formalised strategy,
  - cost–benefit analysis of communication events.

The Office is, of course, pleased with the overall positive tone of the report.



# 5. THE ADMINISTRATIVE COUNCIL

The CPVO is supervised by an Administrative Council (AC) comprising representatives of the Member States, the European Commission and their alternates. The AC monitors the activities of the Office. In particular, it is responsible for examining the management report of the President, adopting the Office's budget, and granting discharge to the President in respect of its implementation. In addition it can provide advice and establish rules on working methods within the Office and issue guidelines on technical examinations, committees of the Office and general matters.

The Administrative Council met twice in 2010, on 10 and 11 March and 26 October.

At the meeting on **10 and 11 March 2010** in Brussels, the members of the Administrative Council adopted:

- the discharge of the President of the CPVO for implementation of the 2008 budget;
- the amending budget for 2010 in accordance with Article 109(3) of the basic regulation;
- the 2009 authorising officer's report (sent to the Court of Auditors);
- the amendment to the rules of procedure of the Administrative Council allowing external observers to be invited to its meetings;
- the staff policy plan for 2011–13;
- the amendment to Article 9 of the Administrative Council's decision of 25 March 2004 concerning public access to documents;
- the amendment of the guidelines on variety denominations (revision of UPOV classes);
- three new technical protocols for *Persea americana* Mill. (CPVO-TP/097/1), *Malus* Mill. (CPVO-TP/163/1) and *Allium fistulosum* L. (CPVO-TP/161/1) and six revisions for *Pisum sativum* L. sensu lato (CPVO-TP/007/2), *Brassica oleracea* L. convar. *botrytis* (L.) Alef. var. *botrytis* (CPVO-TP/045/2), *Spinacea oleracea* L. (CPVO-TP/055/3), *Gypsophila* L. (CPVO-TP/GYPSO/2), *Zea mays* L. (CPVO-TP/002/3) and *Hordeum vulgare* L. sensu lato (CPVO-TP/019/2);
- the entrustments of examination offices proposed by the CPVO for the testing of 15 new species.



Administrative Council meeting, October 2010, Angers

Furthermore, the members of the AC agreed not to amend or revoke the policy on the status of plant material used for DUS examinations adopted in 2006.

The members of the Administrative Council also took note of:

- the report of the President of the CPVO with its statistics;
- the provisional accounts for 2009 under Article 78 of the financial regulation;
- the preliminary draft budget for 2011;
- the internal audit report;
- the 2009 management report by the President of the CPVO;
- the fourth social report by the CPVO's Human Resources Service;
- the CPVO work programme for 2010;
- the proposal to lower the application fee from EUR 200 for applications made online and the amendment of the fees regulation which will be necessary in such case;
- the report on the cases of the Board of Appeal, its statistics and the cases ongoing before the General Court and the Court of Justice;
- the state of affairs as regards four IT projects (online gazettes, online applications, increased cooperation in variety denomination testing, online publication of official variety descriptions) which were due to start in 2010;
- the withdrawal of three research projects presented to the CPVO in 2009 due to a lack of financing and the request to the CPVO to review its policy on the allocation of funds to avoid such situation in the future.

The members of the AC took note of the launch of the programme for certification of examination offices and the finalisation of its procedures, such as corrective actions and complaint procedures, declarations of confidentiality, the working procedures of the consultative audit committee or the projects to train experts.

The members of the AC also agreed to suspend consideration of a possible extension of the duration of the protection of new plant varieties by the working group created for this purpose in 2009. As the Commission has launched a project to evaluate the PVR system, which includes an analysis of the duration of the protection, this means that pursuing the activities of the working group would be superfluous.

Finally, the members of the AC took note of the possible need of reorganisation of the current structure of cost groups, as well as the arrangements for carrying out the calculation of examination costs in 2010 and the negotiations for remunerating the examination offices.

The Administrative Council, initially due to meet over two days, had to reduce the meeting to only one day, **on 26 October 2010** in Angers, due to a general strike in France.

The members of the Administrative Council adopted:

- the draft budget for 2011 after amending the establishment plan to reflect the actual grades of the President and Vice-President in accordance with Article 109(3) of the basic regulation;
- the new CPVO treasury management policy since the Court of Auditors had asked the CPVO to alter its treasury management policy;
- the grant of observer status on the Administrative Council to ESA and Ciopora but deferred their decision on the requests from Plantum NL and AOHE until the next meeting;
- the CPVO work programme for 2011;
- the new version of the *Quality audit service procedure manual* along with the comments made by the United Kingdom;
- the certification of the following examination offices:
  - (a) Central Agricultural Office (Hungary),
  - (b) Coboru (Poland),
  - (c) CRA FRU (Italy),
  - (d) CRA-W (Belgium),
  - (e) UKZUZ (Czech Republic);
- the two revisions of CPVO technical protocols for *Osteospermum* L. and hybrids with *Dimorphotheca* Vaill (CPVO-TP/176/2 Rev.1) and for *Guzmania* Ruiz & Pavón (CPVO-TP/182 Rev.1) and the correction of the CPVO technical protocol for *Gypsophila* L. (CPVO-TP/GYPSO/2 Corr.);
- additional assignment criteria (wish of the breeder, total number of applications in a given year and for a given species and proximity of the country where the breeder, the applicant and the procedural representative are located) to the principles as approved in 1996 allowing the CPVO to attribute varieties to examination offices for technical examination;
- the entrustments of examination offices proposed by the CPVO for the testing of 26 new species.



Administrative Council meeting, October 2010, Angers

The members of the Administrative Council took note of two resignations of experts responsible for the quality audits of the examination offices and unanimously appointed one Hungarian expert as technical expert for those quality audits.

The members of the Administrative Council also decided that the *Certification requirements for CPVO examination offices* issued by the Quality Audit Service would be reviewed by a working party and would subsequently be adopted. The Head of the Quality Audit Service was asked to brief the AC on the situation in June 2011.

Finally the members of the AC were also informed that the project developed for closer cooperation in the examination of variety denominations with the purpose to harmonise within the EU the implementation of the rules for suitability of variety denominations was working well but was still not sufficiently used by all the examination offices. Member States were therefore encouraged to make use of this system, which should not delay internal procedures taking into account the rapid reaction from the CPVO.

**Chairman of the Administrative Council:**

Mr U. von Kröcher

**Vice-Chairman of the Administrative Council:**

Ms B. Bátorová

**Members of the Administrative Council:**

|                |  |
|----------------|--|
| Belgium        | Ms C. Vanslebrouck<br>Ms M. Petit (alternate)                                      |
| Bulgaria       | Ms B. Pavlovska<br>Mr T. Gadev (alternate)   |
| Czech Republic | Mr J. Staňa<br>Mr D. Jurecka (alternate)   |
| Denmark        | Mr G. Deneken<br>Mr E. Lawaetz (alternate)   |
| Germany        | Mr U. von Kröcher (Chairman)<br>Ms B. Rücker (alternate)                           |
| Estonia        | Ms P. Ardel (until 30.6.2010)<br>Ms E. Kunberg (from 1.7.2010)<br>Alternate vacant |
| Ireland        | Mr D. Coleman<br>Mr D. McGilloway (alternate)                                      |

|             |   |
|-------------|---|
| Greece      | Mr E. Zangilis<br>Mr K. Michos (alternate)  |
| Spain       | Ms A. Crespo Pazos<br>Mr L. Salaices Sánchez (alternate)  |
| France      | Mr R. Tessier<br>Ms N. Bustin (alternate)   |
| Italy       | Ms I. Pugliese<br>Alternate vacant  |
| Cyprus      | Ms S. Louka<br>Mr C. Nicolau (alternate)  |
| Latvia      | Ms S. Kalinina<br>Alternate vacant  |
| Lithuania   | Ms S. Juciuviene<br>Ms D. Kirvaitiene (alternate)   |
| Luxembourg  | Mr M. Weyland<br>Mr F. Kraus (alternate)  |
| Hungary     | Ms A. Szenci<br>Ms M. Posteiner Toldi (alternate)   |
| Malta       | Ms M. Delia<br>Mr M. Sciberras (alternate) (until 13.4.2010)<br>Mr C. Leone Ganado (alternate) (from 15.4.2010) |
| Netherlands | Mr M. Valstar<br>Mr K. Fikkert (alternate)  |
| Austria     | Mr H-P. Zach<br>Mr L. Girsch (alternate)  |

|                     |   |
|---------------------|---|
| Poland              | Mr E. Gacek<br>Ms J. Borys (alternate)  |
| Portugal            | Ms F. Alfarroba<br>Ms P. Cruz de Carvalho (alternate) (until 24.10.2010)<br>Mr J. Fernandes (alternate) (from 25.10.2010) |
| Romania             | Mr A. Strenc<br>Ms A. Ivascu (alternate)  |
| Slovenia            | Mr J. Ileršič<br>Mr P. Grižon (alternate)   |
| Slovakia            | Ms B. Bátorová (Vice-Chairman)<br>Ms M. Andrašková (alternate)  |
| Finland             | Mr M. Puolimatka<br>Mr T. Lahti (alternate)   |
| Sweden              | Mr T. Olsson<br>Ms C. Knorpp (alternate)  |
| United Kingdom      | Mr A. Mitchell<br>Mr R. Harris (alternate)  |
| European Commission | Ms P. Testori Coggi<br>Mr J. Gennatas (alternate)   |

# 6.

## ORGANISATION OF THE CPVO

In December 2010, the staff of the Office comprised 11 officials and 34 temporary agents. Twelve nationalities from the European Union's Member States were represented.

Under the general direction of its President, assisted by the Vice-President, the Office is organised internally into three units and two support services. There is also a third service responsible for quality auditing of examination offices. This service is under the administrative responsibility of the President while being independent with regard to its audit operations.

**The Technical Unit** has as its principal tasks: general coordination of the various technical sectors of the Community plant variety rights system; reception and checking of applications for protection; organisation of technical examinations and technical reports; organisation of variety denomination examinations; preparation for granting of rights; maintenance of the Office's registers; production of official technical publications; relations with applicants, national offices, stakeholders and international organisations; active participation in international committees of technical experts and cooperation in the development of technical analyses and studies intended to improve the system.

**The Administrative and Financial Unit** is active in two areas.

- Administrative Section: public procurement; organisation of the Office's publications; administration, management and monitoring of the Office's inventory of movable property and buildings; administration of logistical and operational resources with a view to ensuring the smooth functioning of the Office.
- Financial Section: management of financial transactions, treasury management, maintenance of the budgetary and general accounts and preparation of budgets and financial documents; management of fees system.

**The Legal Unit:** provides legal advice to the President and other members of the Office staff, in principle on matters related to the Community plant variety rights system, but also on questions of an administrative nature; provides legal interpretations and opinions and



CPVO headquarters, Angers, France

also draws up draft legislation; participates in various CPVO committees, thus ensuring that Community procedures and legislation are respected; manages the administration of objections to applicants for CPVRs and provides the Secretariat of the Office's Board of Appeal.

**The Human Resources Service** deals with the administration and management of the Office's human resources in compliance with the Staff Regulations of the European Commission.

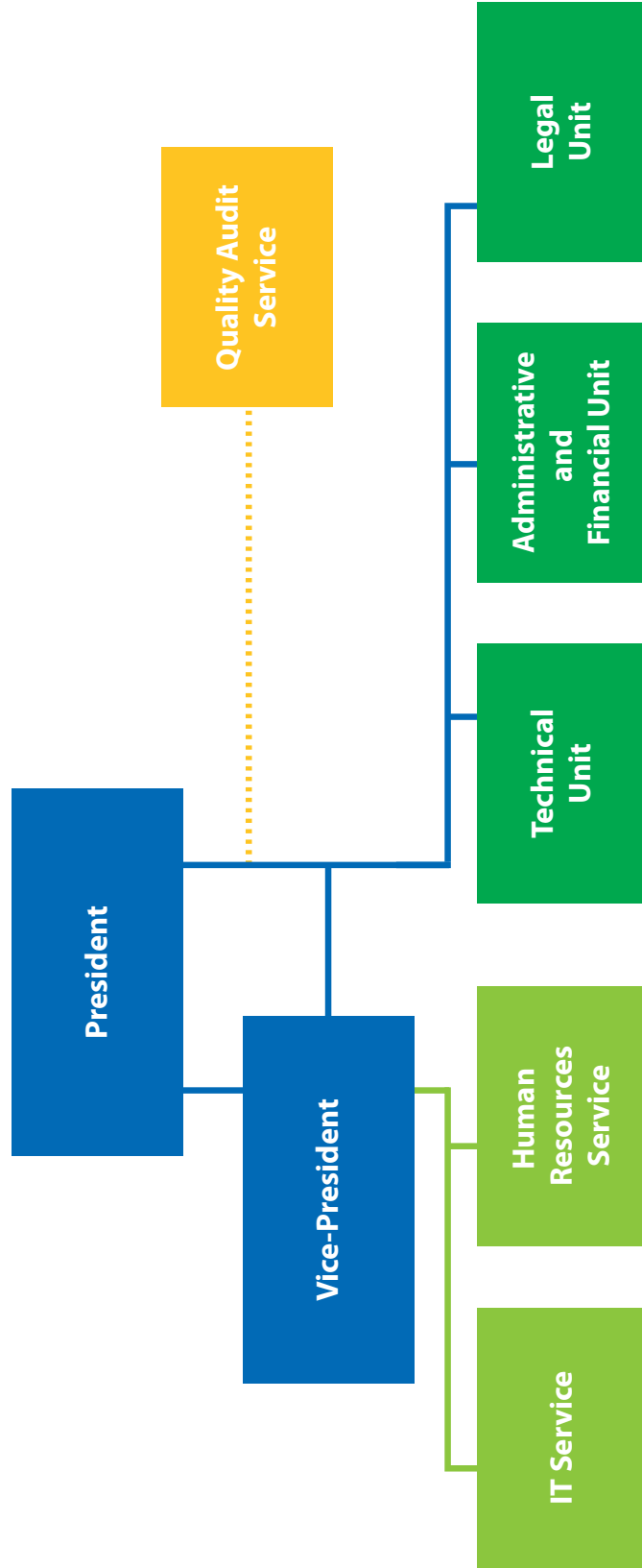
**The IT Service** ensures that the Office runs smoothly in computing terms. Its tasks include: analysis of the Office's hardware and software requirements; design, development and installation of new programmes specific to the Office; development and maintenance of the websites of the Office; installation of standard programmes; maintenance of the computer installation and its administration; security of the computer system; helpdesk and interinstitutional cooperation in computing.

**The Quality Audit Service** is responsible for the verification that technical examination offices meet the quality standards required for providing services to the CPVO in the area of testing compliance of candidate varieties with the distinctness, uniformity and stability (DUS) criteria in addition to novelty.

In 2010, the CPVO prepared a social report with information concerning the turnover, work environment and social aspects of the CPVO. The different headings treated in the report were employment (staff members, recruitment procedure, staff joining or leaving the CPVO, promotions, absenteeism, gender balance), working conditions (hours worked, part-time, parental leave), training (language training, IT training, other training) and professional relations (Staff Committee). The CPVO social reports from 2006 to 2010 can be consulted on the CPVO website under the heading 'Annual reports'.



# ORGANISATIONAL CHART OF THE CPVO



**PRESIDENCY**



**President**  
Bart Kiewiet



**Vice-President**  
Carlos Godinho



**Assistant to the Vice-President**  
Cyrille Antoine



**Assistant to the President**  
Marleen Van de Meulebroeke

**LEGAL UNIT**



**Head of Legal Unit**  
Martin Ekvad



**Board of Appeal/ Data Protection**  
Véronique Doreau

**SUPPORT SERVICES**



**IT Service**  
Sébastien Beugnier



**IT Service**  
Jean-Louis Curnier



**Human Resources Service**  
Deirdre Killeen



**IT Service**  
Patrick Lecoq

**QUALITY AUDIT SERVICE**



**Quality Audit Team Leader**  
Gerhard Schuon



**IT Service**  
Laura Naie



**IT Service**  
Marc Rouillard



**Human Resources Service**  
Anna Verdini

## ADMINISTRATIVE AND FINANCIAL UNIT (AFU)



**Head of AFU**  
Thomas Wollersen



**Accountant**  
James Moran



**General Services**  
Thierry Cluzeau



**Accounting**  
Valérie De Caestecker



**Accounting/Assistant to Quality Audit Service**  
Laurence Dumont



**Evaluation/Internal Audit & Control**  
Roseline Fagel



**Accounting**  
Anne-Marie Fernandez



**Assistant to the Head of AFU**  
Béatrice Hodet



**Reception**  
Isabelle Kirsch



**Reception**  
Daniëlle Leenaarts



**Public Relations/Denominations**  
Bénédicte Legrand



**Finances**  
Ekaterina Mantziaris



**Administration/Logistic**  
Gil Oliveira



**Public Relations/Training**  
Fabienne Santoire



**Mailroom**  
Manuel Soares Teixeira



**Head of TU**  
Dirk Theobald



**Deputy Head of TU**  
Jean Maisson



**Denominations**  
Carole Bonneau



**Fruit and ornamental species**  
Urszula Braun-Mfodecka



**Denominations**  
Rudi Caes



**Ornamental species**  
Laetitia Denecheau



**Register**  
Pierre-Emmanuel Fouillé



**Register**  
Anne Gardener



**Register**  
Nadège Grantham



**Ornamental species**  
Ghislaine Guilbert



**Assistant to the Head of TU**  
Aline Noguès



**Agricultural, fruit and vegetable species**  
Nadine Pigat



**Fruit and vegetable species**  
Sergio Semón



**Alternate assistant to the Head of TU**  
Laurence Théodore



**Ornamental species**  
Jens Wegner



**Agricultural species**  
Anne Weitz

## TECHNICAL UNIT (TU)

NB: The above organisational chart comprises the members of the CPVO employed as officials and temporary agents on 31 December 2010.

# 7. QUALITY AUDIT SERVICE

The Quality Audit Service is responsible for verifying if technical examination offices meet the quality standards required for providing services to the CPVO in the area of testing compliance of candidate varieties with the distinctness, uniformity and stability (DUS) criteria. To this end regular assessments are conducted at the examination offices and at the test sites involved in the technical work.

