

Benefits of a common regional Plant Variety protection system

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Philippines
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OUTLINE

- 1. The European Union Plant Variety System
- 2. The CPVO
- 3. Application Procedure
- 4. Scope of the Plant Variety Rights
- 5. Enforcement
- 6. Why choosing a regional system?
- 7. Final remarks



1. The European Union Plant Variety System

- [●] 1. The system
- [●] 2. Object of CPVR
- § 3. Legal basis





The system

 Sui generis system for the industrial property protection of plant varieties



 The Industrial property rights granted under this tailor-made system are valid throughout the territory of the 28 Member States of the European Union

The system

- This system was established by an EU Regulation in 1994, which is modelled on, and intended to comply with the International Convention for the Protection of New Varieties of Plants of 1991 (1991 UPOV Act)*
- In fact, the EU became party to UPOV as inter-governmental organization 11 years after the entry into force of the EU Regulation, in June 2005
 - * The UPOV Convention was originally adopted in Paris in 1961







The system

The CPVRsystem coexists with the national systems Applicant's choice:
National* OR
EU route (Art. 3 BR)



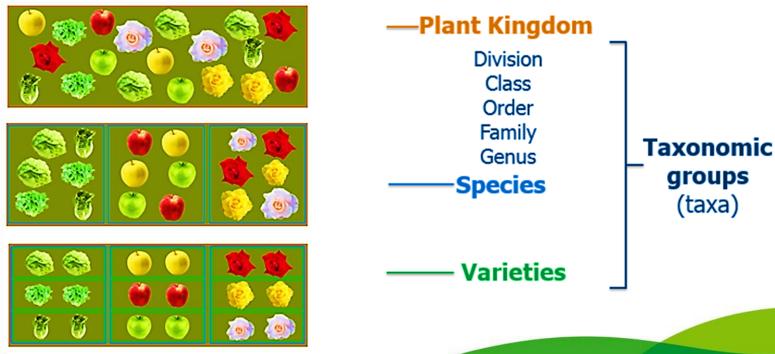


* 24 EU Member States are members to UPOV and have their own Plant Variety Rights' system (all EU MS with the exception of Cyprus, Greece, Malta and Luxembourg)



Object of CPVR

- Varieties of all botanical genera and species may be protected, including, inter alia, hybrids between genera or species [Art. 5(1) BR].
- What is a variety? 'A plant grouping within a single botanical taxon of the lowest known rank' [Art. 5(2) BR]





Legal Basis

Basic Regulation (BR):

Council Regulation (EC) No 2100/94 on Community plant variety rights



Implementing Regulations (IRS): 3 Commission Regulations

Regulation No. 874/2009

Proceedingsbefore the CPVO

Regulation No. 1238/95

• Fees payable to the CPVO

Regulation No. 1768/95

Agricultural exemption

Outline

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2. The CPVO

- § 3. Application procedure
- § 4. Scope
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2. The CPVO

- [●] 1. The Office
- [●] 2. Mission
- § 3. Institutional framework
- § 4. Organizational chart



The Office

The EU Plant Variety system is run by the Community Plant Variety Office (CPVO):

- Official Agency of the EU
- Based in Angers (France)
- Operational since 1995
- Independent legal status
- Fully self-financed
- President and Vice-President (appointed by the Council)



