



CPVO

Community Plant Variety Office

Structure and Benefit of EU Plant Variety protection system

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Outline

1. The EU Plant Variety System
2. The CPVO
3. Application Procedure
4. DUS Examination
5. Board of Appeal
6. Scope of EU PVRs
7. Statistics
8. Overview of the CPVR system
9. Final remarks





1. The EU Plant Variety System

- A system for the protection of plant varieties was established by Regulation 2100/94 of the European Community in 1994.
- The intellectual property rights granted under this system are valid throughout the territory of the 28 Member States of the EU (“**unitary effect**”).
- **Brexit:** For the time being, the UK remains a full member of the EU and rights and obligations continue to apply in and to the UK.



- **EU / national**

- The EU system co-exists with the national systems of the EU Member States
- It is the applicant's choice: national or EU plant variety rights

- **UPOV**

UPOV

- The EU system is in line with the UPOV 1991 Act
- 24 out of 28 EU Member States are UPOV members
- The EU is a full member of UPOV as an inter-governmental organisation



- The EU system is tailored made for intellectual property protection for plant varieties (sui generis system under the TRIPS):
 - Breeders' exemption
 - Agricultural exception (FSS)
- Plant varieties can not be protected by patents under the
 - European Patent Convention
 - EU Directive on patents for biotechnological inventions
- Plant variety rights are meant to guarantee exclusive exploitation rights for new plant varieties for at least 25 years (at least 30 for vines, potatoes and tree species)





2. The CPVO

Mission statement

To deliver and promote an efficient Intellectual Property Rights system that supports the creation of new plant varieties for the benefit of Society



Council

Commission

Court of Justice

EU Parliament

Administrative Council

Board of Appeal

CPVO

Examination Offices



The Administrative Council

- Monitoring the CPVO
- Composed by representatives of the EU Member States, the European Commission and observer organisations
- Budgetary authority
- Entrustment of Examination Offices
- Approval of Technical Protocols
- 2 meetings per year





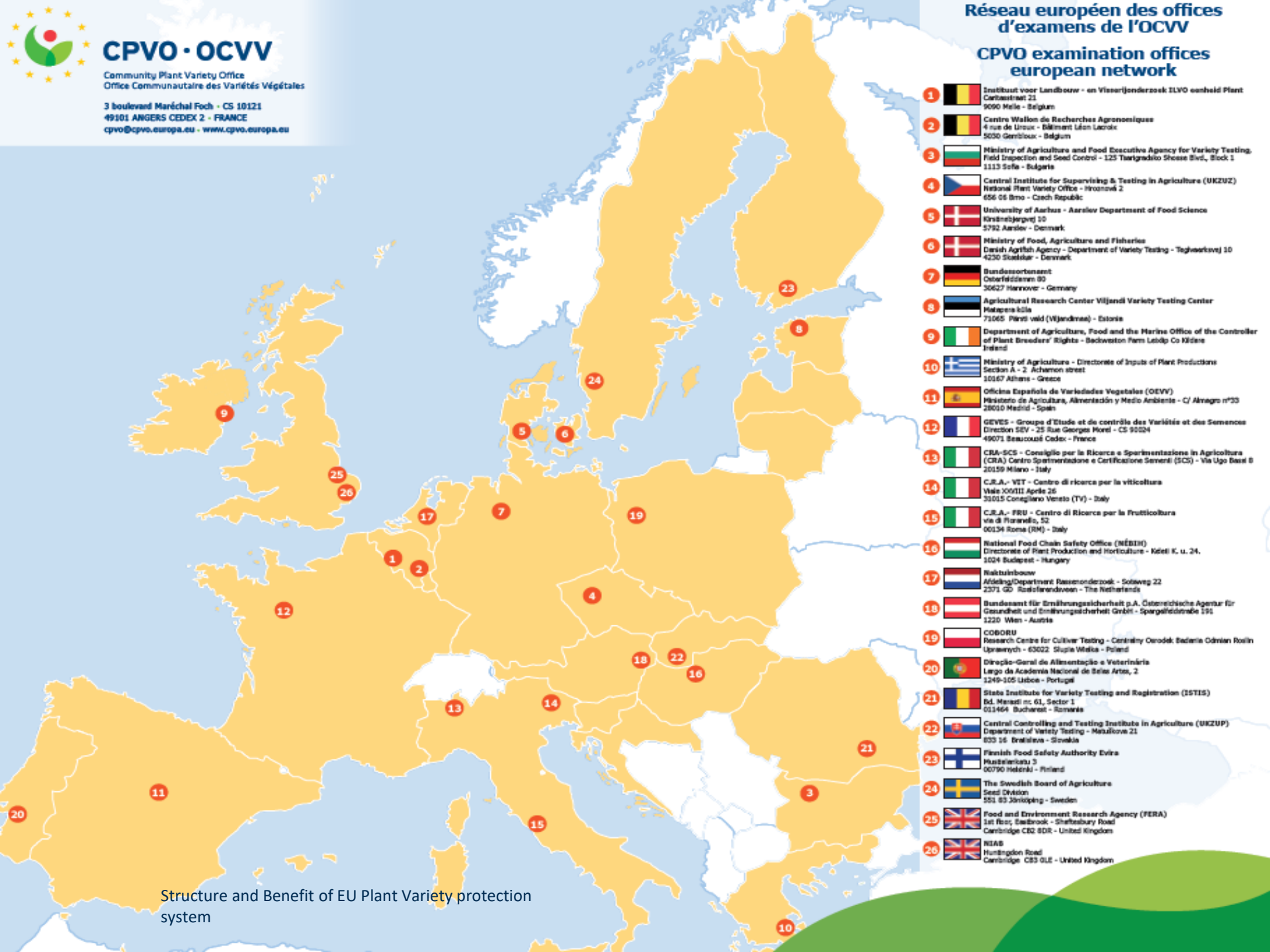
Technical Examinations

- The CPVO has not created its own technical infrastructure
- Technical examination to confirm **d**istinctness, **u**niformity and **s**tability (DUS) is carried out by the Examination Offices entrusted by the Administrative Council
- Entrustment process to be followed
- Technical examinations are carried out according CPVO technical protocols



- Once the technical examination is concluded, a technical report (positive or negative) for the CPVO, with accompanying variety description in case of positive report.
- Applicant is given an opportunity to comment on the draft report and description before the Committee takes a decision on the application for CPVRs.
- Possibility to: “Take-over” of technical reports of entrusted examination offices or sell technical reports to UPOV Members under UPOV cooperation.