## 7.1. Assessment of examination offices

The year 2010 saw the launch of the audit programme with a total of eight assessment visits to examination offices. In addition to the audit team leader, 12 technical experts, appointed by the CPVO Administrative Council, participated in their respective field of expertise. After evaluating the corrective measures implemented by examination offices in response to the assessment findings, the respective audit teams issued a recommendation to the Administrative Council. The AC took the entrustment decisions for six examination offices visited in 2010. By the end of 2010, recommendations for the remaining assessments conducted in that year were available for presentation at the first Administrative Council meeting in 2011.

## 7.2. Review entrustment requirements

The criteria for entrusting examination offices for DUS testing work on behalf of the CPVO were approved by the Administrative Council in 2009. Experience from the first set of assessments and feedback received during the first meeting of technical experts involved in the assessment work resulted in a proposal to review some aspects of the entrustment requirements. The AC approved the creation of a review working group, in order to revise the current version of the document.



First entrustment certificate signed on March 2010, Brussels



Meeting of experts involved in quality audit assessments, June 2010, Angers

### **7.3. Review audit manual**

The procedure manual and related documents define the framework for the assessments conducted at examination offices. They provide information to all parties involved and are intended to guide assessment teams in their work. A revised version was presented to the AC and approved in October 2010, taking into account all the developments that were made during the first year of transit to the new approach based on quality criteria. In parallel, supporting documents supplementing the procedure manual were amended and new ones created, in order to specify in sufficient detail how the assessments are organised and what consultations need to be made at what stage.

# 8.

## RESEARCH AND DEVELOPMENT

Following the rules established by the Administrative Council in 2002 and reviewed in 2009 for financially supporting projects of interest to the Community plant variety rights system, the Office received several applications for co-financing R & D projects. Under this chapter the Office provides updated information about projects under way and follow-up measures taken in 2010 on projects already concluded.



Rose

**European collection of rose varieties:** This project was finalised in 2006. The outcome was presented to rose breeders and the professional organisations in the form of a questionnaire. A response was received from 22 rose breeders, representing 75% of all rose applications. In relation to the professional organisations, replies were received from Ciopora, Plantum NL and ESA. From these reactions, it can be concluded that the majority of the rose breeders, as well as their professional organisations, were in favour of maintaining a DNA sample of their candidate varieties on a voluntary basis. In relation to the DNA fingerprinting of these official samples, the answers were more diverse. Some breeders showed interest, others not. There were some reservations in relation to the costs involved and in relation to the evolution of techniques in time. With that in mind, the implementation of the project will focus on keeping a DNA sample from the original plant material submitted for technical examination as well as the access to such samples, in particular in relation to the enforcement of rights. In 2010, the Office started the selection procedure for a laboratory which will, possibly as from 2011, extract and store DNA samples of all rose candidate varieties.

**Management of peach tree reference collections:** The project is in its final year of its three-year duration. Its aim is to create and manage a peach tree database, via the establishment of an EU *Prunus persica* tree collection structured in varietal groups, using a common database containing phenotypic, visual and molecular descriptions. During the calendar year, the four project partners (France, Hungary, Italy, Spain) representing the entrusted examination offices for this species almost finalised on a phenotypic database of 504 peach varieties of common knowledge as well as the corresponding photo database and genetic map of the correlation between all those varieties. Twelve of those varieties also formed the basis of a ring trial between the project partners to compare the reliability of results. Thus far the results seem to be encouraging. The project is due to be finalised and concluded upon in 2011, at which time the project coordinator will formally present the results and conclusions to the CPVO before this is done shortly afterwards to the stakeholders. Apart from analysing how to implement the findings of the project in order to better target reference varieties and improve the efficiency of the DUS test, an important issue which the CPVO will have to consider together with its entrusted peach examination offices is how to maintain the created database up to date into the future.

**Construction of an integrated microsatellite and key morphological characteristic database of potato varieties in the EU common catalogue:** This project started in April 2006. The final report was received in spring 2008. The partners involved are Germany, the Netherlands, Poland and the United Kingdom. The project delivered a database including marker profiles of potato varieties, key morphological characteristics and a photo library



Potato

with light sprout pictures. The aim is to rapidly identify plant material of a vegetatively propagated crop where reference material has to be submitted every year and to ease the management of the reference collection. At the request of the breeders' association ESA (European Seed Association), the possible use of molecular means for variety identification for enforcement purposes has been taken into account. Several conference calls in 2010 with the project partners and ESA were held in order to agree upon the follow-up of the project results and their implementation in the DUS test. This activity will continue in 2011. Emphasis will be placed on the harmonisation of the variety descriptions from the different examination offices as well as to the set-up of a procedure for the exchange of tubers of candidate varieties so that their DNA can be extracted and profiled for the management of the reference collection.

**A potential UPOV option 2 approach for barley high density SNP genotyping:** This project was presented by NIAB from the United Kingdom; the grant agreement was signed by the end of 2010. The project considers three possible approaches: (1) calculation of correlations between molecular and morphological distances; (2) quantification of morphological and molecular distances against pedigree; (3) genomic selections for phenotypic predictions. If such correlation exists and calibration thresholds for the phenotype could be established, this could be used as a powerful tool for the grouping of varieties in the growing trial. The project will start at the beginning of 2011 and take 12 months.

# 9.

## BUDGET AND FINANCE

### 9.1. Overview — outturn

Strong demand in 2010 coupled with the new fee structure in place since the beginning of the year meant that budgetary revenue remained buoyant. Budgetary expenses were significantly lower than expected due to delays in certain examinations.

| <b>Net outturn for the year:</b>                               | <b>Million EUR</b> |
|--|--------------------|
| Budgetary revenue (a)  | 11.97              |
| Budgetary expenses (b)   | 10.81              |
| <b>Budgetary outturn (c) = (a) – (b)</b>                       | <b>1.16</b>        |
| Non-budgetary receipts (d)                                     | 0.15               |
| <b>Net outturn for the budgetary year 2010 (e) = (c) + (d)</b> | <b>1.31</b>        |

Significant savings which were also made in discretionary expenses (such as IT investments and recruitments) with non-urgent projects were postponed where possible.

### 9.2. Revenue

The Office's revenue mainly comprises various fees paid by applicants for and holders of Community plant variety rights and revenue from interest on bank accounts. The total revenue collected in 2010 was EUR 11.97 million.

The principal types of revenue collected in 2010 are broken down as follows:

|                      | <b>Var.</b> | <b>2010</b>          | <b>2009</b>          |
|----------------------|-------------|----------------------|----------------------|
|                      | <b>(%)</b>  | <b>(million EUR)</b> | <b>(million EUR)</b> |
| Fees                 | 4.5         | 11.90                | 11.39                |
| Bank interest        | – 48        | 0.08                 | 0.15                 |
| Other revenue        | – 120       | – 0.01               | 0.24                 |
| <b>Total revenue</b> | <b>1.56</b> | <b>11.97</b>         | <b>11.78</b>         |

The total fees received in 2010 amounted to EUR 11.9 million, representing an increase of 4.5% as compared with the previous year. There was significant reduction in interest income due to the continually low interest rates in 2010. Finally 'other' revenue shows a negative amount as the unused receipts for the European Commission for the 2008 multi-beneficiary programme were returned.



### 9.3. Expenditure

The total amount for recorded expenditure and commitments carried over was EUR 10.8 million, compared with EUR 11.9 million in 2009. The increase in staff costs was more than offset by savings in administrative expenditure and operational costs.

|                            | <b>Var.</b><br><b>(%)</b> | <b>2010</b><br><b>(million EUR)</b> | <b>2009</b><br><b>(million EUR)</b> |
|----------------------------|---------------------------|-------------------------------------|-------------------------------------|
| Staff expenditure          | 5.7                       | 5.5                                 | 5.2                                 |
| Administrative expenditure | - 21                      | 1.1                                 | 1.4                                 |
| Operational expenditure    | - 20                      | 4.2                                 | 5.3                                 |
| <b>Total expenditure</b>   | <b>- 9.2</b>              | <b>10.8</b>                         | <b>11.9</b>                         |

Staff expenditure increased in 2010 due to normal career development. The salary grid for staff of the Office, being governed by the levels set by the European Council is also subject to changes in line with inflation and career progression. Administrative expenditure fell again in 2010 as no major infrastructure projects were undertaken. Operational expenditure which consists mainly of remunerations for examination offices decreased significantly due to late arrival of reports from examination offices. This should reverse in 2011.

### 9.4. Conclusion

The significant positive result in 2010 reflects the financial stability of the Office and the Community PVR system. The high outturn of the year should move closer to break-even in 2011.

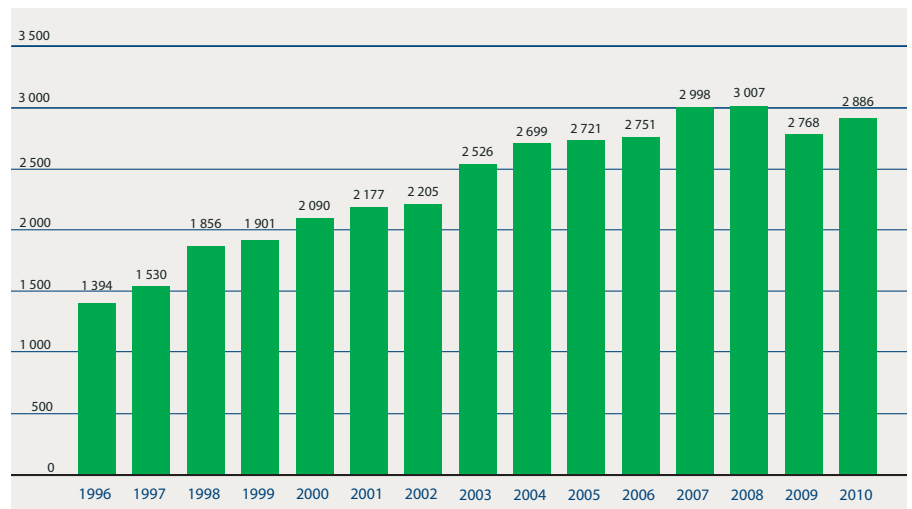
# 10. TRENDS AND DEVELOPMENTS

## 10.1. Applications for Community plant variety protection

In 2010, the Office received 2886 applications for Community plant variety protection (all figures are based on the date of arrival of the application documents at the Office). As illustrated in Graph 1, this represents an increase of 4.1 % compared with the previous year.

**Graph 1**

Evolution of the annual number of applications for Community plant variety protection (1996–2010)

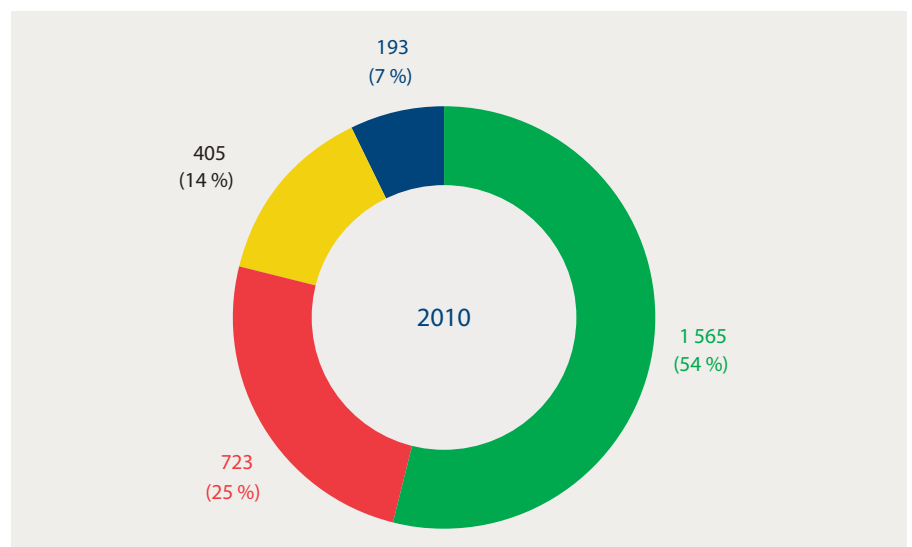


Graph 2 represents shares of the crop sectors in number of applications received in 2010.

**Graph 2**

Shares in application numbers per crop sector in 2010

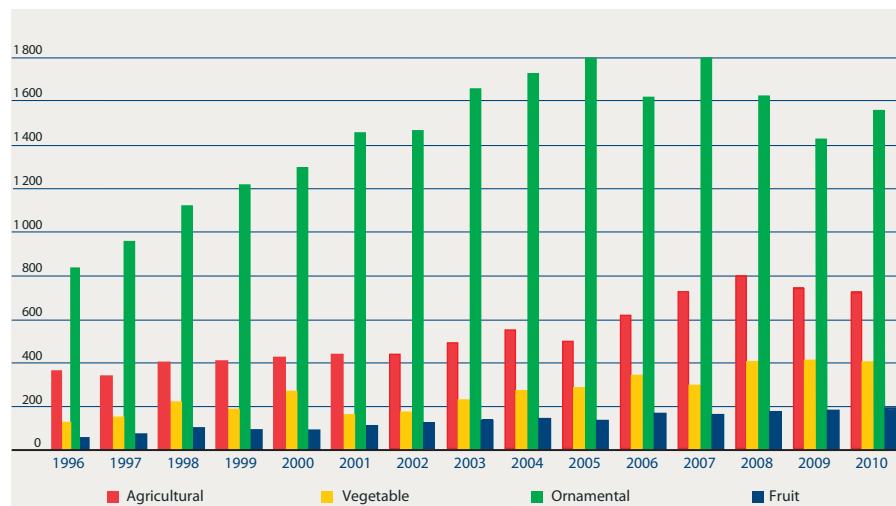
- Ornamental
- Agricultural
- Vegetable
- Fruit



Graph 3 shows the evolution in number of applications per crop sector since 1996. The important increase in application numbers observed in 2010 in the ornamental sector (+ 10.8%) represents a partial recovery from the considerable decline seen in 2008 and 2009. Also for fruit species, an increase of (+ 4.3%) in application numbers was observed.

By contrast, decreasing application numbers were found for agricultural species (– 3.0 %) and vegetables (– 2.2 %).

**Graph 3**  
Evolution of application numbers per crop sector (1996–2010)



In 2010, 617 applicants filed applications for Community plant variety rights. The table below lists the 50 most frequent users of the Community system and their respective number of applications filed in 2010. These top 50 applicants filed, in total, 1 533 applications, which is equal to 53.1 % of all applications received in that year. These figures illustrate that the Community plant variety rights system is not only attractive to global players but also to medium and smaller-sized breeding companies.

| Name of applicant                     | Country | Number of applications filed in 2010 |
|---------------------------------------|---------|--------------------------------------|
| Syngenta Crop Protection AG           | CH      | 102                                  |
| Rijk Zwaan Zaadteelt en Zaadhandel BV | NL      | 89                                   |
| Tobias Dümmer                         | DE      | 71                                   |
| RAGT 2n SAS                           | FR      | 56                                   |
| Limagrain Europe SA                   | FR      | 55                                   |
| Seminis Vegetable Seeds Inc.          | US      | 54                                   |
| Pioneer Hi-Bred International Inc.    | US      | 53                                   |
| Enza Zaden Beheer BV                  | NL      | 49                                   |
| Anthura BV                            | NL      | 48                                   |
| KWS Saat AG                           | DE      | 44                                   |
| Pioneer Overseas Corporation          | US      | 44                                   |
| Nunhems BV                            | NL      | 43                                   |
| Dekker Breeding BV                    | NL      | 43                                   |
| Nils Klemm                            | DE      | 40                                   |
| Soltis SAS                            | FR      | 38                                   |
| Nickerson International Research SNC  | FR      | 36                                   |
| Agro Selections Fruits SAS            | FR      | 35                                   |

|  |    |    |
|--|----|----|
| <b>Fides BV</b>                              | NL | 32 |
| <b>Terra Nova Nurseries Inc.</b>             | US | 30 |
| <b>Paraty BVBA</b>                           | BE | 26 |
| <b>Poulsen Roser A/S</b>                     | DK | 25 |
| <b>Testcentrum voor Siergewassen BV</b>      | NL | 25 |
| <b>Meilland International SA</b>             | FR | 24 |
| <b>Euro Grass Breeding GmbH &amp; Co. KG</b> | DE | 24 |
| <b>Adrien Momont et Fils SARL</b>            | FR | 24 |
| <b>RijnPlant BV</b>                          | NL | 22 |
| <b>Vilmorin SA</b>                           | FR | 22 |
| <b>Rosen Tantau KG</b>                       | DE | 22 |
| <b>Maïsadour Semences SA</b>                 | FR | 22 |
| <b>Piet Schreurs Holding BV</b>              | NL | 21 |
| <b>Suntory Flowers Limited</b>               | JP | 21 |
| <b>Bejo Zaden BV</b>                         | NL | 20 |
| <b>Goldsmith Seeds Europe BV</b>             | NL | 19 |
| <b>Floréac NV</b>                            | BE | 18 |
| <b>Euralis Semences SAS</b>                  | FR | 18 |
| <b>Barberet &amp; Blanc SA</b>               | ES | 17 |
| <b>Florist de Kwakel BV</b>                  | NL | 16 |
| <b>Beekenkamp Plants BV</b>                  | NL | 16 |
| <b>Satter Roses Breeding BV</b>              | NL | 16 |
| <b>Leonardus Arkesteijn</b>                  | NL | 15 |
| <b>Hilverda Kooij BV</b>                     | NL | 15 |
| <b>Herbalea GmbH</b>                         | DE | 15 |
| <b>Interplant Roses BV</b>                   | NL | 15 |
| <b>PSB Producción Vegetal SL</b>             | ES | 14 |
| <b>Serasem SNC</b>                           | FR | 14 |
| <b>Jean-Pierre Darnaud</b>                   | FR | 13 |
| <b>Esmeralda Breeding BV</b>                 | NL | 13 |
| <b>Deliflor Royalties BV</b>                 | NL | 13 |
| <b>Vletter &amp; Den Haan Beheer BV</b>      | NL | 13 |
| <b>Deutsche Saatveredelung AG</b>            | DE | 13 |

Applicants from outside the European Union must appoint a representative with registered office or with domicile inside the EU to handle their applications. Sometimes mother companies located outside the EU appoint their daughter company in the EU; this is the case e.g. for Monsanto, Pioneer, Syngenta, Sakata and Limagrain. EU applicants do not have such an obligation; however, some of them prefer commissioning the application procedure to an external agent. In 2010, 1 304 applications (45.0 %) were filed by 141 procedural representatives. The table below lists the 15 most 'active' procedural representatives for 2010 having submitted in total 859 applications.

| Name of procedural representative       | Country | Number of applications filed in 2010 |
|---|---------|--------------------------------------|
| Royalty Administration International CV | NL      | 264                                  |
| Pioneer Hi-Bred SARL                    | FR      | 87                                   |
| Syngenta Seeds BV                       | NL      | 68                                   |
| Hortis Holland BV                       | NL      | 64                                   |
| Deutsche Saatgutgesellschaft mbH Berlin | DE      | 63                                   |
| Monsanto Holland BV                     | NL      | 54                                   |
| Dominique Marc                          | FR      | 46                                   |
| Syngenta Seeds GmbH                     | DE      | 45                                   |
| GPL International A/S                   | DK      | 35                                   |
| Hans-Gerd Seifert                       | DE      | 34                                   |
| Plantipp. BV                            | NL      | 24                                   |
| Moerheim New Plant BV                   | NL      | 22                                   |
| Ronald Houtman Sortimentsadvies         | NL      | 22                                   |
| CNB (UA)                                | NL      | 16                                   |
| Udo Schäfer                             | DE      | 15                                   |

### 10.1.1. Ornamental species

With 54 % of the applications received in 2010, ornamentals continue to represent the largest group of applications filed for Community plant variety rights. As can be seen in Graph 3 (p. 33), the ornamental sector remains the most important in terms of number of applications each year. After two consecutive years of sharply decreasing application numbers, a significant increase of + 10.8 % was observed in 2010.