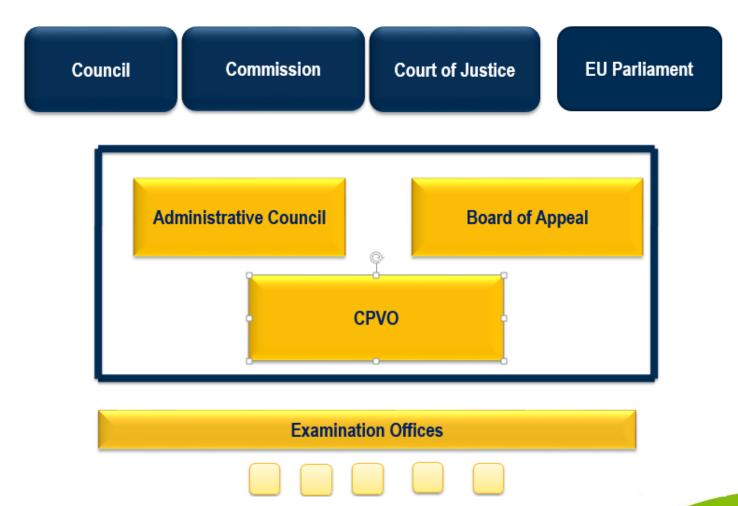
Mission

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



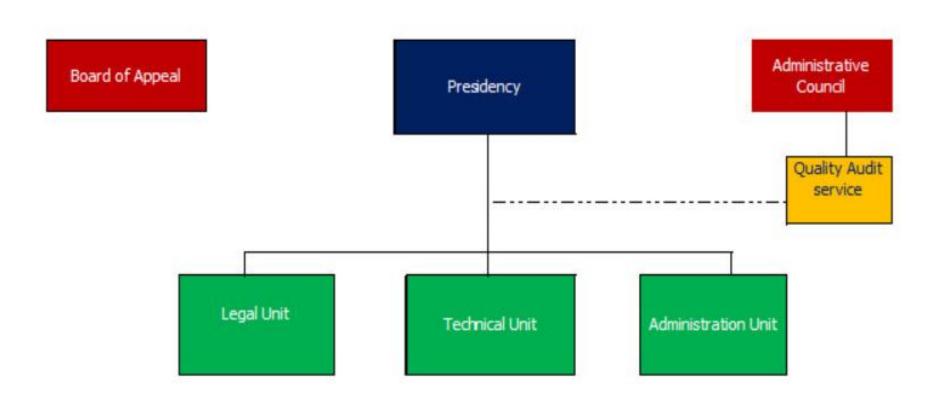


Institutional framework



2. The CPVO

Organizational chart



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- § 1. The European Union Plant Variety System
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- § 1. introduction
- 2. Filing of an application
- § 3. Grant requirements:
- § 4. Examination



Introduction

One Application

One Procedure One Technical Examination

One Decision

- CPVRS shall have uniform effect within the EU territory* (including: grant, transferral, termination) (Art. 2 BR)
 - *28 EU MS: access to a market of **520 million citizens**!
- The procedure concludes with the decision of grant or refusal (Art. 61-62 BR)
- Duration of the CPVR** (Art. 19 BR):
 - 25 years
 - 30 years > for vines, trees and potato varieties
 - ** The CPVR system also foresees a provisional protection period covering the time from publication of the application until the CPVR grant (Art. 95 BR)

Filing of an application

- The system is open to any natural or legal person (Art. 12 BR)
 - Applicants who are not domiciled or do not have a seat or establishment within the EU territory must appoint a procedural representative (Art. 82 BR)
 - If the applicant is not the breeder of the variety, a deed of assignment must be enclosed attesting to the transfer of rights (Art. 11 BR)
- The application shall be filed at the CPVO directly; OR at one of the sub-offices or national agencies*, established or entrusted [Art. 49(1) BR]
 - *subject to the applicant forwarding an information on this filing to the CPVO within 2 weeks
- The application date is the date on which a valid application was received (Art. 51 BR)





Grant requirements

The Plant Variety must comply with the following requirements

THE DUS CRITERIA

- D Distinctness
- U Uniformity
- S Stability

NOVELTY

VARIETY DENOMINATION







Grant requirements: DUS criteria



The candidate variety should be:

Distinct from already existing varieties of common knowledge

(Art. 7 BR)



Uniform amongst its individual plants (Art. 8 BR)



Stable in its characteristics, that should remain unchanged after repeated propagation

(Art. 9 BR)



Grant requirements: Novelty

The candidate variety must **not** have been sold or otherwise disposed of to others by or with the breeder's consent within the European Union for purposes of exploitation of the variety [Art. 10(1) BR]:

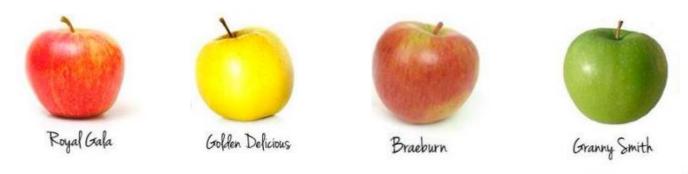
- (a) earlier than one year before the application date, within the <u>EU</u>
- (b) earlier than four years or, in the case of trees or of vines, earlier than six years before the application date, outside the EU.





Grant requirements: Variety Denomination

- The applicant must propose a denomination for the variety which shall be approved by the Office if suitable [Art. 50(3), Art. 63(1) BR].
- 'Not-suitable denominations' include, amongst others:
 misleading denominations and conflicts with identical (or *similar*)
 denominations or third parties' prior rights [Art. 63(3-5) BR].