- 1  Instituut voor Landbouw - en Visserijonderzoek ILVO eenheid Plant
 Carfaxstraat 21
 9090 Melle - Belgium
- 2  Centre Wallon de Recherches Agronomiques
 4 rue de Liroux - Bâtiment Léon Lacroix
 5030 Gembloux - Belgium
- 3  Ministry of Agriculture and Food Executive Agency for Variety Testing,
 Field Inspection and Seed Control - 125 Tsarigradsko Shosse Blvd, Block 1
 1113 Sofia - Bulgaria
- 4  Central Institute for Supervising & Testing in Agriculture (UKZUZ)
 National Plant Variety Office - Hrosová 2
 656 06 Brno - Czech Republic
- 5  University of Aarhus - Aarhus Department of Food Science
 Kibækvej 10
 8792 Årskov - Denmark
- 6  Ministry of Food, Agriculture and Fisheries
 Danish Agrifish Agency - Department of Variety Testing - Teglværtsvej 10
 4230 Skælskør - Denmark
- 7  Bundesortenamt
 Osterfeldstrasse 90
 30627 Hannover - Germany
- 8  Agricultural Research Center Viljandi Variety Testing Center
 Mäepera küla
 71065 Pärsti vald (Viljandimaa) - Estonia
- 9  Department of Agriculture, Food and the Marine Office of the Controller
 of Plant Breeders' Rights - Backweston Farm Leixlip Co Kildare
 Ireland
- 10  Ministry of Agriculture - Directorate of Inputs of Plant Production
 Section A - 2 Acharnon street
 10167 Athens - Greece
- 11  Oficina Española de Variedades Vegetales (OEVV)
 Ministerio de Agricultura, Alimentación y Medio Ambiente - C/ Alvaro nº33
 28000 Madrid - Spain
- 12  GEVES - Groupe d'Etude et de Contrôle des Variétés et des Semences
 Direction SEV - 25 Rue Georges Morel - CS 90024
 49071 Beaucoué Cedex - France
- 13  CRA-SCS - Consiglio per la Ricerca e Sperimentazione in Agricoltura
 (CRA) Centro Sperimentazione e Certificazione Sementi (SCS) - Via Ugo Bassi 8
 20159 Milano - Italy
- 14  C.R.A. - VIT - Centro di ricerca per la viticoltura
 Viale XXIII Aprile 26
 31015 Conegliano Veneto (TV) - Italy
- 15  C.R.A. - FRU - Centro di Ricerca per la Frutticoltura
 via di Fioravillo, 52
 00134 Roma (RM) - Italy
- 16  National Food Chain Safety Office (NEMIR)
 Directorate of Plant Production and Horticulture - Késti K. u. 24.
 1026 Budapest - Hungary
- 17  Wageningen
 MinsingDepartment Rassenonderzoek - Solweg 22
 2371 GD Rosslarenhuizen - The Netherlands
- 18  Bundesamt für Ernährungssicherheit p.A. Österreichische Agentur für
 Gesundheit und Ernährungssicherheit GmbH - Spargelfeldstraße 191
 1220 Wien - Austria
- 19  COBORU
 Research Centre for Cultivar Testing - Centralny Cerodół Badania Odmian Roślin
 Uprawywnych - 63002 Sępólno Wielkie - Poland
- 20  Direção-Geral de Alimentação e Veterinária
 Largo da Academia Nacional de Belas Artes, 2
 1249-105 Lisboa - Portugal
- 21  State Institute for Variety Testing and Registration (ISTIS)
 Bd. Marasti nr. 61, Sector 1
 011464 Bucharest - Romania
- 22  Central Controlling and Testing Institute in Agriculture (UKZUP)
 Department of Variety Testing - Malákovce 21
 833 16 Bratislava - Slovakia
- 23  Finnish Food Safety Authority Evira
 Mieskivenkatu 3
 00790 Helsinki - Finland
- 24  The Swedish Board of Agriculture
 Seed Division
 551 83 Jönköping - Sweden
- 25  Food and Environment Research Agency (FERA)
 1st floor, Eastbrook - Shaftesbury Road
 Cambridge CB2 8DR - United Kingdom
- 26  NIAB
 Huntingdon Road
 Cambridge CB3 0LE - United Kingdom

Structure and Benefit of EU Plant Variety protection system

CPVO Finances

Under the terms of the basic Regulation the Community Plant Variety Office is self-financed:

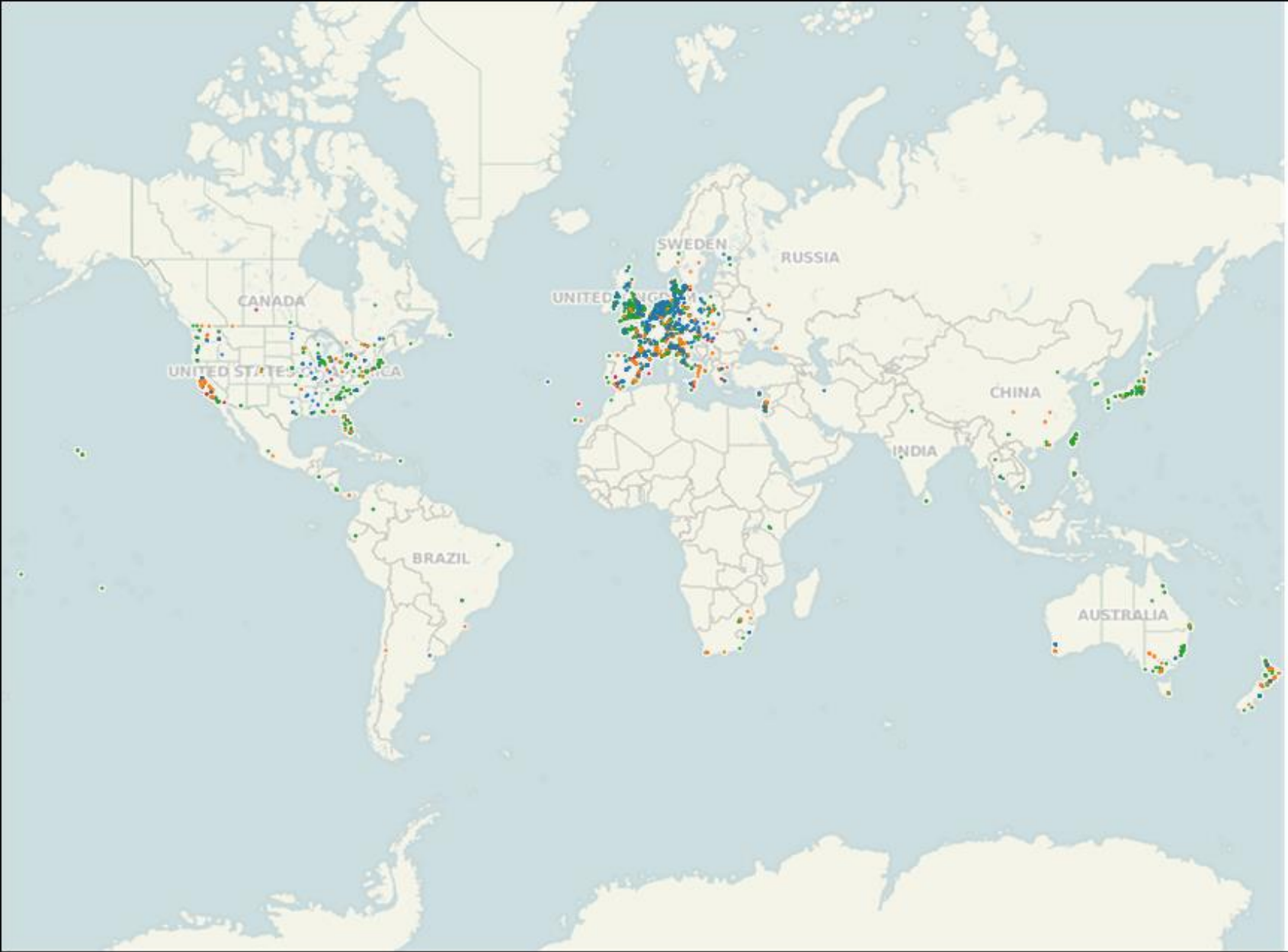
- It must administer the system without financial support from the general European Union budget
- The CPVO receives revenue from fees (application, examination, take-over, annual fee)
- Due to the number of applications received and rights granted, the Office has been able to meet the requirement of financial self-sufficiency