Table 1 shows the 10 most important ornamental crops in terms of the number of applications. Changes in the importance of most of these crops — with the exception of orchids and *Impatiens* — seem to be rather accidental. In 2010, *Chrysanthemum* and Rose remain, in that order, by far the most important species. For orchids in general, and *Phalaenopsis* and *× Doritaenopsis* in particular, a sudden dramatic increase was observed in 2006–07, followed by a steep decline in 2009 but they were on the rise again in 2010. As for *Impatiens*, the decline seems to mark a trend.



*Phalaenopsis*, the Netherlands



*Lilium L.*, the Netherlands

**Table 1: Number of applications of the 10 most important ornamentals**

| Genus   | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | Total       |
|---|------|------|------|------|------|------|------|------|------|-------------|
| <i>Rosa</i> L.  | 182  | 191  | 218  | 168  | 180  | 154  | 169  | 155  | 199  | <b>1616</b> |
| <i>Chrysanthemum</i> L.                                   | 181  | 186  | 147  | 160  | 197  | 167  | 158  | 162  | 175  | <b>1533</b> |
| <i>Petunia</i> Juss. and <i>Callibrachoa</i> Llave & Lex. | 104  | 51   | 71   | 87   | 70   | 99   | 53   | 73   | 76   | <b>684</b>  |
| <i>Pelargonium</i> L'Her. ex Aiton                        | 61   | 72   | 69   | 114  | 77   | 66   | 67   | 49   | 44   | <b>618</b>  |
| <i>Lilium</i> L.  | 60   | 65   | 85   | 64   | 63   | 59   | 44   | 56   | 43   | <b>539</b>  |
| <i>Impatiens</i> L.                                       | 104  | 63   | 66   | 98   | 56   | 51   | 39   | 18   | 30   | <b>525</b>  |
| <i>Gerbera</i> L.   | 48   | 79   | 44   | 66   | 45   | 39   | 77   | 63   | 37   | <b>498</b>  |
| <i>Phalaenopsis</i> Blume & x <i>Doritaenopsis</i> hort.  | 5    | 18   | 41   | 11   | 63   | 109  | 77   | 50   | 85   | <b>459</b>  |
| <i>Dianthus</i> L.  | 41   | 58   | 35   | 57   | 38   | 34   | 34   | 29   | 61   | <b>387</b>  |
| <i>Osteospermum</i> L.                                    | 25   | 39   | 53   | 56   | 39   | 31   | 40   | 28   | 22   | <b>333</b>  |

It is also interesting to note that there are differences in the time kept for the legal protection of varieties of different genera. At the end of 2010, out of the 16 541 rights granted in total for ornamental varieties, 9 593 (58.1 %) are still active. The table below gives information on the number of rights still in force for a few species. Consistent differences between species can be noticed. There might be a number of reasons for this phenomenon, such as a change in consumer preferences, breeding trends, differences in intensity of breeding activities or the time and expenses required to develop new varieties.

| Genus   | Rights granted | Rights still in force: absolute (relative) |
|---|----------------|--|
| <i>Gerbera</i> L.   | 591            | 151 (25%)                                  |
| <i>Tulipa</i> L.  | 261            | 126 (48%)                                  |
| <i>Impatiens</i> L.                                       | 745            | 331 (44%)                                  |
| <i>Chrysanthemum</i> L.                                   | 1 847          | 973 (52%)                                  |
| <i>Pelargonium</i> L'Hér. ex. Aiton                       | 1 016          | 524 (51%)                                  |
| <i>Rosa</i> L.  | 2 320          | 1 237 (53%)                                |
| <i>Lilium</i> L.  | 634            | 352 (55%)                                  |
| <i>Petunia</i> Juss. and <i>Callibrachoa</i> Llave & Lex. | 468            | 264 (56%)                                  |
| <i>Dahlia</i> Cav.  | 227            | 164 (72%)                                  |
| <i>Clematis</i> L.  | 101            | 98 (97%)                                   |

One particularity of the ornamentals is the great diversity of species, as illustrated in Graph 8 (p. 52); most of the botanical taxa mentioned in the graph are ornamentals. For each of them, there is a rather low number of applications.

The Office may base its decision to grant Community plant variety rights on a technical examination carried out in the frame of a previous application for plant breeders' rights in an EU Member State. The table below shows the percentage of reports taken over during the last 10 years. The considerably lower numbers of reports taken over as compared to the vegetable or agricultural sector is due to the absence of any listing requirement before commercialising ornamental varieties.

| Year                           | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|--------------------------------|------|------|------|------|------|------|------|------|------|------|
| Percentage of report takeovers | 16.5 | 12.1 | 7.8  | 9.8  | 6.0  | 7.0  | 5.8  | 6.2  | 3.3  | 5.8  |

The introduction of the Quality Audit Service (QAS) has resulted in a situation where for a number of ornamental species more than one examination office is competent to undertake DUS examination. Whereas in the past a centralised testing situation existed, the CPVO has now to decide at which examination office a certain candidate variety is going to be examined. For that reason the CPVO's Administrative Council has extended the criteria to be applied by the CPVO.

The Office will have to take into consideration not only climatic conditions but also the wish of the breeder and the other varieties under examination.

In cooperation with the relevant examination office, the CPVO held two open days for ornamental breeders. In the Netherlands, the Dutch examination office Naktuinbouw hosted in January 2010 an open day especially addressed to rose breeders. Such a specialised meeting gave the opportunity to raise the mutual understanding for problems (such as phytosanitary issues) breeders are faced with and the corresponding requirements that need to be met for the conduct of the technical examination. In September 2010, the first ever open day was held especially for Danish breeders at the testing station in Aarslev, Denmark. Breeders of all ornamental crops were invited and the presentations and discussions covered all parts of the Community plant variety rights system.

### 10.1.2. Agricultural species

The year 2010 showed a decrease of 3 % in the number of applications.

The 10 most important species in the agricultural sector are the same as in the previous years: maize at the top again, followed by wheat and potato, the general distribution of applications over species remains stable in 2010.

The following table shows the number of applications received per year over all agricultural species since 2004.

| All agricultural species | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | Total |
|--------------------------|------|------|------|------|------|------|------|-------|
| Total                    | 536  | 499  | 610  | 733  | 791  | 741  | 723  | 4 633 |

Table 2 shows the number of applications for the 10 most important agricultural species for the last seven years.

**Table 2: Number of applications of the 10 most important agricultural species**

| Species   | 2004       | 2005       | 2006       | 2007       | 2008       | 2009       | 2010       | Total       |
|---|------------|------------|------------|------------|------------|------------|------------|-------------|
| <i>Zea mays</i> L.                                | 169        | 181        | 212        | 248        | 222        | 219        | 220        | 1471        |
| <i>Triticum aestivum</i> L. emend. Fiori et Paol. | 75         | 54         | 76         | 91         | 87         | 76         | 92         | 551         |
| <i>Solanum tuberosum</i> L.                       | 50         | 34         | 84         | 66         | 94         | 87         | 63         | 478         |
| <i>Brassica napus</i> L. emend. Metzg.            | 41         | 29         | 44         | 71         | 85         | 96         | 75         | 441         |
| <i>Hordeum vulgare</i> L. sensu lato              | 52         | 44         | 45         | 55         | 69         | 64         | 56         | 385         |
| <i>Helianthus annuus</i> L.                       | 27         | 40         | 30         | 38         | 49         | 46         | 68         | 298         |
| <i>Lolium perenne</i> L.                          | 6          | 16         | 20         | 11         | 26         | 20         | 19         | 118         |
| <i>Triticum durum</i> Desf.                       | 13         | 13         | 8          | 14         | 13         | 17         | 14         | 92          |
| <i>Pisum sativum</i> L. sensu lato                | 11         | 21         | 11         | 14         | 14         | 10         | 13         | 94          |
| × <i>Triticosecale</i> Witt.                      | 15         | 7          | 7          | 14         | 13         | 7          | 9          | 72          |
| <b>Total</b>                                      | <b>459</b> | <b>439</b> | <b>537</b> | <b>622</b> | <b>672</b> | <b>642</b> | <b>629</b> | <b>4000</b> |

With regard to the technical examination of candidate varieties, the DUS test has in many cases already been carried out in the framework of the procedure for national listing, or it is in the process of being carried out at the time of the application. The DUS report can therefore be taken over from entrusted examination offices, according to Article 27 of the implementing rules (Commission Regulation (EC) No 874/2009), if it constitutes a sufficient basis for a decision.

The ratio of technical examinations of agricultural species organised on behalf of the Office to takeovers has remained fairly stable during recent years. On average, 80 % of the reports can be taken over from examination offices. In general, the number of technical examinations on behalf of the Office is more important for varieties of species with inbred lines, such as maize, sunflower and sugar beet components.

The following table refers to the comparison between the number of varieties **registered** into the common catalogue (CC) of agricultural species in 2010 and the number of



*Zea mays* L.



*Solanum Tuberosum* L.





Brassica DUS trials, France



Cereals DUS trials, Finland

applications for Community plant variety rights (CPVR) **received** during 2010 for four important agricultural species.

| Species      | Number of varieties listed in CC in 2010 (2009) | Number of applications for CPVR received in 2010 (2009) |
|--------------|---|---|
| Oilseed rape | 100 (101)                                       | 75 (96)   |
| Wheat        | 163 (129)                                       | 89 (76)   |
| Potato       | 106 (87)  | 62 (87)   |
| Ryegrass     | 73 (69)   | 19 (20)   |

The comparison of the number of varieties listed during a given year with the number of applications for Community rights received can only give an indication to which extent for a given species protection is sought by the breeders.

Given that the data represent only the two years of 2009 and 2010, a trend cannot be identified with regard to an order of importance for protection within the species. However, it shows that in 2010 the number of varieties that were the subject of an application for Community plant variety rights is relatively smaller than in 2009 although the number of varieties listed in 2010 is higher than in 2009. This might explain, at least partly, the decrease by 3 % of the total number of applications in the agricultural sector. What remains 'stable' is the low percentage of applications concerning recently registered ryegrass varieties; it is generally reflected in the small number of *Lolium* applications compared to other species over the years (see Table 2, p. 38).

The call for tender for the entrustment of examination offices for new species, which had been launched in 2009 in the framework of the new Quality Audit System had resulted in an extension of the list of species for which the network of examination offices of the CPVO has expressed its capacities to carry out the DUS tests. Although no applications for CPVR have been received so far, the following species can be tested within the CPVO network since 2010:

|  |   |
|--|---|
| <i>Agrostis capillaris</i> L.                                    | <i>Galega orientalis</i> Lam.   |
| <i>Agrostis gigantea</i> Roth                                    | <i>Jatropha curcas</i> L.   |
| <i>Alopecurus pratensis</i> L.                                   | <i>Onobrychis viciifolia</i> Scop.  |
| <i>Arachis</i> L.  | <i>Poa trivialis</i> L.   |
| <i>Arrhenatherum elatius</i> (L.) P.Beauv. ex J.S. et K.B. Presl | <i>Raphanobrassica</i>  |
| <i>Avena nuda</i> L.   | <i>Spirodela polyrhiza</i> (L.) Schleid                                       |
| <i>Avena strigosa</i> Schreb.                                    | <i>Trifolium alexandrinum</i> L.  |
| <i>Brachiaria</i> (Trin.) Griseb.                                | <i>Trifolium incarnatum</i> L.  |
| <i>Camelina sativa</i> (L.) Crantz                               | <i>Trifolium resupinatum</i> L.   |
| <i>Carthamus tinctorius</i> L.                                   | <i>Trisetum flavescens</i> (L.) P. Beauv.                                     |
| <i>Cynosurus cristatus</i> (crested dog's tail)                  | <i>Triticum monococcum</i> L.   |
| <i>Elytrigia elongata</i> (Host) Nevski                          | <i>Triticum turgidum</i> L. subsp. <i>dicoccum</i> (Schrank ex Schübl.) Thell |

### 10.1.3. Vegetable species

After the record number of vegetable applications the previous year, figures for 2010 showed a slight decrease of 2.2% to 405. The main species continued to be lettuce followed by tomato, although 2010 saw significant increases in pepper (35), which almost took second place. After several quiet years, the Office received a sudden influx of 16 *Ocimum basilicum* applications from one applicant; this would seem to reflect the continuing interest of growers and consumers for ready-to-eat aromatic leafy vegetables such as basil and rocket.

The Office now takes over prior technical examination reports for vegetables rather than organising its own technical examinations (70:30 ratio), demonstrating that, as in the agricultural sector, the applicant has already commenced a prior application for national listing and/or plant breeders rights in order to save time and possibly take advantage of claiming priority over the earlier application. The major difference with respect to the agricultural sector is that, whereas for agriculture varieties subject of a 'takeover', in the majority of cases



Tomato DUS trials, France



Monitoring lettuce DUS trials, the Netherlands

by the time the CPVO receives the corresponding application, the technical examination has already been finalised and a positive technical report is available, thus there is a relative certainty that Community plant variety right will also be granted, and that the duration of the procedure from date of application to date of granting can be as short as six months for many agricultural varieties. In the vegetable sector, however, applications for Community rights tend to be filed just a few months after the corresponding application for national registration, meaning that the technical examination is at its infancy stage and that the whole procedure will only take slightly less time than if an application had been filed directly for Community rights. An unexpected by-product of this though is that the number of voluntary withdrawals of vegetable varieties during the application procedure has risen significantly; in 2010 the number of withdrawals of vegetable applications totalled 59, which represents almost 15% of all applications that will not get to the end of the procedure. The number of negative technical reports (mostly for uniformity reasons) is also on the increase, which begs the question that vegetable seed companies may sometimes be putting candidate varieties for registration at too early a stage, before the variety has been perfected.

The breeding of disease resistance is one of the most important goals in the vegetable sector, and with the shift of this responsibility from the public sector (research institutes, universities) to the private sector (seed companies), UPOV guidelines and the corresponding CPVO protocols have seen an increase in disease resistance characteristics. Over time the number of obligatory (asterisked) disease resistance characteristics also increased since it was perceived that certain diseases were of major importance throughout the EU. In the last couple of years though there have been voices from certain smaller breeding companies and officials, particularly in the acceding Member States since 2004, that some diseases are not of importance in various European regions, and thus the obligation to breed uniform varieties for those disease resistances would appear to be unfair. The issue is of particular relevance at the moment seeing as how there was a substantial increase in 2010 in the number of entrusted examination offices for vegetables, although not all of them have the same capabilities with respect to the testing of vegetable disease resistances. The matter will be analysed further in 2011, not only with ESA but also with the European Commission, since the CPVO protocols are also applicable to national listing and subsequent entry into the common catalogue.



Pepper DUS trials, France



Vegetable Open Day, GEVES Brion, October 2010



Vegetable Open Day, GEVES Brion, October 2010

On a positive note, the CPVO co-hosted with GEVES a vegetable open day in Brion on 6 October, which was well attended by representatives from the CVPO's entrusted examination offices as well as from the seed companies (mostly French). The day featured various discussion topics such as optimising the selection of reference varieties, the use of disease resistance characteristics and the viewing of DUS field trials in various crops tested at the station.

#### 10.1.4. Fruit species

The number of fruit CPVR applications in 2010 rose slightly to an all-time high of 193. As usual, the top three species were peach, strawberry and apple in that order. Most notable was a spectacular increase in citrus applications (16, compared to just two the previous year). The ratio of technical examinations to takeovers in the fruit sector has remained stable, with the former still being in the majority.

The Office continues to discuss together with Ciopora and its entrusted examination offices, ways to optimise DUS testing in this sector via various means, also with the aim to reduce costs to all the stakeholders. The issues which seem to be gathering greater strength thus far are: the possible conclusion of a technical report after just one fruiting period if the candidate variety has been shown to be clearly distinct, uniform and stable and not demonstrated any problems; the better use and rationalisation of reference collections; better quality plants of candidate varieties sent for DUS testing. These matters will be discussed further in the course of 2011.

The most important groups of apple varieties at the moment with respect to the number of candidate varieties received for Community rights are mutations of 'Gala' and 'Fuji'. According to the agreement reached in 2004 between the CPVO and its apple examination offices, the major apple mutation groups would be centralised either in France (GEVES/INRA) or Germany (Bundessortenamt) according to the mutation group, in order to concentrate expertise and the variety collection in one place, thereby ensuring reliable results for the resulting technical examination; for 'Fuji' and 'Gala', mutations of these two varieties are tested at INRA Angers. This principle has worked well for a number



Apple



Strawberry

of years now, but in recent times the Office has seen an increase in the number of 'Fuji' and 'Gala' which are claimed to be different solely on the development and pattern of the over colour of the fruit. The majority of these mutations are discovered in south European or overseas locations, but the problem encountered by the CPVO and the French examination office is that under the climatic conditions in Angers such varieties would appear to develop too much their over colouring, rendering them not distinct from other already existing varieties in the same mutation group. The Office is currently investigating together with GEVES possible ways to remedy this situation, such as establishing a second site in southern France for pertinent mutation varieties so that these express themselves to their full potential, or having additional characteristics where possible differences could be spotted at an earlier stage during the development of the fruit. The Office intends to involve Ciopora in these discussions since some of these solutions could entail supplementary examination costs due to the greater workload involved, as well as having an impact on possibly reducing minimum distances from other apple varieties of common knowledge.