Examinations carried out by the CPVO:

- Formal examination (Art. 53 BR)
- **Substantive examination** (Art. 54 BR): Entitlement, Novelty, Variety Denomination

Examinations carried out by Examination Offices:

• Technical examination (Art. 55 BR): DUS





Examination

- The CPVO has **not** created its own technical infrastructure
- Technical examinations are carried out by the Examination Offices
 (EOS) entrusted by the Administrative Council.
- The attribution of varieties for DUS testing to EOS is done according to

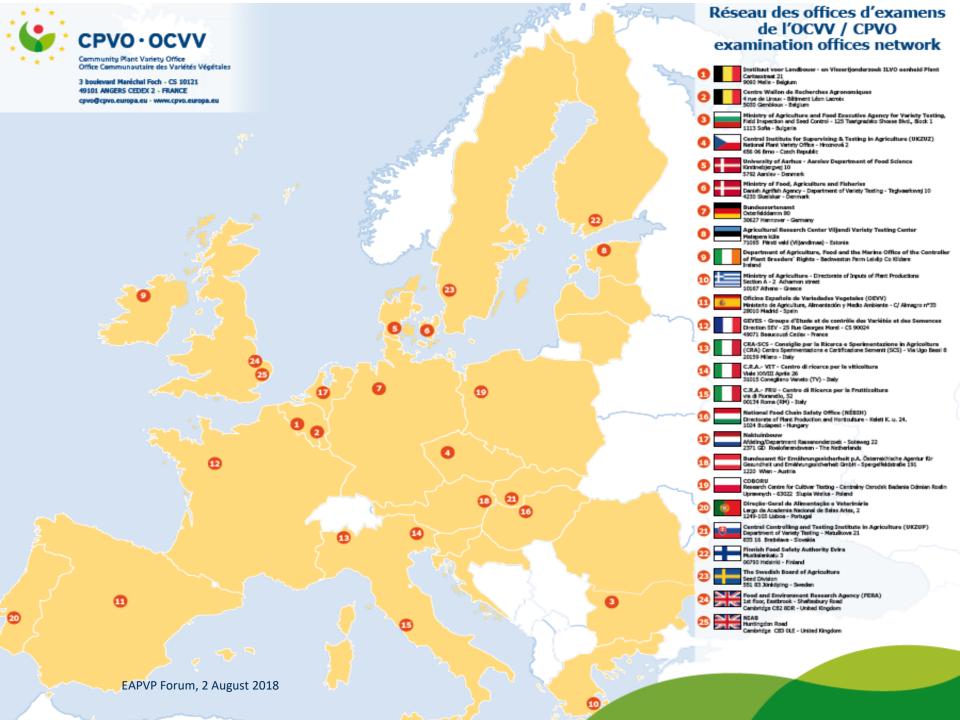
defined criteria:

Wish of the breeder (usual criteria)

- Origin of the applicant
- Geographical origin of the variety
- Experience of the EO







Examination

- If the examination findings are sufficient
- and there are no impediments,
- the CPVO shall grant the Community plant variety right (Art. 62 BR)

(including an official description of the variety)



CERTIFICAT ATTESTANT L'OCTROI D'UNE PROTECTION COMMUNAUTAIRE DES OBTENTIONS VÉGÉTALES

PAR LA PRÉSENTE, L'OFFICE COMMUNAUTAIRE DES VARIÉTÉS VÉGÉTALES RECONNAÎT L'OCTROI D'UNE PROTECTION COMMUNAUTAIRE DES OBTENTIONS VÉGÉTALES PAR SA DÉCISION N° EU 24514 DU 06 AVRIL 2009, ARRÊTÉE CONFORMÉMENT AU RÉGLEMENT (CE) 1/22009/9 DU CONDEIL, INSTITUANT UN RÉGIME DE PROTECTION COMMUNAUTAIRE DES OBTENTIONS VÉGÉTALES, AVEC EFFET À LA DATE DE LA DÉCISION PRÉCITÉE, EN FAVEUR DE

PEPINIERES JEAN REY S.A. LA PASCALETTE - R.D. 559 FR - 83250 LA LONDE LES MAURES LES SERRES DU LODEVOIS S.A.R.L.
ROUTE DE MONTPELLIER
FR - 34700 LODEVE

EN TANT QUE TITULAIRES DE LA PRÉSENTE PROTECTION, POUR LA VARIÉTÉ DE *Mandevilla sanderi* (*Hemsl.*) *Woodson*, PORTANT LA DÉNOMINATION ATTRIBUÉE SUIVANTE :

LUTEVA PINK AGLAË

PENDANT UNE DURÉE EXPIRANT LE 31 DÉCEMBRE 2034 AU PLUS TARD.

LA PROTECTION COMMUNITAIRE DES OBTENTIONS VÉGÉTALES A UN EFFET UNIFORME SUR LE TERRITOIRE DE LA COMMUNIAUTÉ EUROPÉENNE ET NE PEUT ÉTRE TRANSFÉRÉE POUR CE TERRITOIRE QUE SUR UNE TELLE BASE UNIFORME. LES TITULAIRES L'EXEKCIN ET EN BÉNÉFICIENT CONFORMÉMENT AU RÉCLEMENT N° 20099 DU CONSEIL INSTITULANT UN RÉGIME DE PROTECTION COMMUNIAUTAIRE DES ORTENTIONS VÉGÉTALES.