Fees

- Application fee € 650 (paper) € 450 online
- Annual Fee - € 330 per title in force
- Examination fees (varied) € 1200-3000
- Take Over Report € 320





- CROP
- Agricultural
 - Fruit
 - Ornamental
 - Vegetables

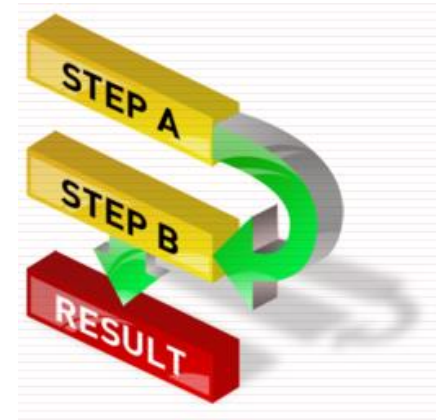
Fees from clients per crop sector



3. Application procedure

Benefit:

- One application
- One procedure
- One technical examination
- One decision
- One valid right covering the territory of the 28 Member States of the European Union





4. DUS Examination

Protectable Varieties (Art. 6 Reg 2100/94)

- **D**istinctness (Art. 7 Reg 2100/94)
- **U**niformity (Art. 8 Reg 2100/94)
- **S**tability (Art. 9 Reg 2100/94)
- Novelty (Art. 10 Reg 2100/94)
- Variety denomination (Art. 63 Reg 2100/94)



Definition of a protectable variety by a CPVR

- **New** (propagating or harvested material not disposed of in the country of application more than a year before application, or more than 4 years in other countries – 6 years for vines and trees)
- **Distinct** (clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application)
- **Uniform** (limited number of off-type individuals observed for the relevant characteristics of the variety in one cycle of propagation)
- **Stable** (its relevant characteristics remain unchanged after repeated propagation)



Definition of breeder

- the person who bred, or who discovered and developed, a variety
- the employer of the aforementioned person (if foreseen under national law)
- the successor in title of the first or second aforementioned person



Variety denominations in the Community Plant Variety Rights system

- Each variety must be given a suitable identification (generic designation), otherwise known as a “**denomination**” (Art. 63 Reg. 2100/94).
Denominations ≠ Trademarks!
- The procedure for approval of a variety denomination is carried out by specialised personnel in the CPVO.
- **Article 63** has been interpreted by guidelines approved by the CPVO Administrative Council
- In depth explanatory notes with detailed examples complement the CPVO guidelines.



5. The Board of Appeal



Composition

Composed by one permanent Chairman and two other members nominated by the Chair with legal and technical expertise

Tasks

Responsible to decide on appeals filed against decisions of the CPVO

Status

Members shall be independent and not involved in the work of the CPVO



Legal procedures post grant or refusal – Appeal (Art. 67-74 BR)

- The addressee of a decision, or any other person directly and individually concerned, may lodge and appeal against certain decisions of the CPVO.
- Time limits:
 - 2 months after the publication or service of the contested decision the notice of appeal must be filed,
 - Within 4 months of publication or service of the decisions, statement of the grounds of appeal must be filed.
- An appeal has **suspensory effect** of the contested decision unless otherwise decided by the CPVO or in cases of decisions on compulsory licenses.



Decisions subject to appeal (Art. 67 BR)

Nullity / cancellation of a CPVR (*art. 20 and 21 of B.R.*)

Compulsory licenses (*art.29 and 100 para. 2*)

Objections to the grant of a CPVR (*art. 59*)

Refusal of an application/ Grant of a CPVR (*art. 61 and 62*)

Approval/amendment of variety denominations (*art. 63 and 66*)

Fees (*art. 83*)

Apportionment of costs (*art. 85*)

Establishment of the Registers/ Public inspection (*art. 87 and 88*)



Appeal Fees: Art. 11 of Commission Regulation (EC) 1238/95 (Fees Regulation)

Appeal fee= 1500 euros per appeal lodged

1/3 are due on receipt of the appeal

2/3 are due, on request of the Office, within one month from the remittal of the appeal to the Board of Appeal

The appeal fee may be **reimbursed**.



Interlocutory revision (Art. 70 BR)

- Revision made by the Committee that adopted the contested decision (“Rectification Committee”), within one month of receipt of statement of grounds of the appeal
- Only in ex parte proceedings (ex. Cancellation because of non-payment of annual fees, refusal to grant a title based on a DUS negative report)
- Otherwise, remittal to the Board of Appeal



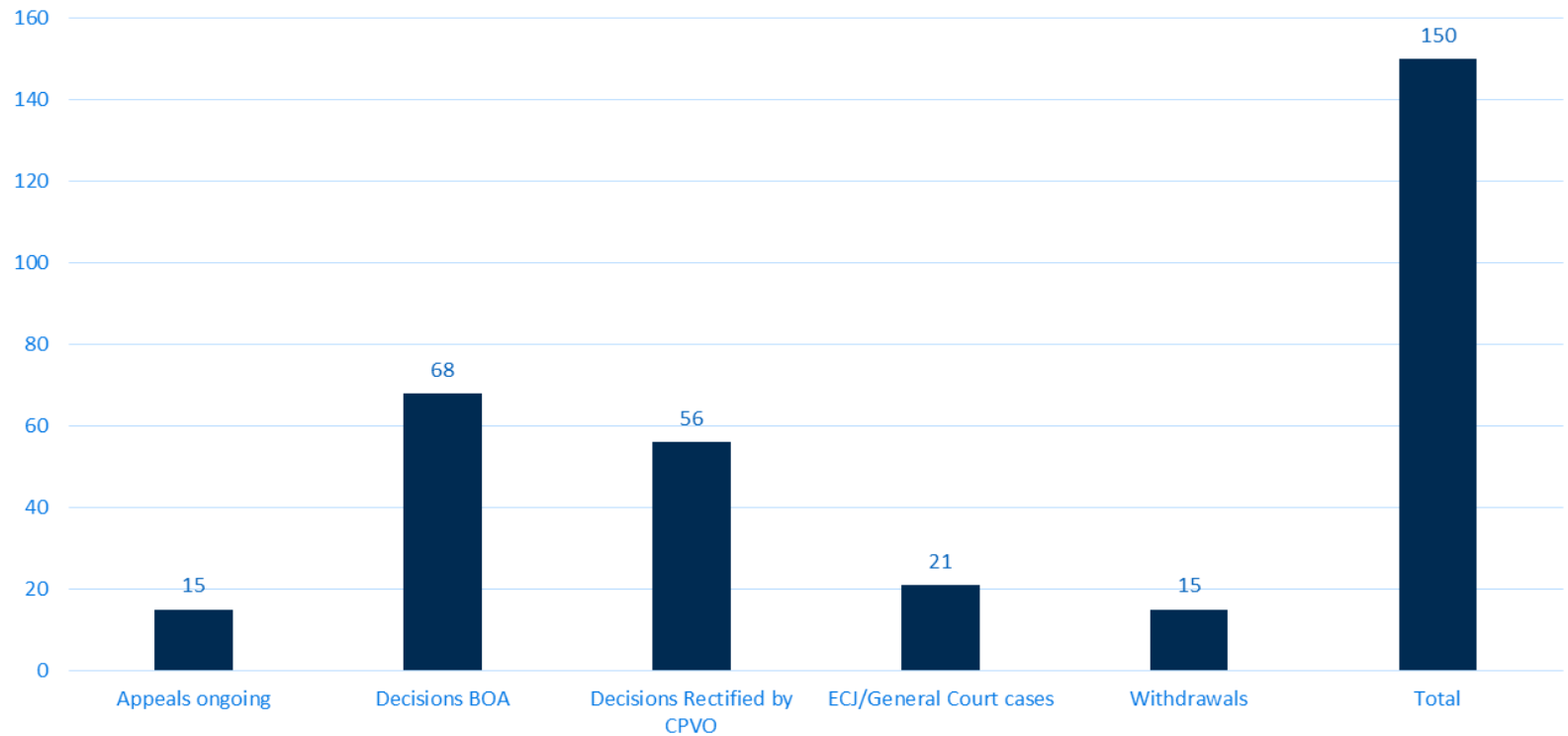
Further appeal against decisions of the Board of Appeal (Art.73 BR)