At the last fruit experts meeting in November 2010, it was agreed in principle to stage a fruit open day together with GEVES/INRA in Avignon in mid-June 2011, along similar lines to the vegetable open day held with GEVES in Brion in October 2010. The intention of the Office is also to hold its annual fruit expert meeting and the wrap up meeting on the R & D project 'Management of peach tree reference collections' in the same week at the same location, in order to try and have as high an attendance as possible from its stakeholders at the open day.

#### **10.1.5. Origin of the applications**

Since the foundation of the Community Plant Variety Office, applications have been received from over 50 countries. Nearly every year, more than one third of all applications received have originated from the Netherlands, underpinning the important role of that country in the breeding sector. The Netherlands is followed, by quite some distance, by Germany, France and the United States. Also in 2010, only minor fluctuations were

observed in the origin of applications. The map below gives an overview of the number of applications received from different European countries in 2010.



Table 3 gives the application numbers for the 10 most important countries outside the EU.

**Table 3: The 10 most important non-EU countries from which CPVR applications were filed in 2010**

| Country of main applicant | Number of applications received in 2010 |
|---------------------------|---|
| USA                       | 286                                     |
| Switzerland               | 108                                     |
| Japan                     | 52                                      |
| Australia                 | 26                                      |
| Israel                    | 25                                      |
| New Zealand               | 25                                      |
| Taiwan                    | 14                                      |
| South Africa              | 11                                      |
| Thailand                  | 10                                      |
| China                     | 9                                       |

## 10.2. Grants of protection

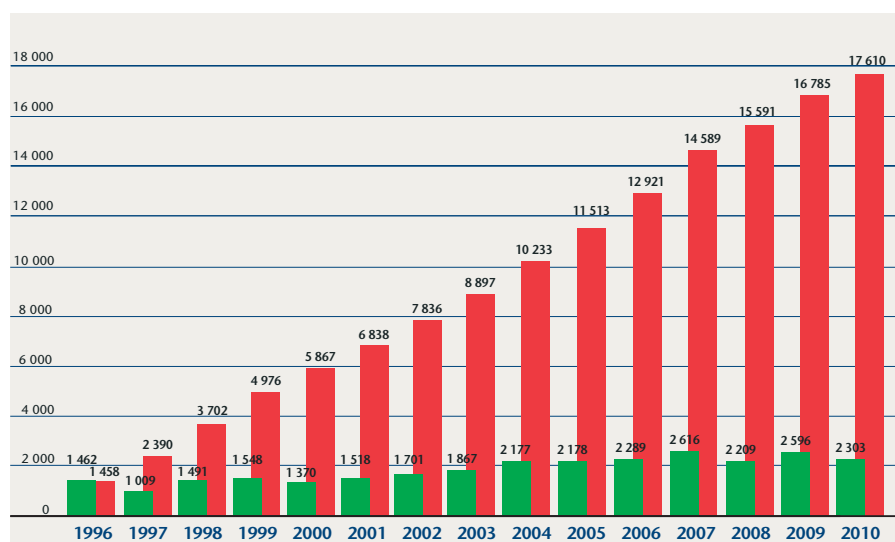
In 2010, the Office granted some 2 300 titles for Community protection. A detailed list of all protected varieties (status as of 31 December 2010) is published in the separate annex to this annual report.

By the end of 2010, there were 17 610 Community plant variety rights in force. Graph 4 shows the number of titles granted for each year from 1996 to 2010 and illustrates the continuous increase of varieties under protection within the Community system.

**Graph 4**

Community plant variety rights granted and rights in force at the end of each year (1996–2010)

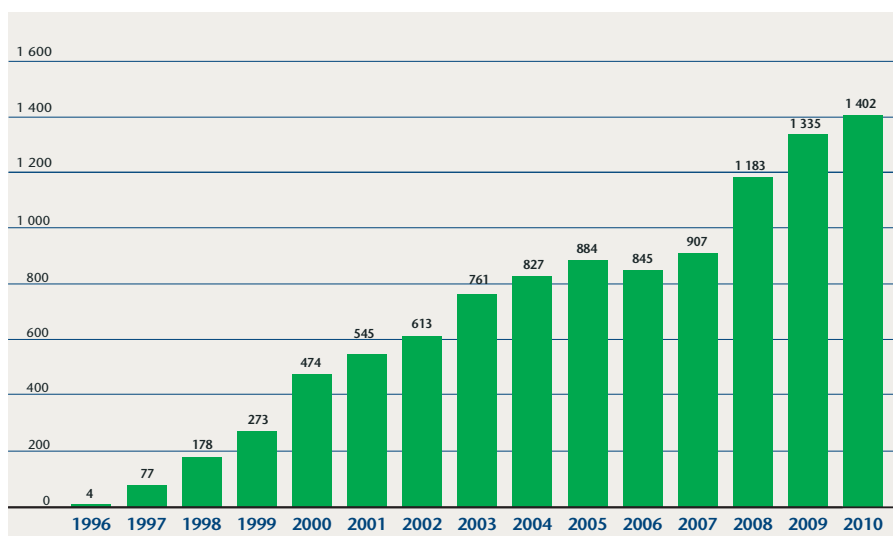
- Titles granted
- Varieties under protection at the end of each year



The development in the number of Community plant variety rights in force must be seen in conjunction with the number of rights surrendered (Graph 5). The number of rights granted still greatly outweighs the number of surrenders despite the remarkable increase of rights surrendered in the last three consecutive years. The increase of surrenders as such is not a surprise.

### Graph 5

Number of surrenders of Community plant variety rights (1996–2010)

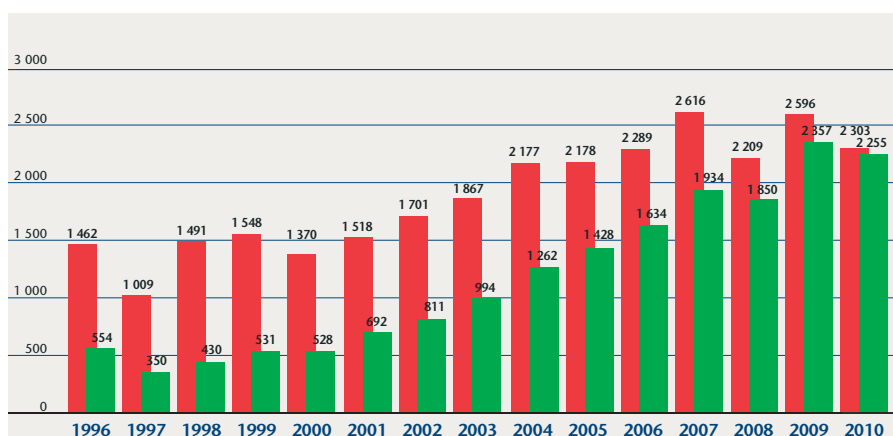


Graph 6 shows the number of rights granted in the years 1996 to 2010 that are still in force. As can be seen, an important number of rights are surrendered within a few years. The Community plant variety rights system is still too young to say how many varieties will actually enjoy their full term of protections of 25 or 30 years. However, figures suggest that it will not be more than one third of all the varieties once protected. This also suggests that the current period of protection might generally be rather well adapted to the needs of breeders. This does not exclude that for some individual species crop-specific situations might exist in that respect.

### Graph 6

Number of rights granted each year from 1996 to 2010 and still in force on 31 December 2010

- Number of rights granted
- Number of rights in force



## 10.3. Technical examinations

In 2010, the CPVO initiated 1 779 technical examinations, 13 examinations fewer than in 2009. The decrease is linked to an increasing number of reports taken over from other plant variety rights authorities. For vegetable and agricultural crops, a large number of technical examinations have already been carried out under the framework of the national



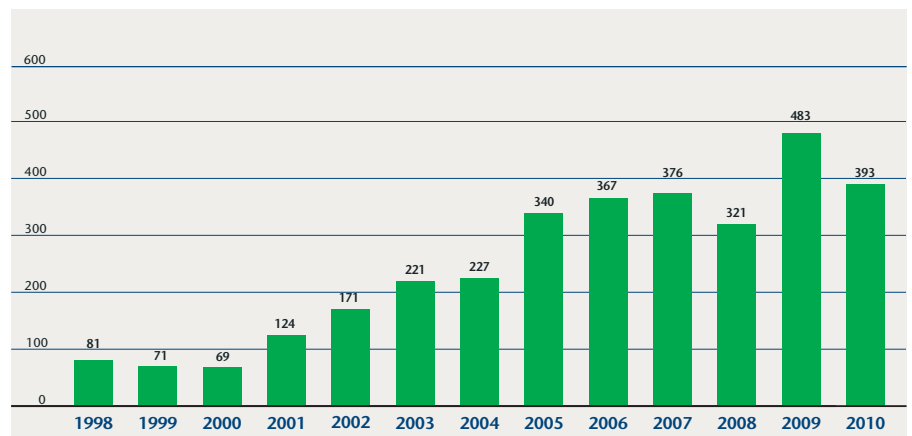
listing procedure. As in some EU Member States fees on application for plant variety rights are considerably lower, applicants may decide to apply first nationally so that the CPVO will base its decision to grant Community plant variety rights on a technical examination which has been carried out in the framework of the national application.

### 10.3.1. Sales of reports

National authorities from all over the world regularly base their decisions on applications for plant variety rights on technical examinations carried out on behalf of the CPVO (international cooperation, takeover of reports). Graph 7 illustrates the number of reports which the Office made available to national authorities.

**Graph 7**

Evolution in the number of DUS testing reports made available to other PVR authorities (1998–2010)



The most important countries having bought DUS technical reports from the CPVO between 1998 and 2010 are given in Table 4.

By the end of 2010, the Office had sold 3 247 technical reports to 47 countries. In 2010, South American countries continued to noticeably increase the number of their requests for reports to the Office, especially in the ornamental sector, which is in line with general trend.

The Office has set up a flexible approach in respect of the UPOV agreed fee for making reports available: requesting countries can pay this fee directly but they can also opt for the alternative according to which the Office sends the invoice to the applicant in the requesting country. The report is always sent to the national authorities.

**Table 4: The 10 most important countries having bought DUS technical reports from the CPVO (1998–2010)**

| Country     | Number of reports bought |
|-------------|--------------------------|
| Israel      | 473                      |
| Brazil      | 325                      |
| Ecuador     | 324                      |
| Switzerland | 282                      |
| Colombia    | 262                      |
| Norway      | 215                      |
| Kenya       | 196                      |
| Canada      | 189                      |
| New Zealand | 187                      |
| France      | 132                      |

## 10.3.2. Relations with examination offices

### 10.3.2.1. Fourteenth annual meeting with the examination offices

In December 2010, the CPVO held its 14th annual meeting with its examination offices, which is also attended by representatives from the European Commission, the UPOV office and the breeders' organisations Ciopora and ESA. The main subjects of discussion were:

- a new template for CPVO technical protocols implementing the UPOV template;
- DNA sampling as part of the technical examination;
- exchange of plant material amongst examination offices;
- aspects related to the number of plants in DUS trials of ornamental and fruit varieties;
- disease resistance testing in vegetables;
- the use of grouping characteristics;
- the keeping of plant material beyond the end of the DUS trial where the technical examination gave negative results;
- communication between the examination offices and the CPVO;
- cooperation in variety denomination testing;
- various aspects in relation to the quality auditing of DUS testing.



Annual meeting with the examinations offices, December 2010, Angers

Furthermore, the participants were informed on the state of affairs regarding the online application system, on the centralised database on variety denomination and the database on jurisprudence in decisions about the suitability of variety denominations, and on the electronic exchange of documents with examination offices.

#### **10.3.2.2. Preparation of CPVO protocols**

In 2010, experts from the Member States' examination offices were invited to participate in elaborating or revising technical protocols for DUS testing which either were subsequently approved by the Administrative Council (see Chapter 5) or can be expected to be approved in 2011. The following meetings were held.

- Agricultural experts: a draft protocol was discussed for *Lolium* and *Festuca ssp.* and revisions of the protocols were discussed for barley, wheat and triticale.
- Fruit experts: the revision of the technical protocols for peach; approval is expected in 2011.
- Vegetable experts: revision of the technical protocols for asparagus, a partial revision of the technical protocol for lettuce and cabbage and new technical protocols for dill and curly kale; the protocols are expected to be approved in 2011.
- Ornamentals experts discussed corrections and modifications of the technical protocols for *Guzmania* and *Osteospermum*.

#### **10.3.2.3. Crop experts meetings**

Two meetings with agricultural experts were held in 2010 to discuss questions related to uniformity in wheat, barley and triticale and the preparation of technical protocols for *Lolium* and *Festuca* species.

One fruit experts meeting was held, in October, to discuss: a partial revision of the peach protocol; phytosanitary documentation and harmonisation of closing dates amongst all entrusted examination offices according to species; continuing discussions on the feasibility for the reduction in duration/costs of fruit technical examinations; the number of plants to be observed for distinctness and uniformity; a possible fruit open day co-hosted



Vegetable experts meeting, November 2010, Angers

with GEVES in June 2011; progress on the final stages of the R & D project 'Management of peach tree reference collections'.

One vegetable experts meeting was held, in November, to discuss: the partial revision of the lettuce and cabbage protocols; the revision of the technical protocols for asparagus, and the creation of CPVO technical protocols for dill and curly kale; discussion with ESA and the Slovak breeders organisation on the observation of obligatory disease resistances for a susceptible candidate variety; possible obligatory submission of colour photographs for certain vegetable species; possible follow-up R & D project on harmonisation of methodologies for vegetable disease resistances; use and notification of supplementary grouping characteristics.

The meeting with ornamental experts was hosted by the Dutch examination office Naktuinbouw. Important items of discussion were the attribution of applications to examination offices, the postponement of testing rules for fruit trees, the acceptance of plant material coming from outside the EU that cannot fully comply with the CPVO's requirements due to contradicting phytosanitary import requirements, the conduct of 'open days' and examination offices, and the follow-up of the R & D project on the management of rose reference collection.

#### **10.3.2.4. Collaboration with Japan**

In 2006, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) and the CPVO began cooperation in respect of technical examinations. In the framework of this cooperation, the conduct of the technical examinations for *Petunia* and *Calibrachoa* was fully harmonised. *Chrysanthemum* testing has reached an advanced stage. As for the conduct of technical examinations of *Nymphaea* varieties, the MAFF is the entrusted examination office of the CPVO. At the end of 2007 the MAFF began to base its decisions on applications for plant variety rights on technical examinations carried out by European examination offices. In turn, the Administrative Council of the Office approved the use of results of DUS examinations carried out in Japan for *Petunia* and *Calibrachoa* varieties as from 2008. In 2009, the contractual basis for taking over Japanese technical reports was prepared regulating all administrative aspects of a report takeover from the Japanese authorities. As soon as the MAFF has signed the contract, technical reports related to varieties belonging to these two species will be the basis for decisions of the CPVO.

#### **10.3.2.5. New species**

In 2010, the Administrative Council of the CPVO entrusted the examination offices for the following botanical taxa forming the so-called 'new species inventories'. It should be noted in that context that, as a consequence of the introduction of the QAS, the examination offices indicate their competence to the CPVO for a given 'new species'. This implies that an examination office is able to fulfill the quality requirements as a precondition for being entrusted. Consequently, the CPVO does not undertake a selection of examination offices when preparing a proposal for entrustment by the Administrative Council.

| Species  | Examination office(s) entrusted   |
|--|---|
| <i>Acanthus</i> L.   | NIAB, UK  |
| <i>Achillea millefolium</i> L. × <i>A. tomentosa</i> L.                          | Bundessortenamt, DE<br>Central Agricultural Office, HU<br>Naktuinbouw, NL<br>NIAB, UK |
| <i>Aloe variegata</i> L.   | Bundessortenamt, DE<br>Naktuinbouw, NL  |
| <i>Ananas comosus</i> (L.) Merr. — ornamental                                    | Naktuinbouw, NL   |
| <i>Berberis</i> × <i>media</i> Groot.  | COBORU, PL<br>GEVES, FR   |
| <i>Brachyscome formosa</i> P. S. Short   | Naktuinbouw, NL<br>NIAB, UK   |
| <i>Caladium humboldtii</i> (Raf.) Schott   | Bundessortenamt, DE<br>Naktuinbouw, NL  |
| <i>Chamaesyce</i> Gray   | Bundessortenamt, DE<br>Naktuinbouw, NL<br>NIAB, UK                                    |
| <i>Chasmanthium latifolium</i> (Michx.) H. O. Yates                              | Central Agricultural Office, HU<br>Naktuinbouw, NL                                    |
| <i>Chelone obliqua</i> L.  | Bundessortenamt, DE<br>Naktuinbouw, NL<br>NIAB, UK                                    |
| <i>Crassula swaziensis</i> Schönland   | Bundessortenamt, DE<br>Naktuinbouw, NL  |
| <i>Dendrobium kingianum</i> Bidwill ex. Lindl.                                   | Naktuinbouw, NL   |
| <i>Diospyros kaki</i> L.f.   | Oficina Española de Variedades Vegetales, ES  |
| <i>Eucalyptus globulus</i> Labill.   | Oficina Española de Variedades Vegetales, ES  |
| <i>Eugenia uniflora</i> L.   | NIAB, UK  |
| <i>Farfugium hiberniflorum</i> (Makino) Kitam. × <i>F. japonicum</i> (L.) Kitam. | Naktuinbouw, NL<br>NIAB, UK   |
| <i>Ficinia truncata</i> (Thunb.) Schrad.   | Naktuinbouw, NL   |
| <i>Haworthia fasciata</i> (Willd.) Haw.  | Naktuinbouw, NL   |
| <i>Hemizygia</i> (Benth.) Briq.  | Bundessortenamt, DE<br>Naktuinbouw, NL<br>NIAB, UK                                    |
| <i>Ipheion uniflorum</i> (Lindl.) Raf.   | Naktuinbouw, NL   |
| <i>Jatropha podagrica</i> Hook.  | Naktuinbouw, NL   |
| <i>Limonium puberulum</i> (Webb) Kuntze × <i>L. perezii</i> (Stapf) F. T. Hubb.  | Naktuinbouw, NL   |
| <i>Mimulus</i> L.  | Naktuinbouw, NL<br>NIAB, UK   |
| <i>Passiflora</i> L.   | Bundessortenamt, DE<br>Naktuinbouw, NL  |