LA PRÉSENTE RECONNAISSANCE N'AFFECTE PAS L'OBLIGATION INCOMBANT AUX TITULAIRES D'ACQUITTER LES TAXES DUES POUR CHAQUE ANNÉE DE DURÉE DE LA PROTECTION COMMUNAUTAIRE ES OSTENTIONS YÉCÉTALES.







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- § 1. The European Union Plant Variety System
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4. Scope of the right

- § 5. Enforcement
- § 6. Why choosing a regional system?
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1. Scope of the right

- § 1. Rights of the holder
- § 2. Exceptions



4. Scope of the right

Rights of the holder

- The authorization of the holder* is required in respect of the following acts [Art. 13(2) BR]:
 - a) Production or reproduction
 - b) Conditioning for the purpose of propagation
 - c) Offering for sale, selling or other marketing
 - d) Exporting from/Importing to the European Union
 - e) Stocking for any of the above mentioned purposes
- * The authorization may be subject to conditions/limitations
- The material scope of CPVRS includes Variety constituents and Harvested material







- The main exceptions to CPVRS restricting the breeder's scope of rights are:
 - The limitations of the effects of CPVRS as listed in Art. 15 BR:
 - Acts done privately for non-commercial purposes
 - Acts done for experimental purposes
 - Acts done for the purpose of breeding, or discovering and developing new varieties (the breeder's exemption)
 - the agricultural exemption (Farm-saved seed) (Art. 14 BR):
 - ➤ Covering varieties belonging to a limited list of 21 agricultural crops in well-defined circumstances and classified into four categories:
 - a) Fodder plants b) Cereals c) Potatoes d) Oil and fibre plants



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Enforcement

- The CPVR holders can enforce their rights on the grounds of infringing acts in relation to the variety or to the variety denomination
- At the moment there are no specialized courts on PVRs
- The role of the CPVO is limited, an active role could jeopardize its impartiality
- The national courts are competent to hear infringement cases
- The applicable national court is chosen on the basis of (Art. 101 BR):
 - Domicile of the defendant
 - Domicile of the plaintiff
 - Location of the CPVO (France)
 - Where the damaged occurred





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6. Why choosing a regional system?

- § 1. Logistic reasons
- § 2. Economic reasons
- § 2. Legal reasons

Logistic reasons: clients

- 1 application for several countries
- 1 fee payment for several countries



- Easier prosecution (e.g. online filing, no need to claim priority in every country)
- Easier research (e.g. same denomination)





Logistic reasons: administration

- Efficient centralized decision taking process
- Less administrative burden for national authorities
- Easier coordination among national authorities
- Single interlocutor for stakeholders (including breedres associations)
- Centralized training
- Harmonization of practices



6. Why choosing a regional system?

Economic reasons: clients

- Reasonable application and annual fees compared to the territorial extent of protection
- Management of the right costs (e.g. cancellation proceedings fees, appeals fees)
- Legal and professional representation costs
- Number of employees are to be involved in prosecution activities



Economic reasons: administration

- A better coordination and harmonized practices mean reduction of costs for national authorities
- Development of common tools (e.g. database and other IT tools)
- Access to information
- Training costs





Legal reasons

- Legal certainty
- Defendable and predictable decisions



- Single decision center on the validity of the right
- Cross-border litigation



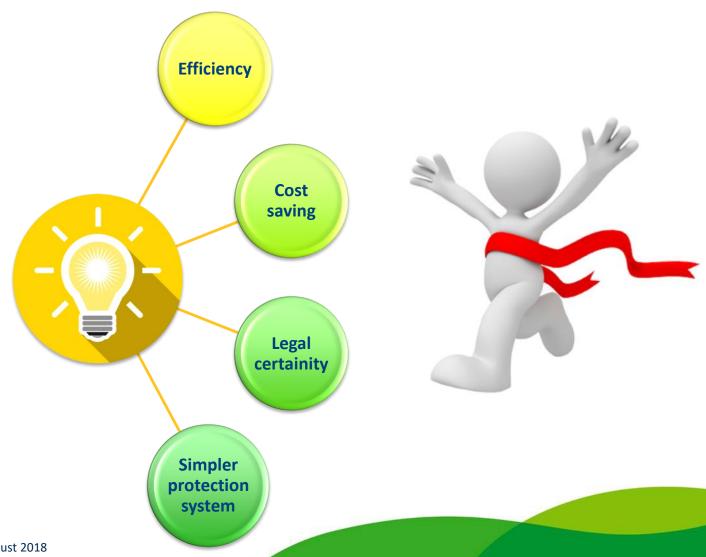
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Final Remarks







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