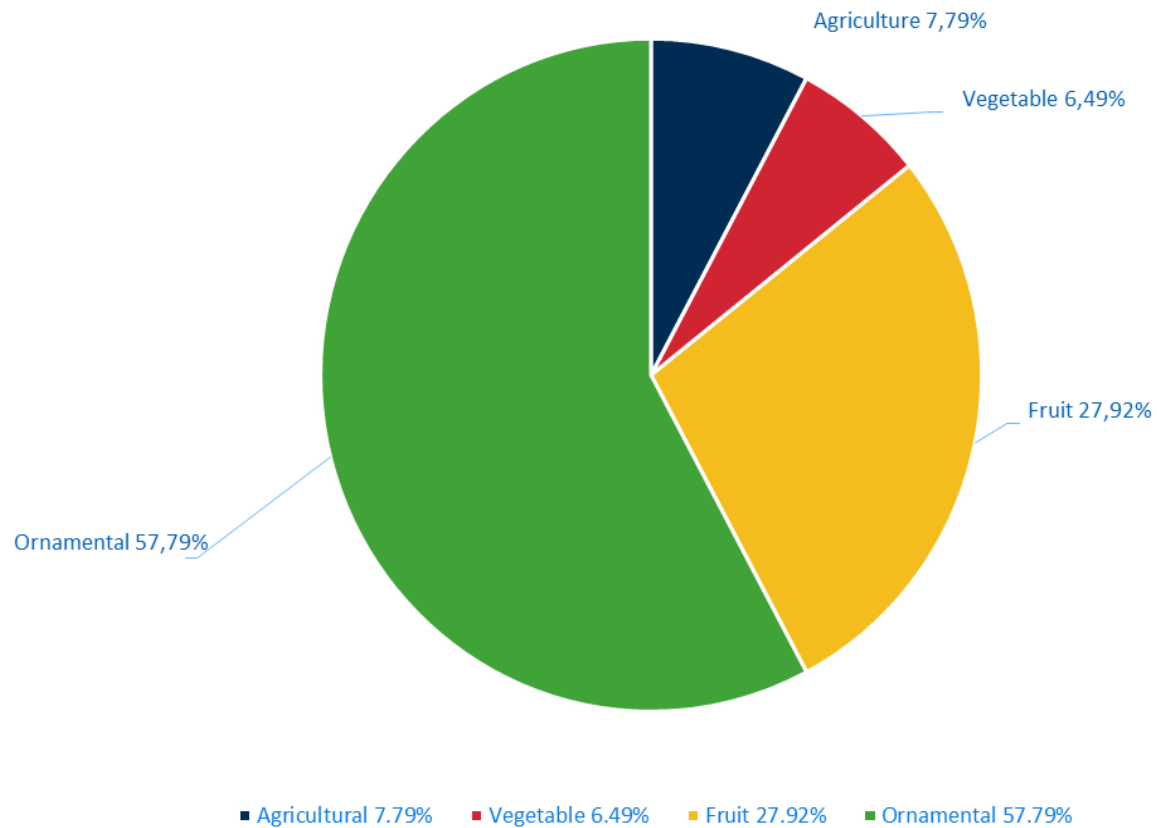
- Any party to proceedings who has been unsuccessful (whole or in part) in an appeal procedure may lodge a further appeal against a decision of the Board of Appeal before the General Court.
- Ruling from the General Court may be appealed before the Court of Justice
- **Benefit:** harmonized interpretation of the rules of law



Board of Appeal: Statistics (01/01/1997 – 27/01/16)



Number of appeals by sector



Legal basis appeals lodged

Article 61 BR	Rejection	. Distinctness . Uniformity . Submission plant material . Entitlement . Novelty	22 9 4 4 4
Article 62 BR	Grant		13
Articles 63&66 BR	Variety denomination		3
Article 83 BR	Fees	. Non payment annual fees	68
Article 59	Objections	Objections	1
Article 20 BR	Nullity		8
Article 21 BR	Cancellation	. (Non) cancellation of a CPVR	3
Article 87 BR	Registries	. Change of variety denomination	2
TOTAL (1997-2016)			154



6. Scope of EU PVRs

The use of protected material is subject to authorization of the breeder (Art. 13 BR):

- production or multiplication of the variety,
- conditioning for the purpose of propagation,
- offering for sale, selling or other marketing,
- exporting from or importing to the EU,
- stocking for any of the purposes mentioned above



Provisional protection

Art. 95 Reg. 2100/94

- Acts prior to grant of Community plant variety rights
- Possibility for reasonable compensation from any person who has, in the time **between publication of the application** for a Community plant variety right **and grant** thereof, effected an act that he would be prohibited from performing subsequent thereto
- Breeders' associations have expressed a wish for improvement of the provisional protection



except

Exceptions

- Acts done privately and for non-commercial purposes
- Acts done for experimental purposes
- Acts done for the purpose of breeding, or discovering and developing other varieties (the **breeder's exemption**)
- Farm Saved Seeds (the **agricultural exemption**) limited to 21 agricultural crops



Advantages of the breeders' exemption:

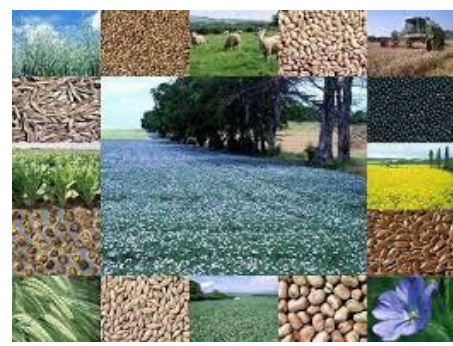
- Germplasm sources remain accessible to the community of breeders;
- Genetic basis for plant improvement is broadened and is actively conserved;
- Variety improvement is enhanced;
- Opportunity for all breeders to share in benefits of breeding activities;



7. Statistics



- **60.194** applications received (more than 90% online)
- **46.900** titles granted (25.800 in force)
- **1.900** different species