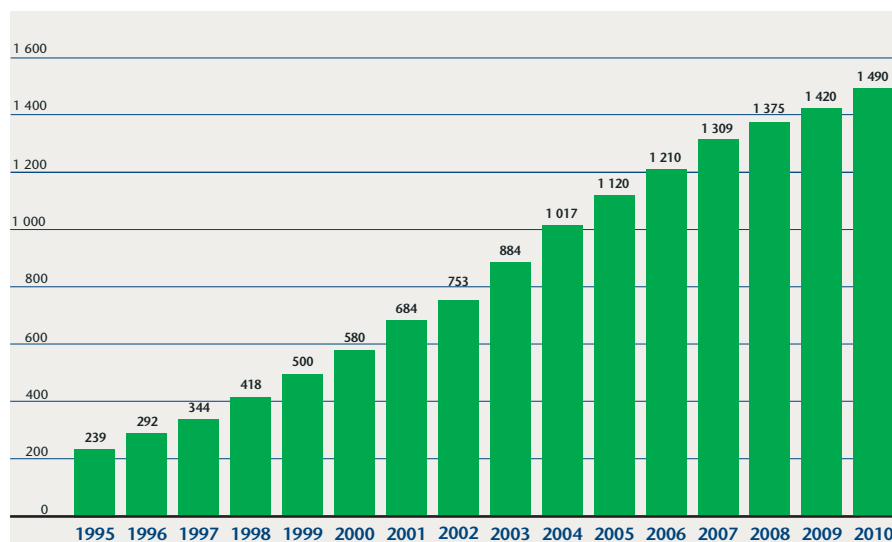
|  |  |
|--|--|
| <i>Pennisetum purpureum</i> Schumach.  | Naktuinbouw, NL<br>NIAB, UK                              |
| <i>Phyllostachys edulis</i> (Carrière) J. Houz.                                  | Naktuinbouw, NL  |
| <i>Pittosporum heterophyllum</i> Franch.   | NIAB, UK   |
| <i>Pleurotus eryngii</i>   | Central Agricultural Office, HU                          |
| <i>Pleurotus ostreatus</i> (Jacq.: Fr.) Kummer                                   | Central Agricultural Office, HU                          |
| <i>Polystichum setiferum</i> (Forssk.) Woyn.                                     | Naktuinbouw, NL  |
| <i>Primula filchnerae</i> R.Knuth × <i>P. praenitens</i><br>Ker Gawl.            | Bundessortenamt, DE                                      |
| <i>Quercus robur</i> L. × <i>Q. macranthera</i> Fisch. &<br>C. A. Mey. ex Hohen. | Bundessortenamt, DE<br>COBORU, PL                        |
| <i>Ruscus hypoglossum</i> L.   | NIAB, UK   |
| <i>Sansevieria cylindrica</i> Bojer ex Hook.                                     | Naktuinbouw, NL  |
| <i>Sansevieria zeylanica</i> (L.) Willd.   | Naktuinbouw, NL  |
| <i>Spiraea hayatana</i> H. L. Li × <i>S. japonica</i> L. f.                      | Central Agricultural Office, HU<br>GEVES, FR<br>NIAB, UK |
| <i>Spirodela polyrhiza</i> (L.) Schleid  | Naktuinbouw, NL  |
| <i>Thalictrum flavum</i> L.  | Naktuinbouw, NL<br>NIAB, UK                              |
| <i>Viburnum plicatum</i> Thunb.  | Naktuinbouw, NL<br>GEVES, FR                             |

#### Entrustment initiated by examination offices

As from 1 January 2010, the Administrative Council of the CPVO entrusted examination offices for numerous taxa for which the examination offices claimed their competence. As a consequence of this entrustment, the expertise for the DUS testing for additional over 800 taxa is available within the EU for Community protection purposes. For a great majority of those taxa no application has yet been received.

**Graph 8**

Evolution of the number of botanical taxa for which the CPVO received applications (1995–2010)





IPM 2010, Essen, Germany



IPM 2010, Essen, Germany

#### 10.3.2.6. Participation in international fairs

The CPVO considers its participation in international fairs and open days at examination offices as a useful tool to promote the Community plant variety rights system, to have direct contact with applicants and to provide information to growers. In 2010, the Office participated in three fairs.

- At the end of January 2010, the Office attended the 'IPM' in Essen, Germany. The stand was shared with German colleagues from the Bundessortenamt. Even though the fair is open to the entire field of horticulture the focus lies with ornamentals.
- The 'Salon du Végétal', which takes place at the end of February in Angers, France, is a fair mainly for growers of ornamental plants in which the Office regularly participates together with GEVES, the French examination office.
- The Dutch 'Horti Fair', which takes place in October in Amsterdam, is another regularly attended event of the ornamental world. Here, the stand was shared with Naktuinbouw.

### 10.4. Technical liaison officers (TLOs)

The CPVO tries to have a close and efficient working relationship with its examination offices and the national offices of the Member States. Therefore, in 2002, the Office formalised a network of contact persons on a technical level in the Member States, the so-called 'technical liaison officers' (TLOs). The TLOs play an important role in the relationship of the Office with its examination offices.

The following principles apply.

- TLOs are appointed by the relevant member of the Administrative Council.
- There is only one TLO per Member State.
- Any modification as far as the TLO is concerned is communicated to the CPVO through the relevant member of the Administrative Council.

The role of the TLO can, in general, be defined as being the contact point for the Office on a technical level. This means the following in particular.

- Invitations for the annual meeting with the examination offices are, in the first place, addressed to that person. If the TLO is not attending, he/she should communicate the person who is attending that meeting to the CPVO.
- Invitations for expert groups on a technical level are initially addressed to the TLO who is in charge of nominating the relevant expert to the CPVO. Once an expert group has been set up, further communications or invitations are directly addressed to the relevant expert designated.
- The TLO should be the person on a national level who is in charge of distributing information of technical relevance in respect of the Community plant variety rights system within his or her own country/authority, e.g. informing colleagues (crop experts) on conclusions drawn at the annual meeting of the examination offices, etc.
- Technical inquiries, which are sent out by the CPVO in order to collect information, should be addressed to the TLOs. Examples are:
  - new species procedures, in order to prepare the proposal for the nomination of examination offices to the Administrative Council;
  - questionnaires in respect of closing dates, quality requirements, testing of GMOs, etc.
- For communications of a general technical nature, the Office contacts the TLOs first. Specific problems, such as in respect of a certain variety, may be discussed in the first instance directly at the level of the crop expert at the examination office and of the relevant expert at the CPVO.

The latest version of the list of appointed TLOs (status as at 31 December 2010) is as follows:

|                        |  |
|------------------------|--|
| John Austin            | Executive Agency of Variety Testing<br>Ministry of Agriculture and Forestry<br>Field Inspection and Seed Control<br>Bulgaria         |
| Bronislava Bátorová    | UKSUP<br>Central Controlling and Testing Institute in Agriculture<br>Variety Testing Department<br>Slovakia                          |
| Julia Borys            | Coboru<br>Centralny Ośrodek Badania Odmian Roślin Uprawnych<br>Poland  |
| John Claffey           | Department of Agriculture Fisheries and Food<br>Office of the Controller of Plant Breeders' Rights<br>Ireland                        |
| Elena Craita Checiu    | State Office for Inventions and Trademarks<br>Romania  |
| Paula Cruz de Carvalho | Direcção-Geral de Agricultura e Desenvolvimento Rural<br>(DGADR)<br>Divisão de Sementes, Variedades e Recursos Genéticos<br>Portugal |



|                     |  |
|---------------------|--|
| Maureen Delia       | Seeds and Other Propagation Material Unit<br>Plant Health Department<br>Rural Affairs and Paying Agency Division<br>Ministry of Rural Affairs and the Environment<br>Malta |
| Gerhard Deneken     | Ministry of Food, Agriculture and Fisheries<br>Plant Directorate<br>Department of Variety Testing<br>Denmark   |
| Krieno Fikkert      | Raad voor Plantenrassen<br>The Netherlands   |
| Barbara Fürnweger   | Bundesamt für Ernährungssicherheit<br>Austria  |
| Zsuzanna Füstös     | Central Agricultural Office<br>Hungary   |
| Primoz Grižon       | Ministry of Agriculture, Forestry and Food<br>Phytosanitary Administration of the Republic of Slovenia<br>Slovenia   |
| Joël Guiard         | GEVES<br>Groupe d'étude et de contrôle des variétés et des semences<br>France  |
| Sigita Juciuvienė   | Lithuanian State Plant Varieties Testing Centre<br>Lithuania   |
| Sofija Kalinina     | Ministry of Agriculture of the Republic of Latvia<br>Seed Control Department<br>Latvia   |
| Paivi Mannerkorpi   | European Commission<br>Directorate-General for Health and Consumers<br>Unit 1 — Biotechnology and plant health<br>Belgium  |
| Kyriacos Mina       | Ministry of Agriculture, Natural Resources and Environment<br>Agricultural Research Institute<br>Cyprus  |
| Kaarina Paavilainen | KTTK — Plant Production Inspection Centre<br>Seed Testing Department<br>Finland  |
| Eha Puusild         | Estonian Agricultural Board<br>Variety Department<br>Estonia   |
| Mara Ramans         | PVRO<br>Plant Variety Rights Office<br>Department for Environment Food and Rural Affairs (DEFRA)<br>United Kingdom   |

|                       |  |
|-----------------------|--|
| Beate Rücker          | BSA<br>Bundessortenamt<br>Germany  |
| Radmila Safarikova    | UKZUZ<br>Central Institute for Supervising and Testing in Agriculture<br>Fruit Testing Station<br>Czech Republic                         |
| Luis Salaices Sánchez | OEVV<br>Oficina Española de Variedades Vegetales<br>Ministerio de Medio Ambiente y Medio Rural y Marino<br>Spain                         |
| Achilios Sotiriou     | Ministry of Rural Development and Food<br>Variety Research Institute of Cultivated Plants<br>Greece                                      |
| Karin Sperlingsson    | Statens Utsädeskontroll<br>Sweden  |
| Domenico Strazzulla   | MIPAF<br>Ministero delle Politiche Agricole e Forestali Dipartimento<br>della Qualità dei Prodotti Agroalimentari e dei Servizi<br>Italy |
| Camille Vanslebrouck  | OPRI<br>Office de la Propriété Intellectuelle<br>Belgium   |
| Marc Weyland          | Administration des Services Techniques de l'Agriculture<br>Service de la Production Végétale<br>Luxembourg                               |

## 10.5. External experts involved in DUS testing

The Administrative Council of the Community Plant Variety Office approved the involvement of external experts in the conduct of technical examinations (DUS tests) under the condition that certain requirements in respect of the set-up of such system are fulfilled. The Office has conducted a survey amongst its examination offices requesting information on the procedures, the role and the compositions of the panels of these external experts. Such experts, also referred to as 'walking reference collection', give advice to the examiner, mainly on the inclusion of reference varieties. The final decision on the compliance, however, remains with the examination office. External experts are currently used by examination offices in Denmark, France, the Netherlands and the United Kingdom. The Office has published on its homepage the names of these external experts, the crops on which they give advice and the rules they have to adhere to.

## 10.6. The multi-beneficiary programme on the participation of Albania, Turkey, Croatia, Serbia and the former Yugoslav Republic of Macedonia in the Community plant variety rights system

Since 2006, the CPVO has been participating in the so-called multi-beneficiary programme aimed at preparing candidate countries for accession to the European Union. This programme was initially set up for Turkey and Croatia; in 2008 it was extended to the former Yugoslav Republic of Macedonia and, since 2009, it has been open to all countries of the western Balkan region. Albania and Serbia expressed an interest in participating in its activities.

In the framework of this programme, representatives of the national plant variety rights authorities were invited to participate in crop expert meetings held regularly at the CPVO. Furthermore, experts from the candidate countries were trained at the examination offices already working on behalf of the CPVO. Additionally, EU experts trained staff in the candidate countries.

The workshops and seminars are adapted to the situation in each country. While for the recent candidate countries activities were focused on fact-finding and fundamental issues, experts from experienced countries received specialised training, such as the GAIA evaluation method that has been taught to Croatian experts.

For Croatia in particular, the activities of the programme have helped to align the national authorities to the Community plant variety system and it should be pointed out as a sign of success that, in 2010, the first training activity for the other candidate countries took place in Croatia.

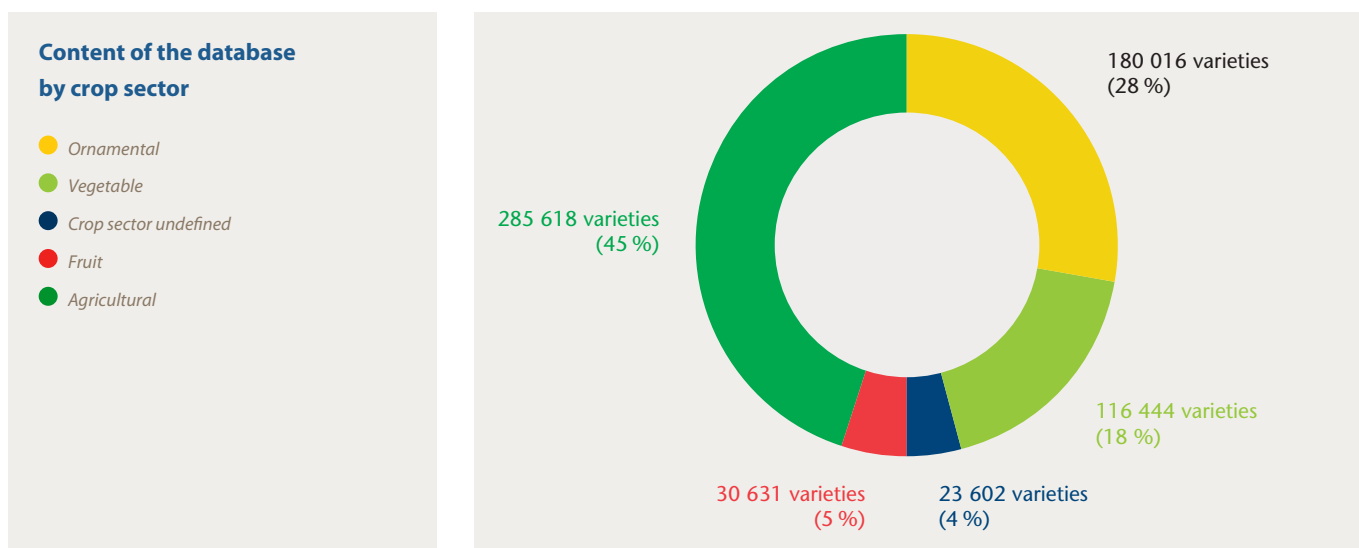


Tarla Günleri show, May 2010, Turkey

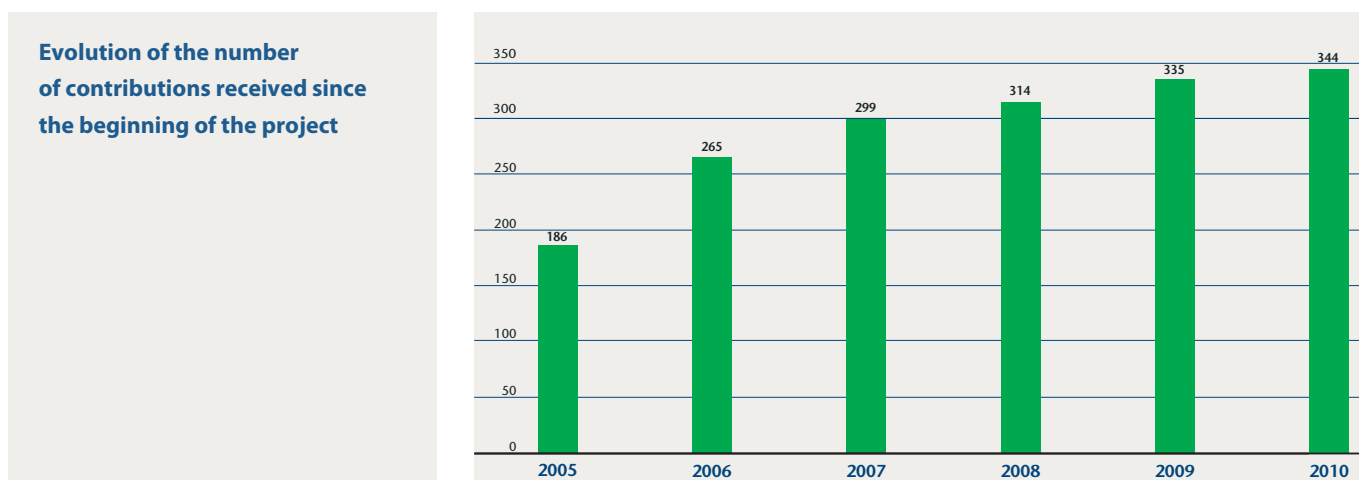
# 11. VARIETY DENOMINATIONS

## 11.1. The centralised database on variety denominations

In 2005, the Office released a web-based database linked with a search tool to test proposals for variety denominations for similarity. Today, the database contains more than 600 000 denominations from national listings and plant variety rights registers of the EU and UPOV Member States. It also contains the register of ornamental varieties commercialised in the Dutch auction system in the Netherlands. The figure below gives an overview of the content of the database by crop sector.