Number of Applications received per year

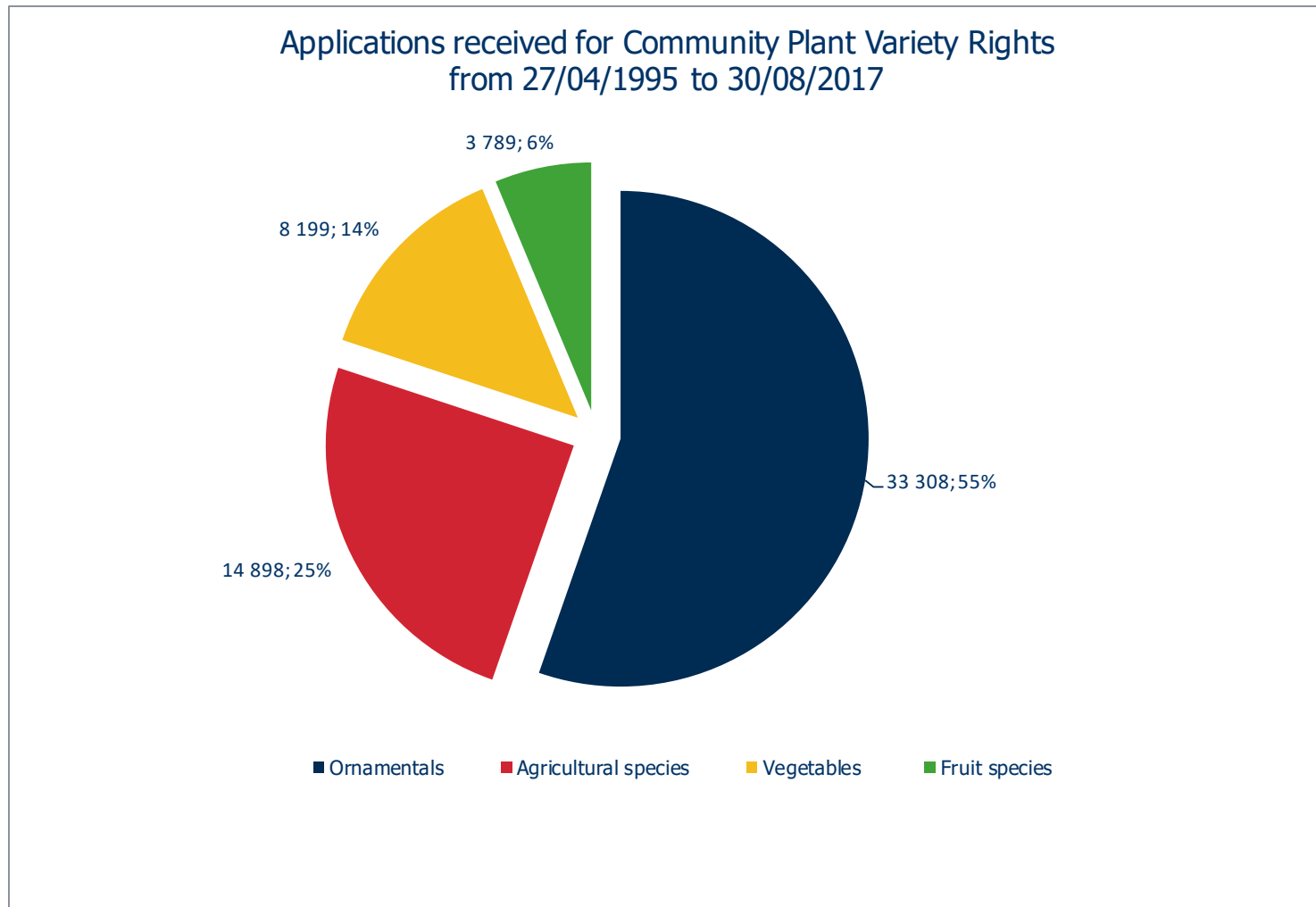
1995	3 191
1996	1 394
1997	1 530
1998	1 856
1999	1 907
2000	2 090
2001	2 177
2002	2 205
2003	2 526
2004	2 699
2005	2 721
2006	2 751

2007	2 998
2008	3 007
2009	2 768
2010	2 886
2011	3 184
2012	2 868
2013	3 297
2014	3 626
2015	3 111
2016	3 299
2017	2 103
Grand Total	60194*

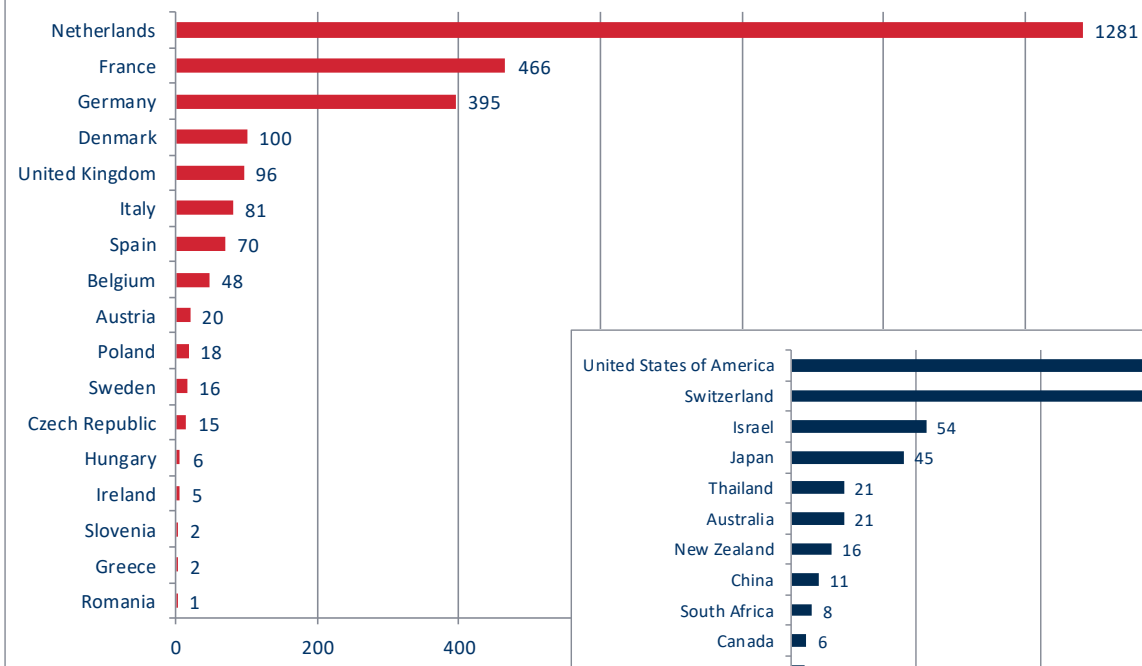
* Situation on 30/08/2017



Applications received per crop sector

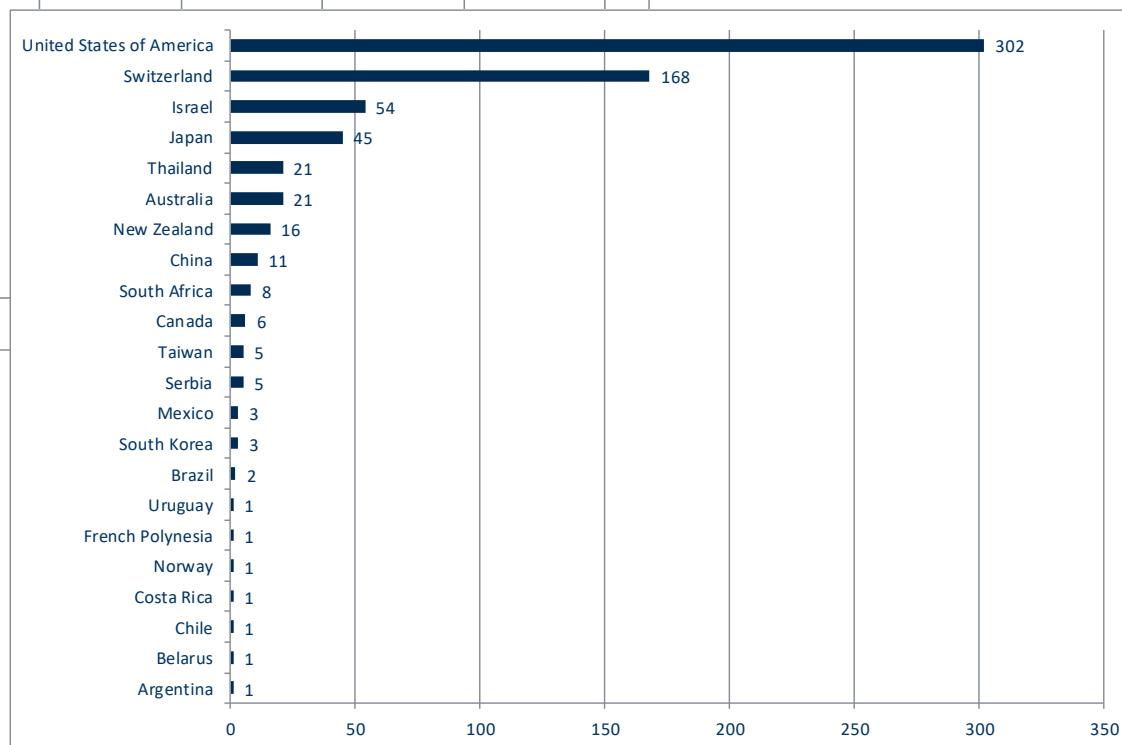


Origin of Community Plant Variety Rights applications in 2016

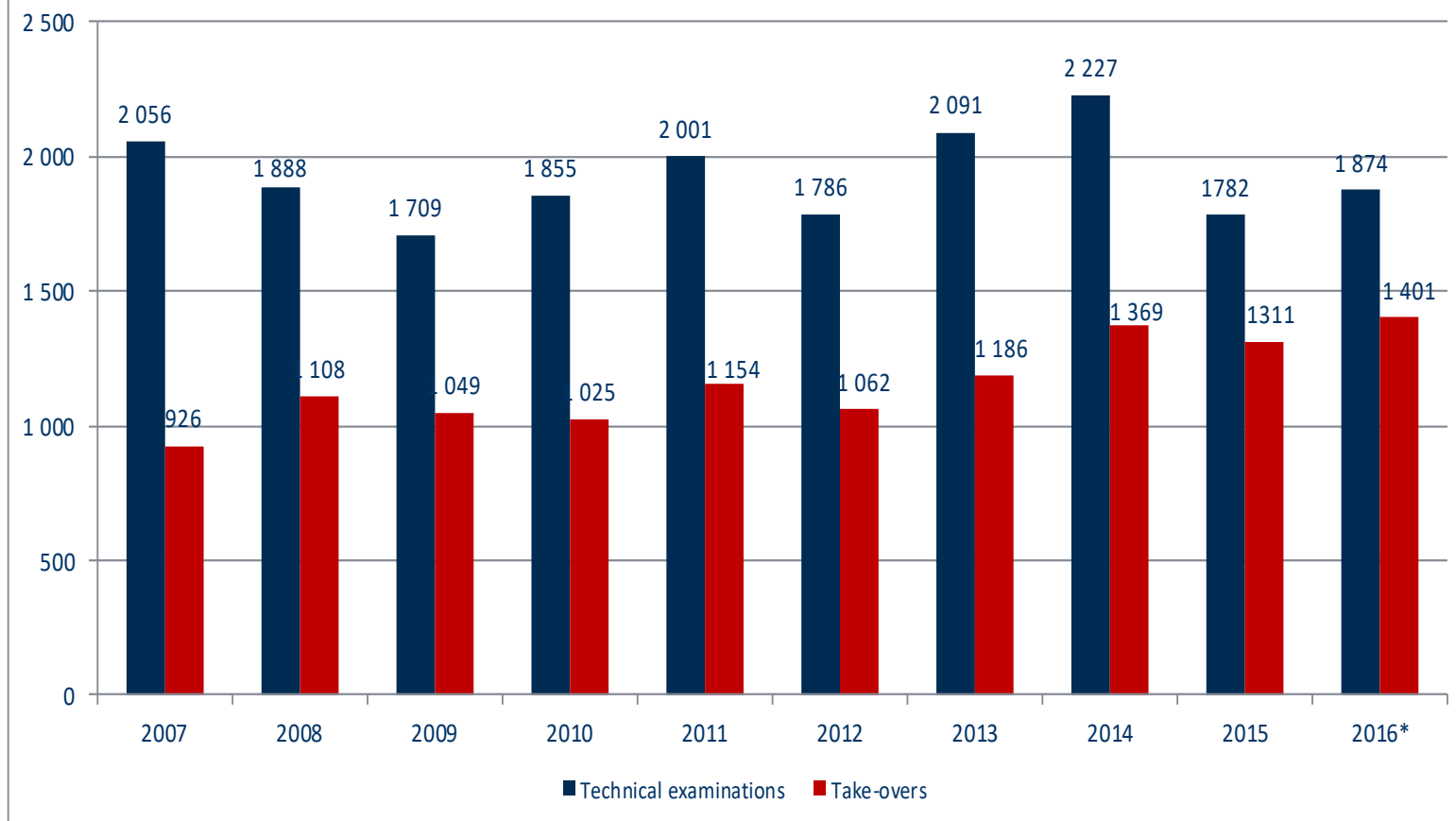


Total from EU members
= 2622 applications

Total from Non-EU members
= 677 applications (26%)