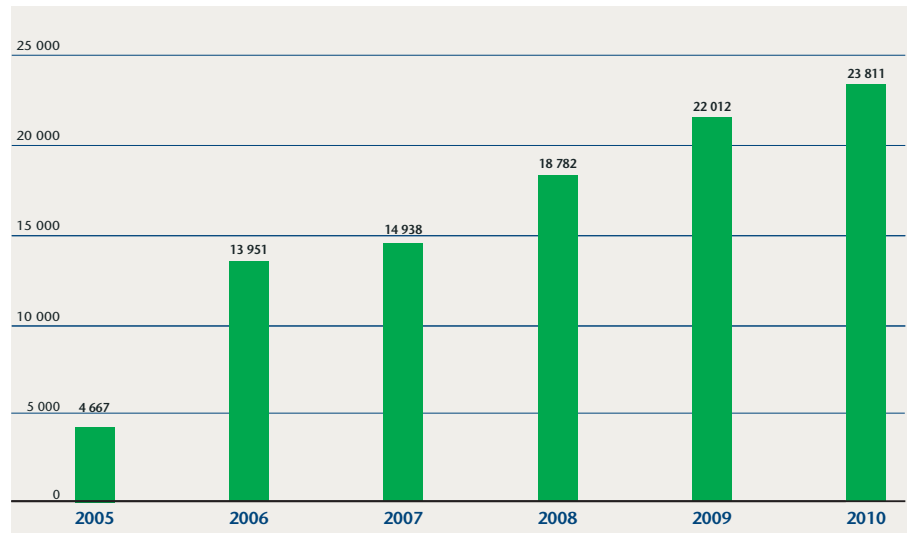


The Office is constantly updating the database with new contributions and the figure below illustrates the evolution of the number of contributions received since the beginning of the project. In 2010, new contributions were received in respect of fruit varieties eligible for commercialisation at national level from countries where such lists exist.



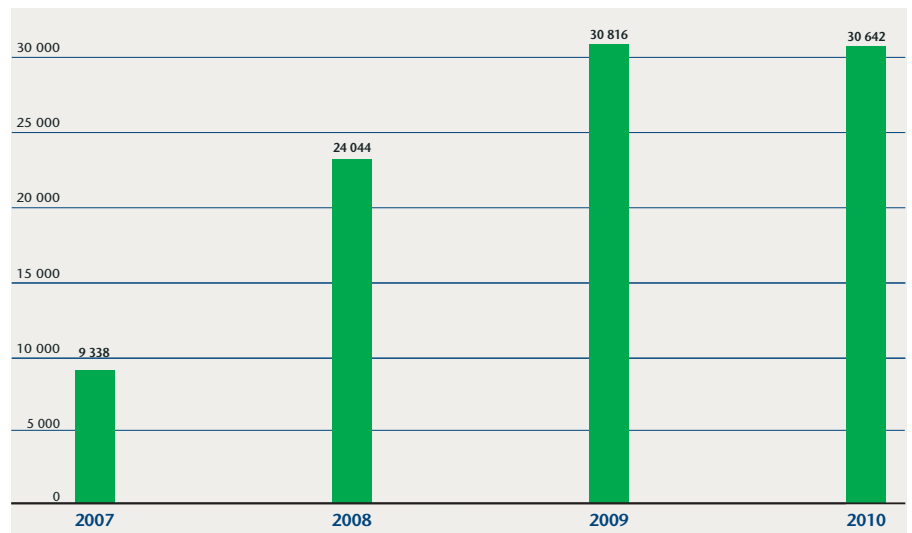
The database is available on the basis of a restricted access to national authorities of EU Member States, the European Commission and UPOV. The graph below illustrates the evolution of the number of tests performed by national authorities since 2005.

**Evolution of the number of tests performed by national authorities since 2005**

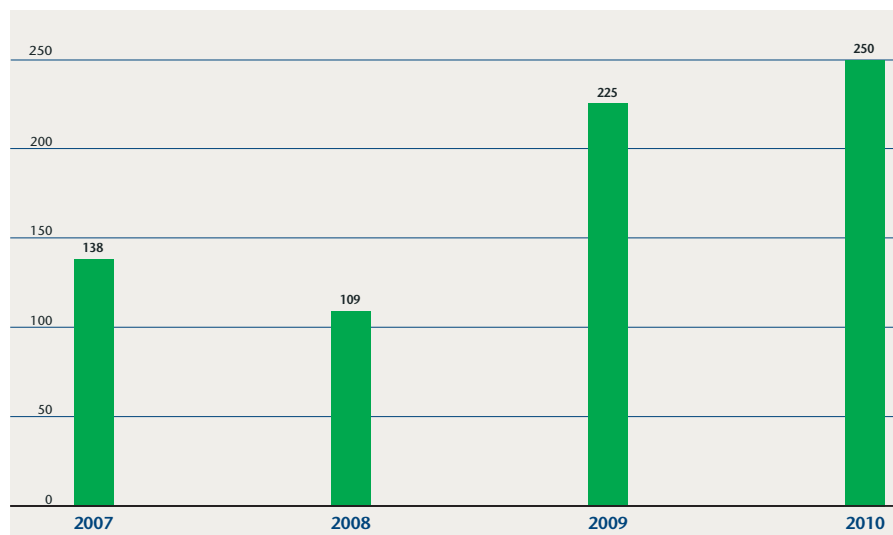


Since 2007, a new version of the website also gives EU-based applicants and their procedural representatives the possibility to pre-check their denomination proposals for similarity. As revealed by the two graphs below, more and more tests are performed by an increasing number of applicants and procedural representatives.

**Evolution of the number of tests performed by applicants and procedural representatives since 2007**



### Evolution of the number of applicants and procedural representatives having used the database since 2007



In 2010, the jurisprudence section was developed. It contains a selection of decisions of the Variety Denomination Committee of the Office with the purpose of illustrating the implementation of the guidelines of the Administrative Council on the subject matter. All users have access to this section where a search tool enables them to look for examples according to various criteria.

The centralised database on variety denomination is a widely used tool. It constitutes a common basis for the purpose of assessing the suitability of variety denomination proposals for suitability in the EU and contributes to the harmonisation of decisions.

## 11.2. Cooperation in denomination testing

The purpose of this activity is to reach a greater harmonisation of decisions as to the suitability of proposals for variety denominations in national plant variety rights, national listing procedures and at the level of the CPVO.

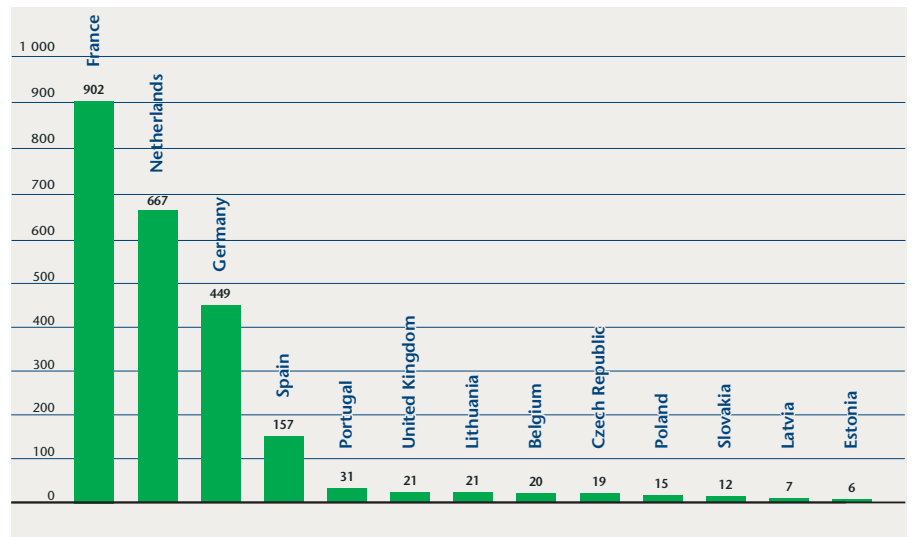
As a matter of fact, the marketing directives relevant for the commercialisation of agricultural and vegetable varieties in the EU contain a cross reference to Article 63 of Regulation (EC) No 2100/94 on Community plant variety rights. Article 63 deals with the criteria for suitability of variety denomination proposals. The legal basis in respect of the suitability of variety denominations is thus unique. However, experience has revealed that applicants have still had to face sometimes discrepant decisions from various authorities in respect of the suitability of the denomination proposals for their varieties. This is the reason why the Office felt that a system of cooperation in checking the suitability of variety denomination proposals would lead to a better harmonisation of decisions.

The Office developed this new project of cooperation in denomination testing in 2009 and it was released in the beginning of 2010. EU national authorities have today the possibility

to ask online for CPVO advice as to the acceptability of their new denomination's proposal. In the case of controversial opinions, exchanges of view can take place but the decision remains in the hands of the authority where the application for registration of the variety has been made.

In 2010, more than 2300 advices were issued and some major EU countries used the system on a regular basis, as illustrated in the chart below.

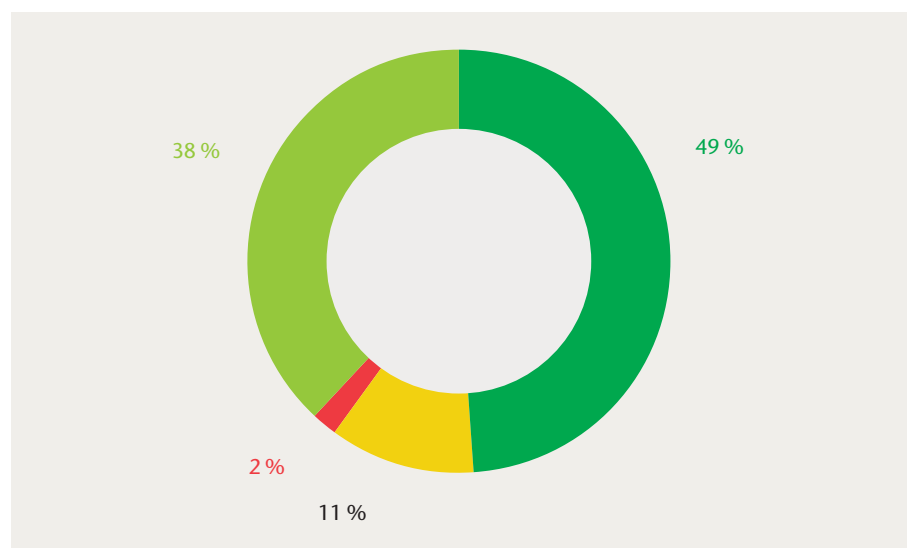
**Countries having made at least five requests of analysis since the start of the project**



More than one third of the advices are rendered on the same day and 85 % in total within one week.

**Requests for analysis: global processing time**

- less than 1 working day
- between 2 and 5 working days
- between 6 and 10 working days
- between 11 and 15 working days

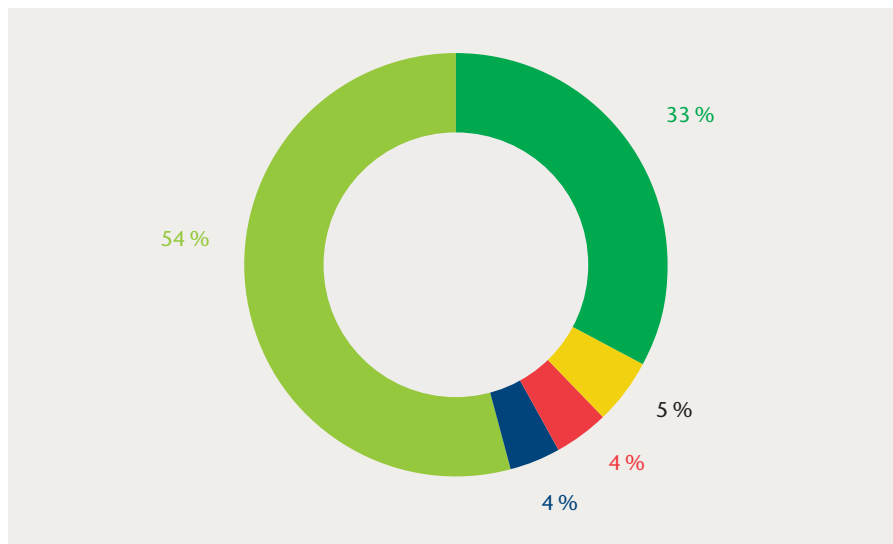


Until now, requests for advice are mainly issued for varieties in the agricultural, vegetable and fruit sectors.

### Requests for advice by crop sector in 2010

- Vegetable
- Undefined crop sector (\*)
- Ornamental
- Fruit
- Agricultural

(\*) *Beta vulgaris L. and Solanum L.*



It is expected that, in future, such requests will increase in the fruit sector where the registration of new fruit varieties will be made obligatory before marketing after 1 October 2012 with the entry into force of Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production.

It can thus be concluded that the use of the system is encouraging in this starting year with advices rendered within short delays. The Office would like to underline that other forms of cooperation have also been put in place, especially in the ornamental sector with authorities like KAVB in the Netherlands, responsible for the registration of bulb species, or the VKC in the Netherlands as well, registering varieties before their commercialisation in the auction system. These authorities have access to the centralised database on variety denominations and regular exchanges of view about the suitability of proposals take place with the CPVO.



# 12. ENFORCEMENT

## 12.1. Seminars

In recent years the Office has organised seminars on the enforcement of plant varieties in Brussels, Warsaw, Madrid, Sofia and Bucharest. Another seminar was organised in Athens in 2010. Officials, lawyers, breeders, farmers and staff from the Office presented different aspects of enforcing Community plant variety rights under Community and national law. The discussions that took place showed that this subject is of much interest in Greece, although Greece does not have a national system in place protecting new plant varieties. All presentations made during the seminars are published on the website of the Office. Breeders' organisations have shown appreciation for these seminars as they raise important issues on the agendas of both national authorities and other stakeholders. In 2010 it was decided that a seminar on enforcement of plant variety rights should be organised in Hamburg, in 2011.

## 12.2. Farm-saved seed

Article 14 of the basic regulation provides an exemption to the scope of rights provided for in Article 13.2 of the basic regulation. Farmers may for certain species and under certain conditions use seeds of protected varieties from the harvest for the purpose of sowing them in the coming season. Experience shows that farmers make use of this exemption to a large extent, but in many cases no remuneration is paid to the holders of the protected varieties. However, the collection of remuneration for farm-saved seeds (FSS) is more efficient in some Member States than in others. For this reason the Office commissioned Dr Hans-Walter Rutz of the Bundessortenamt to make a study of the collection of FSS and of how it differs in various Member States. The conclusion of the study shows that the lack of efficiency in collecting remuneration is mainly due to the difficulties holders face in getting adequate information on the use of FSS. Another issue raised in the conclusions is that the definition of small farmers (exempted from paying remuneration for the use of FSS) is obsolete and difficult to apply.

As a follow-up to the study, the Office organised, in 2009, a meeting for the purpose of analysing the situation to see if improvements in the collection of information concerning the use of FSS could be made under the present rules or if amendments to the rules would be opportune. Breeders, farmers, Member States and the Commission participated in the meeting as well as a lawyer presenting the applicable rules and how the rules have been interpreted by the European Court of Justice. Examples of efficient collection systems were given as well as systems which do not function very well. The conclusion of the meeting confirmed that problems in collecting information on the use of FSS do exist, and that there is a need to amend existing legislation.

On the basis of a proposal of the President of the Office, the Administrative Council decided that the Office should take the initiative to create a working group with representatives from all the relevant stakeholders with the aim of analysing the details of how the

collection of remuneration for FSS could be improved and whether legislative initiatives would be appropriate. In 2010 the Office organised four meetings for this working group in which mainly three issues were discussed, the collection of information on the use of FSS, the definition of small farmer and the definition of own holding. The conclusions of the working group will be presented to the Administrative Council in 2011.

### 12.3. Database containing court cases on PVR

One of the challenges in enforcing plant variety rights is that the legal procedure as well as the interpretation of the law can be rather difficult. The studying of case-law is in many cases a helpful tool when interpreting the law and the procedural tools available. For this reason the Office has created a database on its website containing case-law on plant variety right cases from courts in the EU. The full text of the cases in their language of origin as well as a summary in English can be uploaded from the database. In addition, a search tool can be used to facilitate the finding of relevant cases. In 2010 a number of new cases were added to the database. The Office is working with a contributor from each Member State providing the Office with new cases. The Belgian lawyer, Mr Philippe de Jong, assisted the Office in creating the database and setting up the network of contributors.



Enforcement seminar, April 2010, Athens, Greece



Enforcement seminar, April 2010, Athens, Greece

# 13. IT DEVELOPMENTS

In 2010, the CPVO developed several tools, for both internal and external uses.

## 13.1. E-publications

The President of the Office decided in 2009 to initiate the necessary IT developments in order to produce internally three CPVO publications in electronic format: the Official Gazette of the Office, the Annex to the annual report and the S2 gazette. As a consequence of this decision the paper versions of these publications should stop once they are available through the CPVO website for consultation or download.

Since February 2010, the Official Gazette has been published on the CPVO website every two months and the Annex to the annual report once per year and both are available in 22 official languages. The S2 gazette has been changed from one publication per year to six, and has been published every two months since October 2010. The S2 search tool on the CPVO website has been updated.

The CPVO has taken advantage of this opportunity to introduce some improvements in the presentation of these publications and to include some navigation tools in the PDF files in order to make their consultation more user-friendly.

A free online subscription facility has been made available since October 2010. Subscribers will also be informed when the online publications are available.

## 13.2. Online applications

In March 2010, the CPVO launched its online application system that allows applicants and procedural representatives to fill in electronic forms and send applications to the CPVO by electronic means.

In the beginning, five technical questionnaires (TQs) were made available (namely *Rosa L.*, *Chrysanthemum L.*, *Solanum tuberosum L.*, *Lactuca sativa L.*, *Prunus persica (L.) Batsch*). A mailing was sent to the registered users, explaining the new possibility (together with the enhanced security in the identification system), and new users were also able to freely subscribe to the system using the new identification system.

Online applications are tightly integrated with the information system of the CPVO, making the data available in electronic format from end to end.

The number of applications has grown steadily since the opening, from 3 in the first month to reach 204 in total by the end of 2010. In parallel, the number of TQs made available for online applications reached 48 at the end of 2010, representing a potential coverage of 80% of the total applications received every year.

### **13.3. Cooperation in variety denominations testing**

The Office has developed a new project of cooperation on denomination testing with the purpose of harmonising within the EU the implementation of the rules for suitability of variety denominations. EU national authorities have the possibility of asking online for CPVO advice as to the acceptability of their new denomination proposals before publication. This tool has been operational since February 2010; several thousand advices were provided to the national offices that used this service in 2010. New features have been added to improve the efficiency of the solution, in particular the national authorities can add to their request the name of breeder and the breeder reference of the denomination for which they request an advice.