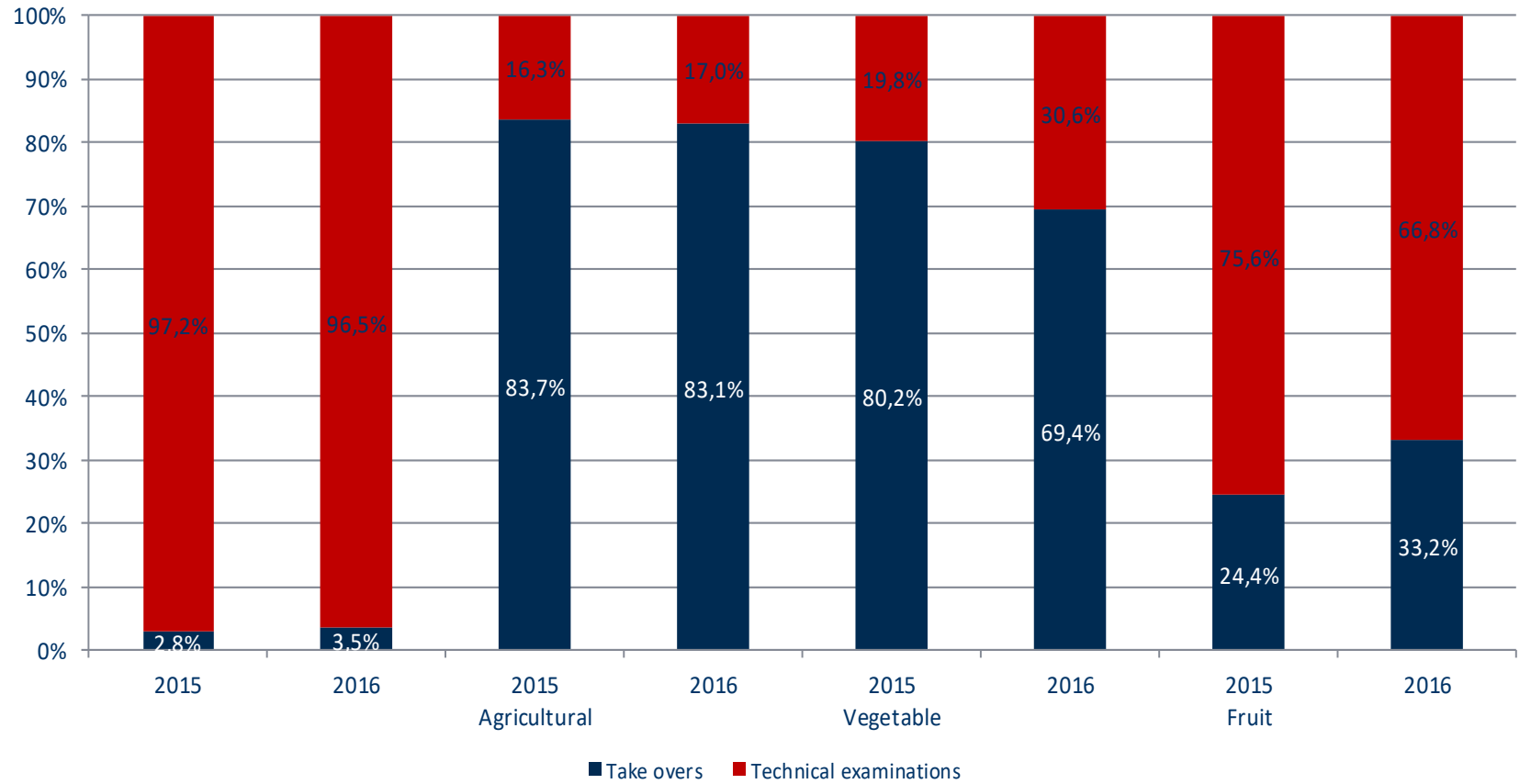
Evolution of annual number of technical examinations and take-overs from 01/01/2007 to 31/12/2016



NB: (*) Situation at 31/12/2016



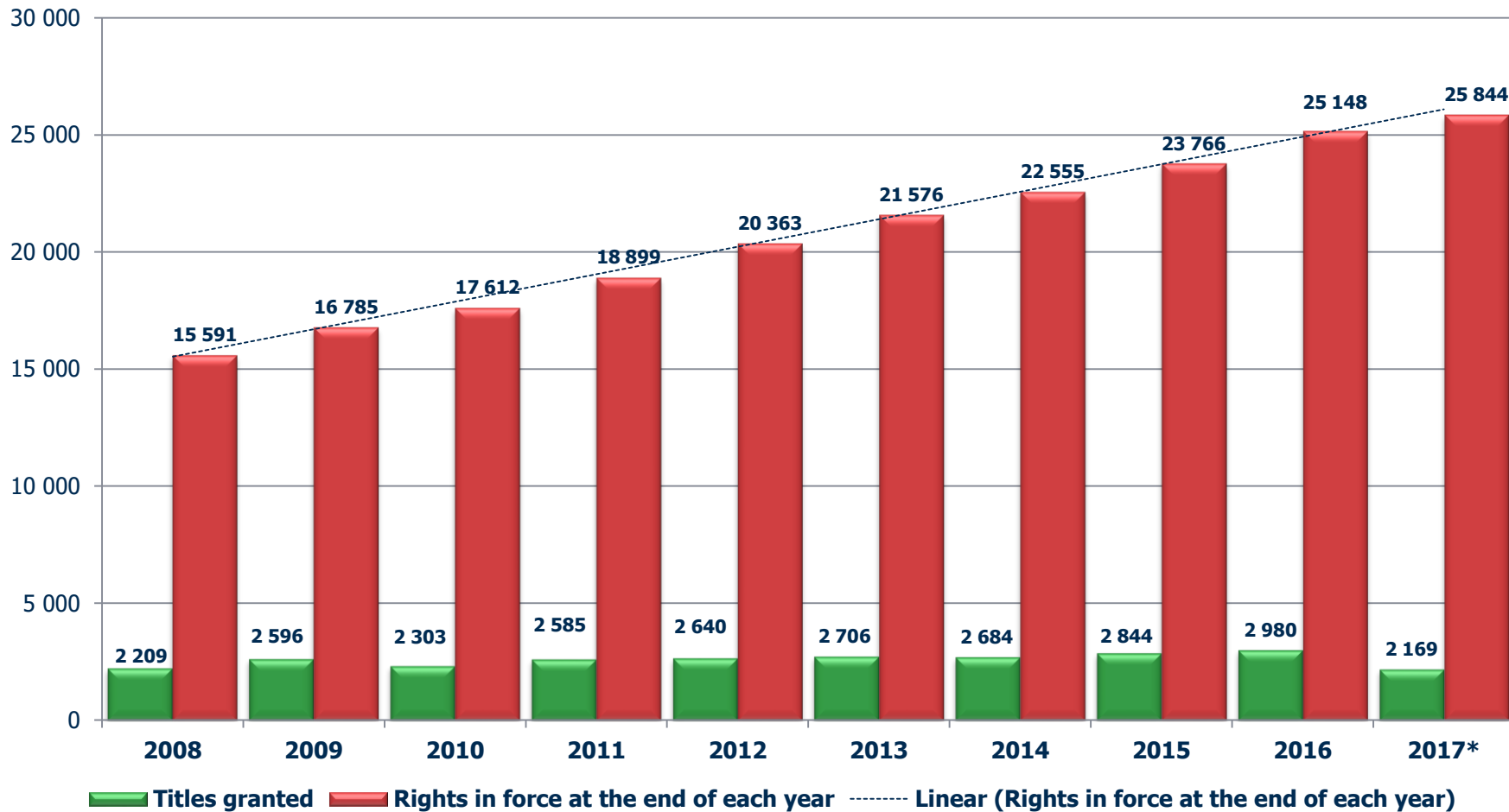
Technical examinations and DUS reports' Take-overs according to Crop Sector (% in 2015 and 2016*)



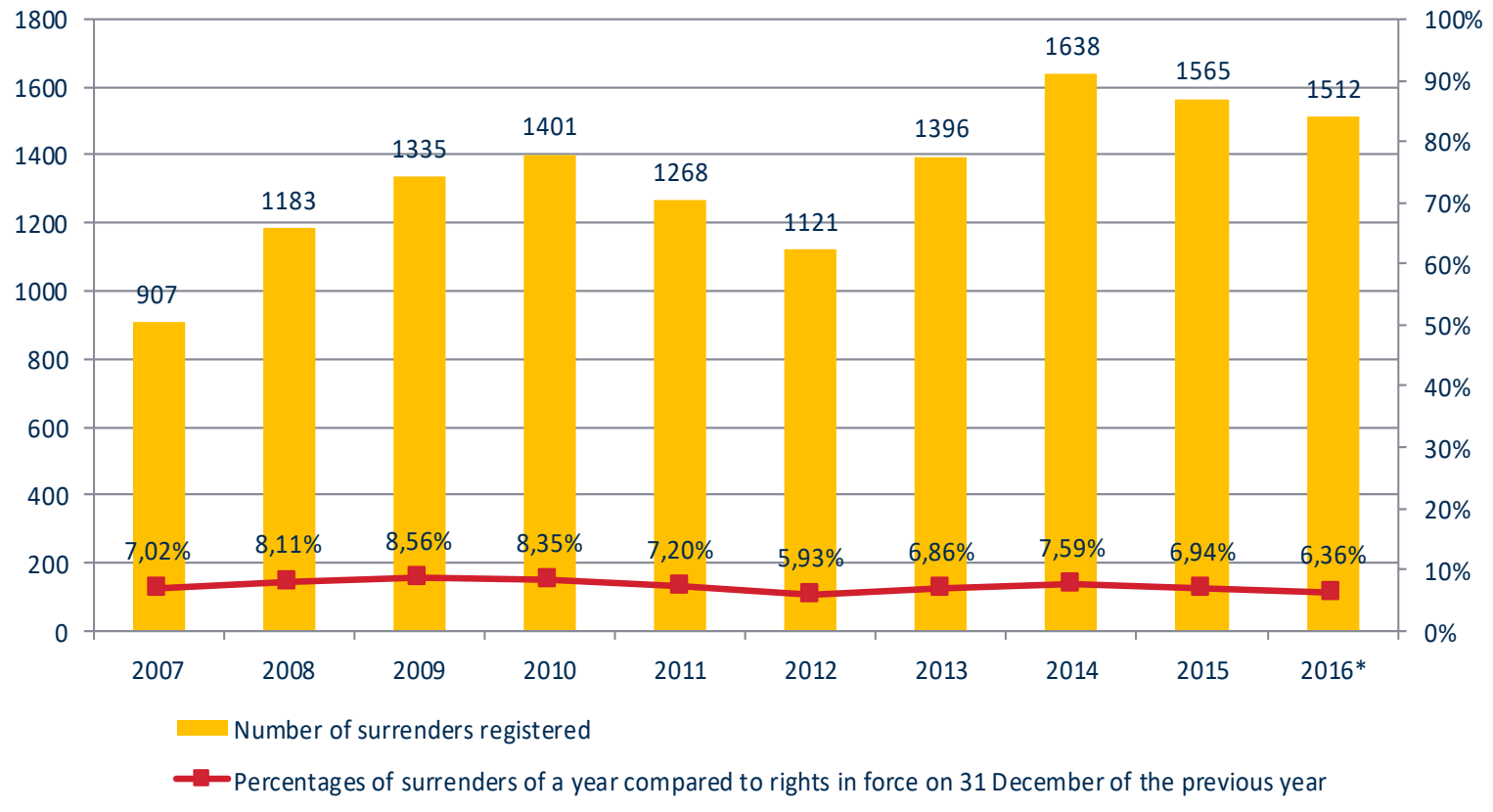
NB: (*) Situation at 31/12/2016



Evolution of varieties protected under the Community system from 01/01/2008 to 30/08/2017*



Evolution of annual number of surrenders of Community Plant Variety Rights from 01/01/2007 to 31/12/2016

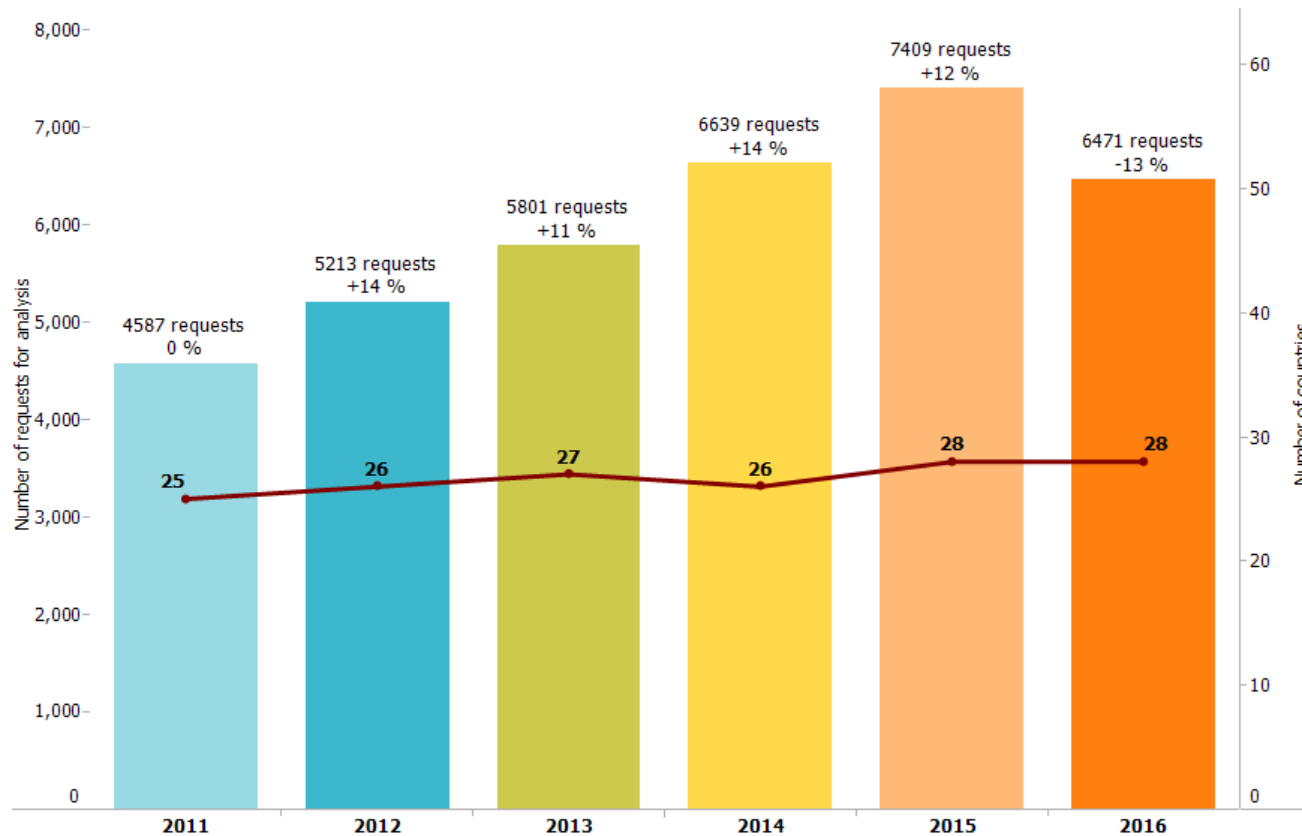


NB: (*) Comparison with 2015: -3.4%



Cooperation of member states and CPVO in the testing of variety denominations

Evolution of annual number of requests for analysis and number of participating countries



8. Overview of the CPVR system

- The system functions well overall and the stakeholders are happy with it
- More efforts need to be done at the level of enforcement of rights by national Courts
- Need for better information on potential overlap between PVR and patents
- Farm Saved Seeds rules could be improved so as to ensure that holders acquire the necessary information on the use of FSS



9. Final remarks

- Efficiencies in the application procedure for applicants through time and costs' economies
- Less administration for national authorities
- Close co-operation on a technical level
 - Technical work is harmonised
 - Denominations/TMs
 - IT tools (Variety Finder)
- Challenges in enforcement





Thank you for your attention