### **13.4. Publication of the official variety descriptions on the CPVO public website**

The granting decision and the official variety description of the CPVO files are published on the CPVO public website. These documents are made available after publication of the grant of the variety in the CPVO Official Gazette, and are extracted from the ECM (electronic content management) solution Eversuite/Docman.

### **13.5. Exchange of electronic documents with the CPVO examination offices**

The CPVO and the examination offices recognised the interest of developing new functionalities on the TLO website (area with restricted access), in order to publish documents linked to the organisation of technical examination or takeover by examination offices (application, technical questionnaire purchase order).

These documents are extracted from the ECM Eversuite/Docman, and access is restricted to the examination office that deals with the technical examination or takeover.

Each time a new technical examination is organised, an e-mail is sent to the examination office. The e-mail contains a direct link to download the documents.

A trial period of these new functionalities will start in February 2011. A second phase of this project to allow the exchange of information in the other sense, from the examination offices to the CPVO, has also been foreseen.

# 14. COOPERATION WITH THE DIRECTORATE-GENERAL FOR HEALTH AND CONSUMERS

The following committees are organised by the European Commission on a more or less regular basis. Staff members of the CPVO attend these meetings as observers in case the agenda is of particular interest for the Office.

## 14.1. Standing Committee on Community Plant Variety Rights

This Committee did not meet in 2010.

## 14.2. Standing Committee on Seeds and Propagating Material for Agricultural, Horticulture and Forestry

This Committee met seven times during 2010 in Brussels and staff members of the CPVO attended four meetings.

Of particular interest for the CPVO throughout the year 2010 were the following items:

- the Commission presentations and discussions on the review of the legislation related to seed and plant material;
- discussion on a draft Commission directive amending Commission Directives 2003/90/EC and 2003/91/EC setting out implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species;
- the continued discussion on a draft Commission proposal as regards the acceptance of landraces and varieties threatened by genetic erosion for marketing;
- the discussion on an eventual programme for the Community comparative trials;
- discussions on the agreement between the European Community and Switzerland on trade in agricultural products;
- the discussions on the Commission working programme for 2011.

Furthermore it should be noted that in the forest reproductive material section, the Office presented the Community plant variety rights system.

## 14.3. Standing Committee on Propagating Material of Ornamental Plants

This Committee did not meet in 2010.

## **14.4. Standing Committee on Propagating Material and Plants of Fruit Genera and Species**

This Committee met twice in 2010 and the CPVO participated in both meetings. The following items were of interest for the CPVO:

- the continued discussion on possible implementing measures for Council Directive 2008/90/EC;
- the continued discussion on a possible adoption of a certification scheme for fruit plants propagating material and fruit plants.

The Office also participated in two working groups organised by the Commission in order to draft proposals for the implementing measures mentioned above.

## **14.5. Council working parties**

Following an invitation from the Directorate-General for Health and Consumers to integrate the representation from the European Commission, the CPVO participated in two Council preparatory working groups:

- coordination of UPOV meetings (Council, Consultative Committee and Administrative and Legal Committee);
- preparation of forthcoming OECD meetings (schemes for the varietal certification of seed moving in international trade).

# 15. CONTACTS WITH EXTERNAL ORGANISATIONS

## 15.1. Contacts with Ciopora and ESA

The CPVO has intensive contacts with the two breeders' organisations, which represent the users of our system: Ciopora, the organisation of breeders of asexually reproduced ornamental and fruit varieties and the European Seed Association (ESA) which, on a European level, organises breeders of agricultural and vegetable varieties. Representatives of both organisations participate in all the relevant meetings of technical experts organised by the Office and are involved in its research and development programme. Ciopora and ESA take active part in and contribute to seminars and workshops organised by the CPVO to spread information on all aspects of the Community Plant Variety Protection system.

In order to offer both organisations the possibility of expressing their views concerning the issues to be discussed by the Administrative Council, a delegation of the CPVO and the Administrative Council used to meet with representatives of Ciopora and ESA shortly before each Administrative Council meeting. Since the Administrative Council in its October meeting has decided to grant the observer status to both organisations there is no ground any more to have these pre-meetings. This does not mean that the CPVO management will not maintain regular contacts with both organisations outside the formal setting of the AC meetings.

In the report year the CPVO attended the annual meetings of Ciopora and ESA, respectively in Seville (Spain) and in Brussels (Belgium).

## 15.2. Contacts with UPOV

The CPVO has participated in UPOV activities since 1996. In July 2005 the European Community became a member of UPOV.

During 2010, as members of the EC delegation, CPVO officials participated in the activities of UPOV and attended the meetings of the following bodies and committees of the International Union:



Meeting with Ciopora, Hamburg, Germany

- UPOV Council;
- Legal and Administrative Committee;
- Technical Committee;
- Consultative Committee;
- Enlarged Editorial Committee;
- technical working parties (agricultural crops, vegetables, fruit crops, ornamental plants and forest trees, BMT review group);
- Advisory Group of the Legal and Administrative Committee.

The CPVO hosted, in June 2010, in Angers, the 28th technical working party on Automation and Computer Programs (TWC).

The CPVO also collaborated in the training course for Latin American countries on protection of plant variety rights, organised by UPOV, WIPO and the Spanish authorities, in Santa Cruz de la Sierra, Bolivia, in December.

The Vice-Secretary-General of UPOV participates in most meetings of the CPVO Administrative Council. Senior officials of the UPOV office also regularly attend experts meetings or working groups organised by the CPVO dealing with technical and legal issues of common interest.

The CPVO signed a memorandum of understanding with UPOV in October 2004 for a programme of cooperation. In the framework of this cooperation the CPVO exchanged information with UPOV during the development of its centralised database on variety denominations, in order to ensure compatibility with the existing UPOV plant variety database (UPOV-ROM). Both databases contain data on plant varieties for which protection has been granted, or which are the subject of an application for protection and also those which are included in national lists of varieties for marketing purposes. A meeting with a delegation of UPOV was organised in December in Angers to discuss questions related to the acceptance of variety denominations.



UPOV TWC annual meeting, June 2010, Angers



UPOV TWC annual meeting, June 2010, Angers



The CPVO's centralised database operates on the basis of a system of codes attributed to botanical names and developed by UPOV. Since its release in July 2005, the Office and UPOV started to exchange data extensively, UPOV collecting data from non-EU UPOV countries and the Office bringing together data from the EU. The CPVO assisted UPOV in the attribution of codes to the species name of varieties of the UPOV-ROM.

In several regions of the world where countries are members of UPOV, such as Asia, Africa, Latin America and the Caribbean, there is an emergent interest to know the details, cumulated experience and results relating to plant variety rights systems with a regional scope. The CPVO frequently provides speakers for seminars and technical workshops organised by UPOV.

### **15.3. Contacts with the African Intellectual Property Organisation (OAPI)**

OAPI, an intergovernmental organisation based in Yaoundé (Cameroon), works on the implementation of the Bangui Agreement that has established a regional system of intellectual property rights, of which plant breeders' rights form a part. Consequently, it is particularly interested in the experience gained by the CPVO running the Community system.

The President of the Office has signed, with the Director-General of OAPI, a memorandum of understanding setting up the framework for future cooperation. The decision of the Administrative Council of OAPI for the entry into force of the PBR system in 2006 and its implementation will provide multiple opportunities for cooperation in several fields of activity.

A regular exchange of publications is maintained.

The Vice-President of the CPVO contributed in July of the report year to a seminar organised by OAPI on plant variety protection under the UPOV convention held in Duala, Cameroon.

### **15.4. Contacts with the OECD**

The CPVO closely follows the activities of the Organisation for Economic Cooperation and Development (OECD) in the seed and variety sector. The Vice-President of the CPVO attended the meeting of the Extended Advisory Group which took place in Paris in November 2010.

## 15.5. Other contacts

The CPVO maintains regular external contacts by participating in meetings organised by:

- the Human Resources and Security DG of the Commission: staff regulations' implementation matters;
- the Budget DG of the Commission: implementation of the new financial regulation and the internal audit function.

In addition, other fields of external activity can be mentioned, such as:

- the relevant standing committees of the European Commission;
- the Translation Centre Administrative Council;
- the coordination of the EU agencies at management level;
- the annual coordination meeting of the Publications Office with the EU agencies;
- the meetings of the data protection officers of the EU agencies.

# 16. PUBLIC ACCESS TO CPVO DOCUMENTS

In 2001, specific rules on public access to documents held by the European Parliament, the Council and the Commission were introduced by the adoption of Regulation (EC) No 1049/2001 <sup>(1)</sup>. In order for these rules to apply also to documents held by the Office, a new article, Article 33(a), was introduced to the basic regulation in 2003 by the adoption of Council Regulation (EC) No 1650/2003 <sup>(2)</sup>.

Article 33(a) contains the following elements.

- Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents shall also apply to documents held by the Office. This provision entered into force on 1 October 2003.
- The Administrative Council shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001. The Administrative Council adopted such practical arrangements on 25 March 2004. Those rules entered into force on 1 April 2004.
- Decisions taken by the Office on public access to documents may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice.

Regulation (EC) No 1049/2001 as well as the rules adopted by the Administrative Council are available on the website of the Office. Information on these rules and forms to use when requesting access to a document have also been published on the website of the Office.

The Office follows up the implementation and application of the rules on public access to documents by reporting annually on information such as the number of cases in which the Office refused to grant access to documents and the reasons for such refusals.

| Year of receipt | Number of requests for access received | Number of refusals | Reasons for such refusals  | Confirmatory applications |
|-----------------|--|--------------------|--|---------------------------|
| 2004            | 30                                     | 6 (partial)        | Confidential technical questionnaire not sent  |                           |
| 2005            | 55                                     | 2 (partial)        | Confidential technical questionnaire not sent  |                           |
| 2006            | 58                                     | 6 (partial)        | Confidential technical questionnaire not sent  |                           |
| 2007            | 55                                     | 17 (partial)       | Confidential technical questionnaire not sent/<br>information of commercial interest not sent                          | 2 (successful)            |
| 2008            | 57                                     | 19 (partial)       | Confidential technical questionnaire not sent/<br>information of commercial interest not sent                          |                           |
| 2009            | 54                                     | 28 (partial)       | Confidential technical questionnaire not sent/<br>information of commercial interest not sent/<br>photos not available | 2 (successful)            |
| 2010            | 63                                     | 29 (partial)       | Confidential technical questionnaire not sent/<br>information of commercial interest not sent/<br>photos not available | 1 (unsuccessful)          |

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

(2) Council Regulation (EC) No 1650/2003 of 18 June 2003 amending Regulation (EC) No 2100/94 on Community plant variety rights (OJ L 245, 29.9.2003, p. 28).

# 17. REPORT OF THE CPVO DATA PROTECTION OFFICER (DPO)

## 17.1. Legal background

Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individual rights with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data was adopted for the purpose of complying with Article 286 of the Treaty establishing the European Community. Article 286 requires the application to the Community institutions and bodies of the Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data.

Processing of data has quite a broad meaning and not only means transferring data to third parties, but also collecting, recording and storing data, whether or not by electronic means.

## 17.2. Role and tasks of the Data Protection Officer

Regulation (EC) No 45/2001 requires the nomination of at least one Data Protection Officer in the institutions and bodies who should ensure in an independent manner the internal application of the provisions in the regulation.

The DPO keeps a register of all personal data processing operations in the institution/body and informs on rights and obligations, provides services and makes recommendations. The DPO notifies risky processing of personal data to the European Data Protection Supervisor (EDPS) and responds to requests from the EDPS.

By decision of the President of 24 April 2009, a DPO was appointed at the CPVO for a term of three years. In 2010, in the absence of the DPO, a replacement was appointed for nine months to act as Data Protection Officer of the CPVO. During the last two months of 2010, a trainee was employed in the Legal Unit who also assisted the DPO with implementing the rules on the protection of personal data.

## 17.3. Report of the CPVO Data Protection Officer for 2010

For 2010, the DPO in charge followed the work plan defined the previous year.

- Update of the register of the processing operations containing CPVO procedures in which personal data is being processed on the CPVO intranet. End of 2010, the register contained 15 notifications and 15 prior checking notifications.
- Update of the inventory of the processing of personal data.
- Submission of prior notifications to the EDPS.

- Organisation of internal meetings with controllers responsible for the processing of personal data.
- Drafting various data protection notices which have been included in the intranet and Internet.

Unfortunately, in 2010, the DPO was unable to participate in DPO meetings held by the EDPS and the DPOs from the other EU institutions and agencies.

# 18. APPEAL PROCEDURES

## 18.1. Composition of the Board of Appeal of the CPVO

The Board of Appeal of the CPVO is composed of a chairman, an alternate to the chairman and of qualified members.

### 18.1.1. Chairman and alternate of the Board of Appeal

The chairman of the Board of Appeal, Mr Paul van der Kooij, was appointed for a term of five years by Council Decision 2007/858/EC of 17 December 2007 (OJ L 337, 21.12.2007, p. 105). His alternate, Mr Timothy Millett, was appointed by the same decision but resigned in July 2010. The procedure for appointing a new alternate is ongoing and will be finalised in 2011.

### 18.1.2. Qualified members of the Board of Appeal

In accordance with the procedure prescribed by Article 47(2) of Council Regulation (EC) No 2100/94, the Administrative Council of the CPVO, at its meeting of 14 and 15 March 2006, adopted the following list of qualified members of the Board of Appeal for a period of five years starting on **23 February 2006**.

#### List of qualified members 2006–11

1. Andersen, Preben Veilstrup
2. Balzanelli, Sergio
3. Barendrecht, Cornelis Joost
4. Beslier, Stéphane
5. Bianchi, Pier Giacomo
6. Bianchi, Richard
7. Blouet, Françoise
8. Bonne, Sophia
9. Borrini, Stefano
10. Bould, Aubrey
11. Bra, Maria
12. Brand, Richard
13. Calvache Quesada, David
14. Chanzá Jordán, Dionisio
15. Chartier, Philippe
16. Csurös, Zoltán
17. Del Rio Pascual, Amparo
18. Gresta, Fabio
19. Guiard, Joël
20. Guissart, Alain
21. Köller, Michael
22. Kralik, Andrej
23. Laurens, François
24. López-Aranda, José Manuel
25. Margellos, Théophile
26. Menne, Andrea
27. Mijs, Jan Willem
28. Millett, Timothy
29. Oliviusson, Peter
30. Patacho, Rosa Hermelinda Vieira Martins
31. Pause, Christof Frank
32. Perracino, Mauro
33. Petit-Pigeard, Roland
34. Pinheiro de Carvalho, Miguel Ângelo Almeida
35. Reheul, Dirk
36. Riechenberg, Kurt
37. Roberts, Timothy Wace
38. Rofes I Pujol, Maria Isabel
39. Rosa-Perez, José-Manuel
40. Royon, René
41. Rücker, Beate
42. Russo, Pietro
43. Santangelo, Enrico
44. Scott, Elizabeth
45. Siboni, Eugenio

46. Turrisi, Rosario Ennio  
47. Ullrich, Hanns  
48. van der Kooij, Paul  
49. Van Marrewijk, Nico

50. Van Overwalle, Geertrui  
51. Veiga da Cruz de Sousa, Pedro António  
52. Wiesner, Ivo

## 18.2. Decision of the Board of Appeal in 2010

The Board of Appeal (BOA) did not meet in 2010 but took one decision on appeal Case A018/2008 by written procedure (without oral hearing) on 15 March 2010.

### 18.2.1. Appeal A 018/2008 — ‘Razymo’

#### Description

On 10 November 2008, the CPVO, by Decision No 23653, granted a CPVR to the ‘Razymo’ variety of the *Lycopersicon esculentum* Mill. species.

On 25 November 2008, the Asociacion de Semilleros Hortícolas (Asehor) lodged an objection against the grant of such a CPVR. On 28 November 2008, Asehor was informed by the CPVO of the impossibility of lodging an objection after a title was granted, but of the possibility of lodging an appeal against the decision granting the title. The CPVO asked whether Asehor wished to do so.

On 15 February 2009, CPVO Decision No 23653 was published in the Official Gazette. The deadline for appealing the decision therefore became 15 April 2010.

On 15 April 2009, having received no response, the CPVO sent Asehor an e-mail asking Asehor to inform the CPVO of its intention regarding the appeal and reminding Asehor of the necessity of paying the appeal fee and sending the grounds in due time, i.e. within one month for the first third of the appeal fee and before 15 June 2009 for the remaining two thirds of the appeal fee and grounds. These obligations and deadlines were reminded several times by the CPVO.

On 22 June 2009, Asehor paid the CPVO EUR 500, i.e. one third of the appeal fee. On 1 July 2009, Asehor confirmed to the CPVO that its document of 25 November 2008 should be regarded as the grounds of its appeal. Finally, on 18 August 2009, upon new request of the CPVO, Asehor paid the remaining two thirds of the appeal fee.

Upon request of the BOA, the parties accepted to waive their right to be heard during oral hearings and agreed to a written decision of the BOA.

### **Arguments of the parties:**

RIJK ZWAAN and the CPVO contended that the appeal was inadmissible because lodged too late and because Asehor was not directly and individually concerned by the contested decision within the meaning of Article 68 of Regulation (EC) No 2100/94.

Asehor argued that the appeal was lodged in time and in due form and that the appeal fees were also paid in compliance with the CPVO's instructions. Asehor also averred that it was, in its own right, directly and individually concerned by Decision No 23653 granting the contested CPVR, since granting a right to one person invariably limits the rights of another. Finally, on the substance, Asehor submitted that the variety at issue could not be granted a CPVR because it lacked novelty under Article 10(1) of Regulation (EC) No 2100/94, having been sold or otherwise disposed of in the Community earlier than one year before the date of the application for a CPVR.

On the substance, RIJK ZWAAN contested Asehor's allegations about novelty: Asehor provided no evidence of the alleged transfer of seeds in July 2006. The first commercial sale and delivery of seeds of that variety was made to the Spanish company Biotechveg SA on 20 April 2007.

### **Decision of the Board of Appeal:**

The CPVO had rightfully considered Asehor's letter of 25 November 2008 as an objection and not an appeal. It is not within the power of the CPVO, of its own motion, to change an objection addressed to it by another person into an appeal. It is solely for the person concerned to take the steps necessary to such an effect.

Asehor was out of time when it first informed the CPVO of its willingness to file an appeal by the payment of the first third of the appeal. Asehor was also out of time when informing the CPVO that its e-mail of 25 November 2008 should be considered as its grounds of appeal. The appeal was therefore considered as inadmissible.

However, the BOA considered that the letters of the CPVO implicitly represented that an appeal would lie if the fees were paid, when in fact the appeal had become definitively time-barred as from 16 April 2009. That inaccurate representation may have led Asehor to pay the appeal fees when the appeal no longer had any prospect of being considered admissible. In these wholly exceptional circumstances, the BOA sentenced the CPVO to refund the appeal fee to the appellant and the appellant to bear the costs of the holder.



## 18.3. Further appeals to the Court of Justice of the European Union in 2010

In accordance with Article 73 of Regulation (EC) No 2100/94, a further appeal to the Court of Justice of the European Union shall lie from decisions of the Board of Appeal.

### 18.3.1. New further appeals in 2010

In 2010, no further appeal to the General Court was lodged against decisions of the Board of Appeal. One further appeal No **C-534/10 P** was lodged to the Court of Justice on 17 November 2010 against the ruling of the General Court of 13 September 2010 in the 'Gala Schnitzer' Case T-135/08.

### 18.3.2. Rulings by the General Court in 2010

In 2010, one ruling was taken by the General Court on Case T-135/08 'Gala Schnitzer' on 13 September 2010.

#### Description

##### 1. Facts:

The CPVO, the Community Agency responsible for granting Community-wide protection for new plant varieties, received an application from Schniga GmbH regarding the apple variety Gala Schnitzer. Based on the general requirements described in correspondence between the applicant and the CPVO, the latter requested the applicant to submit the necessary plant material and stated that the applicant was responsible for complying with all phytosanitary and customs requirements. The applicant submitted the material and provided a so-called European plant passport claiming that it served as a phytosanitary certificate. The centre responsible for the technical examination recognised the European plant passport as sufficient for the purpose of carrying out the technical examination and determining whether the substantive conditions for the grant of a Community plant variety right had been met. Additionally to that, the centre requested a copy of an official certificate confirming that the material sent was virus-free. The applicant informed the centre that it could not provide the requested official certificate because it emerged that the material sent to the centre was infected by latent viruses. The examination centre suggested to the CPVO to request the applicant to submit the new virus-free material for the technical examination. The CPVO agreed that it was necessary to let the applicant provide the new material because in the initial request for material the CPVO did not state that the material must be virus-free but just that it had to comply with the European plant passport.

The results of the second examination proved that the variety was distinct from the closest reference variety, the Baignet variety, on the basis of the additional characteristic 'fruit: width of stripes'.

The interveners, Elaris SNC and Brookfield New Zealand Ltd, licensee and holder respectively of the plant variety right of the Baignet variety lodged with the CPVO, pursuant to Article 59 of the Regulation (EC) No 2100/94, objections to the grant of a right for the Gala Schnitzer variety. The pleas in law were based on firstly Article 61(1)(b) that the CPVO should have refused the application on the ground that the applicant failed to comply with the requirements for submitting material for the technical examination; secondly the interveners supported their objection on Article 7 of the regulation stating that the Gala Schnitzer variety is not distinct from the Baignet variety.

The President of the CPVO approved the use of the additional characteristic 'fruit: width and stripes' for establishing the distinctness of the Gala Schnitzer variety. The committee of the CPVO rejected the interveners' objections and granted a Community plant variety right for the Gala Schnitzer.

The interveners filed notice of appeal with the Board of Appeal of the CPVO under Articles 67 to 72 of Regulation (EC) No 2100/94, against preceding decisions made by the committee of the CPVO.

In its decision (the contested decision) the Board of Appeal annulled the decisions taken by the committee and itself refused the application concerning the Gala Schnitzer variety. The Board of Appeal based its decision on Article 61(1)(b) reasoning that the CPVO was not allowed to request a submission of new plant material from the applicant if the latter did not comply with a request in an individual case as provided for in Article 55(4) to provide a phytosanitary certificate confirming that the material submitted was virus-free.

## **2. Claims:**

The CPVO and the applicant claimed that the Court should annul the contested decision. The interveners claimed that the Court should uphold the contested decision. In the alternative the interveners requested the Court, in essence, to order the complementary examinations on distinctness to be conducted. Each party claimed recovery of their costs before the Court.

## **3. Law:**

The applicant presented three claims alleging that the interveners' objections were inadmissible, there was no infringement based on Article 61(1)(b) and Article 62 of the regulation and also on Article 55(4) of the regulation.

### **Admissibility**

#### *Admissibility of the first plea in law:*

The applicant claimed that the appeal should be inadmissible since the objection filed with the CPVO by the interveners (the objectors before the CPVO) should have been dismissed by the Board of Appeal as inadmissible since it was not based on any of the

grounds mentioned in Article 59 of the Regulation (EC) No 2100/94. However, the Court held that it is authorised to assess only the legality of decisions of the Board of Appeal of the CPVO and issues which appeared before the procedure in front of the Board of Appeal. Consequently, the Court found that since this argument was raised by the applicant for the first time before the General Court, it was inadmissible.

#### *Admissibility of the third plea in law:*

The interveners claimed that the applicant's third plea in law was inadmissible because the Board of Appeal considered only facts but not the law. The Court found that the Board of Appeal by assessment of the information included in the correspondence between the applicant and the CPVO assessed the legal nature of those letters and acted upon this assessment by applying the relevant provisions of Regulation (EC) No 2100/94. In conclusion, the Court found the third plea in law admissible.

#### **Substance**

The Court found it appropriate to first consider the third plea in law.

The applicant alleged that the CPVO has a full discretion to determine the technical and administrative requirements which plant material must satisfy. The authorisation of the CPVO is a result of the application of rules stated in Article 55(4) of the regulation. The applicant emphasised that the instructions given by the CPVO as a European Union entity must be clear and sufficiently precise to avoid a loss of rights. Lack of accurate information about phytosanitary requirements obliged the applicant to make an interpretation of the binding rules by themselves. Additionally, acceptance of the European plant passport by the examination centre and later its requirement to provide as soon as possible a certificate proving that the material is virus-free is evidence that the information about the technical and administrative requirements were not precise at that stage of the procedure, and that is why the CPVO let the applicant submit new material.

The CPVO stated that it did not concur with the Board of Appeal's analysis. According to the CPVO, its instructions on the material for the technical examination were insufficiently clear and that was the reason why it did not refuse the applicant's application. The CPVO argued that Article 61(1)(b) of Regulation (EC) No 2100/94 which, in essence, states that the CPVO must refuse applications if the applicant does not comply with a request, is not applicable in cases where a request is unclear.

The interveners stated that the preconditions for dismissing the application were fulfilled, since the applicant did not provide required certification of phytosanitary accuracy of the examined material.

The Court found that the CPVO is responsible for determining through the general rules or through requests in individual cases, when, where and in what quantities and qualities

the material for the technical examination and reference samples are to be submitted. The Court held that it is consistent with the principle of sound administration and with the need to ensure the proper conduct and effectiveness of proceedings that, when it finds that the lack of precision which it has noted may be corrected, the CPVO has the power to continue with the examination of the application filed with it and is not required, in that situation, to refuse that application. Thus envisaged, that discretion makes it possible to avoid any pointless increase in the period between the filing of an application for a Community plant variety right and the decision on that application which would arise if the applicant were required to file a new application. The General Court clarified that the applicant cannot hold alone the responsibility for ambiguous requirements.

The Court analysed the correspondence between the CPVO, the examination centre and applicant and concluded that the CPVO was entitled to clarify its requests in an individual case to the fact that the material to be submitted for the technical examination must be virus-free. In consequence it was up to the Board of Appeal to assess whether the applicant had complied with the final request in an individual case from the CPVO. The Court stated that the Board of Appeal erred in law in finding that it is obligatory to withdraw the application because the applicant did not comply with phytosanitary requirements considering the correspondence at the beginning of the application procedure. Additionally, the Court found that the Board of Appeal misconstrued the scope of the discretion conferred on the CPVO by Article 55(4) of Regulation (EC) No 2100/94.

The Court did not find it necessary to examine the second plea in law.

The interveners had alternatively claimed, in essence, that the Court should order the CPVO to reopen the technical examination as regards the distinctness requirement or take any other measures to assess the question of distinctness.

The General Court did not accept the claims. In point 85 of the judgment the Court established that:

‘Since the interveners have relied, in answer to the present action, on an argument which was not examined by the Board of Appeal, their application to have the contested decision altered cannot be granted, since that would involve, in substance, the exercise of administrative and investigatory functions specific to the CPVO, and would therefore upset the institutional balance on which the division of jurisdiction between the CPVO and the General Court is based’.

Accordingly, the Court decided to uphold the appeal and annulled the contested decision and ordered the CPVO to bear its own costs and to pay the costs incurred by Schniga GmbH. The Court ordered interveners to bear their own costs.

### 18.3.3. Rulings by the Court of Justice in 2010

In 2010, one ruling was issued by the Court in Case C-38/09 P (Sumcol 01) on 15 April 2010.

The Court confirmed the findings of the CPVO, its Board of Appeal and the General Court, concerning the refusal of an application for Community plant variety rights.

The Court issued, on 15 April 2010, its first judgment in an appeal case concerning an application for Community plant variety rights. The appellant, Mr Schröder, attempted to set aside the judgment of the Court of First Instance of the European Union of 19 November 2008 in Case T-187/06 *Schröder v CPVO* (Sumcol 01), by which that court dismissed his action against the decision of the Board of Appeal of the Community Plant Variety Office (CPVO) of 2 May 2006 (Reference A 003/2004). In its decision, the Board of Appeal had ruled that an appeal against a decision of the Office, refusing an application for Community plant variety rights for the candidate variety 'Sumcol 01', of the species *Plectranthus ornatus*, due to lack of distinctness, was not well founded.

Throughout the proceedings, the appellant argued, in essence, that the reference variety used in the technical examination of the candidate variety was either not of common knowledge or in fact the candidate variety 'Sumcol 01'.

The Court held that in accordance with Article 225(1) EC and the first paragraph of Article 58 of the Statute of the Court of Justice, an appeal lies on points of law only. The General Court has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of those facts and the assessment of that evidence thus does not, save where they distort the facts or evidence, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal. The Court held that the General Court had not distorted the facts or evidence when ruling in the case.

The Court also confirmed the findings of the General Court that issues of technical complexity are not subject to review by the EU Courts. In paragraphs 77 and 78 of the judgment the Court states that:

'In addition, it must be recalled that the General Court, which has jurisdiction only within the limits set by Article 73(2) of Regulation (EC) No 2100/94, was not required to carry out a complete review in order to determine whether or not the Sumcol 01 variety lacked distinctness for the purposes of Article 7(1) of Regulation (EC) No 2100/94 but it was entitled, in the light of the scientific and technical complexity of that condition, compliance with which must be verified by means of a technical examination which, as is clear from Article 55 of Regulation (EC) No 2100/94, is to be entrusted by the CPVO to one of the competent national offices, to limit itself to a review of manifest errors of assessment. Consequently, the General Court was entitled to consider that the evidence on the file was sufficient to permit the Board of Appeal to rule on the refusal decision.'

The Court also held that technical experts working for examination offices on behalf of the Office may appear in hearings before the Board of Appeal as agents of the Office. Such experts do not need to be called to hearings as witnesses or experts which require the adoption of measures for taking evidence within the meaning of Article 60(1) of Regulation (EC) No 874/2009.

## 18.4. Appeals received by the CPVO and decisions reached by the Board of Appeal since its inception

| Number of notices of appeal lodged with the CPVO | Reasons for appeal   | Number of decisions reached by the Board of Appeal | Number and date of the decision                             | Date of publication in the Official Gazette of the CPVO |
|--|--|--|---|---|
| <b>1996</b>                                      |  |  |   |   |
| 0  | Not applicable (n/a)   | 0  | n/a   | n/a   |
| <b>1997</b>                                      |  |  |   |   |
| 2  | Article 63 - Variety denomination (1)<br>Article 10 - Novelty (1)  | 0  | n/a   | n/a   |
| <b>1998</b>                                      |  |  |   |   |
| 2  | Article 63 - Variety denomination (1)<br>Article 10 - Novelty (1)  | 0  | n/a   | n/a   |
| <b>1999</b>                                      |  |  |   |   |
| 2  | Article 7 - Distinctness (1)<br>Article 10 - Novelty (1)   | 1  | A2/98 of 14.9.1999  | 15.4.2000   |
| <b>2000</b>                                      |  |  |   |   |
| 8  | Article 7 - Distinctness (1)<br>Article 55(4) BR (*) - Non-compliance with request for technical verification (3)<br>Article 83 - Non-payment of fees (4)                              | 2  | A1/99 of 25.1.2000<br>A2/99 of 19.5.2000 (interim decision) | 15.4.2000<br>15.4.2000                                  |
| <b>2001</b>                                      |  |  |   |   |
| 1  | Article 8 BR - Uniformity (1)  | 2  | A2/00 of 27.3.2001<br>A4/00 of 6.12.2001                    | 15.6.2001<br>15.4.2002                                  |
| <b>2002</b>                                      |  |  |   |   |
| 35   | Article 83 - Non-payment of fees (25)<br>Article 7 - Distinctness (8)<br>Article 11 BR - Entitlement (1)<br>Article 55 BR - Non-compliance with request for technical verification (1) | 1  | A5/00 of 28.5.2002  | 15.8.2002   |

(\*) BR: Basic Regulation (Council Regulation (EC) No 2100/94)

| Number of notices of appeal lodged with the CPVO | Reasons for appeal  | Number of decisions reached by the Board of Appeal | Number and date of the decision  | Date of publication in the Official Gazette of the CPVO   |
|--|---|--|--|---|
| <b>2003</b>                                      |   |  |  |   |
| 6  | Article 7 BR - Distinctness (3)<br>Article 8 BR - Uniformity (2)<br>Article 55 BR - Non-compliance with request for technical verification (1)  | 15   | A5/02 of 2.4.2003<br>A1/02-2/02-3/02 of 1.4.2003<br>A018/2002 of 14.5.2003<br>A8/02-9/02-10/02-11/02-12/02-13/02 of 15.5.2003<br>A017/2002 of 3.4.2003<br>A023/2002 of 8.10.2003<br>A031/2002 of 8.12.2003<br>A021/2002 of 9.12.2003 | 15.6.2003<br>15.6.2003<br>15.8.2003<br>15.8.2003<br>15.6.2003<br>15.12.2003<br>15.2.2004<br>15.2.2004 |
| <b>2004</b>                                      |   |  |  |   |
| 8  | Article 20 - Nullity (1)<br>Article 83 - Non-payment of fees (1)<br>Article 7 - Distinctness (3)<br>Article 66 - Variety denomination (1)<br>Article 8 - Uniformity (1)<br>Article 10 - Novelty (1) | 5  | A003/03 of 4.6.2004<br>A004/03 of 4.6.2004<br>A005/03-006/03 of 28.9.2004<br>A001/2004 of 16.12.2004   | 15.8.2004<br>15.8.2004<br>15.12.2004<br>15.2.2005   |
| <b>2005</b>                                      |   |  |  |   |
| 4  | Article 11 BR - Entitlement (1)<br>Article 7 - Distinctness (2)<br>Article 10 - Novelty (1)   | 4  | A006/2004 of 15.6.2005<br>A005/2004 of 16.6.2005<br>A004/2004 of 18.7.2005<br>A001/2005 of 8.11.2005   | 15.8.2005<br>15.8.2005<br>15.10.2005<br>15.1.2006   |
| <b>2006</b>                                      |   |  |  |   |
| 1  | Article 83 - Non-payment of fees (1)  | 3  | A003/2004 of 2.5.2006<br>A004/2005 of 13.10.2006<br>A007/2005 of 7.7.2006  | 15.8.2006<br>15.12.2006<br>15.10.2006   |



| Number of notices of appeal lodged with the CPVO | Reasons for appeal  | Number of decisions reached by the Board of Appeal | Number and date of the decision  | Date of publication in the Official Gazette of the CPVO        |
|--|---|--|--|--|
| <b>2007</b>                                      |   |  |  |  |
| 8  | Article 10 - Novelty (1)<br>Article 83 - Non-payment of fees (1)<br>Article 55(4) BR - Non-compliance with request for technical verification (2)<br>Article 7 - Distinctness (1)<br>Article 20 - Nullity (1)<br>Article 21 - Cancellation (1)<br>Article 87 - Establishment of the Registers (1) | 6  | A001/2007 of 11.9.2007<br>A003/2007-004/2007 of 21.11.2007<br>A005/2007 of 4.12.2007<br>A006/2007 of 4.12.2007<br>A007/2007 of 4.12.2007 | 15.12.2007<br>15.2.2008<br>15.2.2008<br>15.2.2008<br>15.2.2008 |
| <b>2008</b>                                      |   |  |  |  |
| 12   | Article 83 - Non-payment of fees (7)<br>Article 8 - Uniformity (4)<br>Article 20 - Nullity (1)  | 3  | A011/2007 of 9.9.2008<br>A009/2008 of 3.12.2008<br>A001/2008 002/2008 of 4.12.2008   | 15.12.2008<br>To be published<br>To be published               |
| <b>2009</b>                                      |   |  |  |  |
| 10   | Article 7 - Distinctness (1)<br>Article 8 - Uniformity (5)<br>Article 11 - Entitlement (1)<br>Article 20 - Nullity (1)<br>Article 21 - Cancellation (2) - One of which for non-payment of fees  | 4  | A010/2007 of 23.1.2009<br>A004/2008 and A005/2008 of 21.4.2009<br>A010/2008 of 8.10.2009<br>A011/2008 of 8.10.2009                       | 15.6.2009<br>15.8.2009<br>15.2.2010<br>15.2.2010               |
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| 19   | Article 11 - Entitlement (4)<br>Article 20 - Nullity (2)<br>Article 21 - Cancellation (1)<br>Article 83 - Non-payment of fees (11)<br>Article 55 - Non-compliance with request for technical verification (1)   | 1  | A018/2008 of 15.3.2010   | 15.6.2010  |



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