

The CPVO and the EU-wide system of plant variety protection

By Martin Ekvad

ABSTRACT

The President of the Community Plant Variety Office (CPVO), Martin Ekvad, provides a short presentation of the background to the legal framework of the EU PVR system, the role of the CPVO and the future challenges and possibilities for the system as such.

THE CPVO AND THE EU-WIDE SYSTEM OF PLANT VARIETY PROTECTION

The Community Plant Variety Office (CPVO) turned 25 last year and one thing is sure: the creation of the EU plant variety right (PVR) system was a good decision for Europe. One application, one procedure, one technical examination and one decision for an EU-wide PVR valid in all EU Member States.

Over the past 25 years, the CPVO processed 72 000 applications and granted over 56 500 titles. Today, 29 000 new plant varieties are being protected by the CPVO. On average, more than 3 000 applications are processed each year and, about 20% of all applications come from applicants based in countries outside the European Union. In practice, the high number of new varieties means that EU farmers and producers get a better choice for their production.

HARMONIZATION AND COLLABORATION

As for every European success story, the advantages

brought by the EU PVR system rely on harmonization and collaboration.

The CPVO has received applications for varieties belonging to more than 2 200 botanical taxa. More than 200 technical protocols have been drafted in cooperation with national experts and adopted by CPVO's Administrative Council. The protocols are mandatory for EU PVR, and for both national PVRs and listing purposes in EU Member States. This led to significant harmonization in variety testing and, as a consequence, it has increased transparency and improved legal certainty.

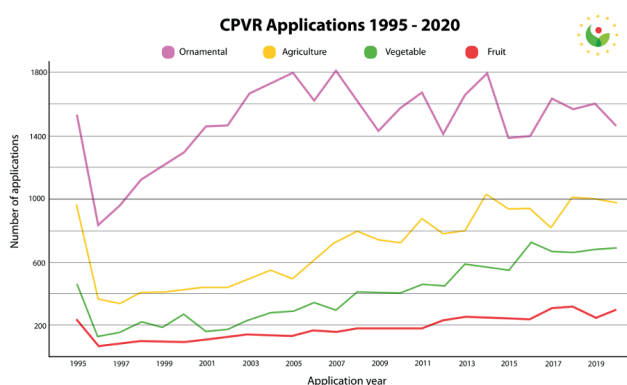
Digitalization has improved the quality of processing applications both for applicants and CPVO staff. Since 2010, applicants can file their applications online using CPVO's web platform called MyPVR. Over 27 000 online applications have been received and 98% of all applications are filed online today. In addition, MyPVR is now connected to the UPOV PRISMA system.

A UPOV-1991 SYSTEM AND THE DEVELOPMENT IN HORTICULTURE

The model of the UPOV-91 Act is very positive as it guarantees a fair return on investment to breeders, unleashing their innovative potential and encouraging investments in R&D for developing better performing varieties with less inputs and often with a better benefit-cost ratio. EU breeders can bring their new varieties to countries outside the EU that have signed the UPOV-91 Act, knowing that the level of protection in such jurisdictions complies with an adequate standard.

The high number of applications for horticultural varieties is a clear sign that a PVR system designed upon UPOV-91 is an important asset to the breeders' business model. In comparison to other crop sectors, ornamental breeders have made most use of the EU PVR system as applications for ornamental varieties represents nearly 54% of applications received since 1995. The number of applications in the fruit sector is increasing with a slow but steady pace.

Applications for ornamentals have been consistently high and in recent years the numbers have stabilized. There is probably a maximum number of new varieties that can exist in a competitive market and the number of applications cannot increase forever. In addition, experience shows that the ornamental sector is more sensitive to the overall market situation. Following the economic crisis and the austerity measures taken in 2008, the number





of applications decreased whilst the situation for other crop sectors remained more stable. During 2020 there was also a decrease in applications and this may be connected to the pandemic although it is still too early to say.

On the other hand, applications in the fruit sector continue to increase which is a sign that there is a demand for new and better performing fruit varieties from the EU and the global market.

It can be noted that there is fierce competition in the fruit sector and that there is a higher proportion of appeals and infringement procedures in that sector. In addition, there are particular challenges for testing fruits, especially apple mutants. Also, fruit breeders must ensure that the plant material they send for DUS (Distinctiveness, Uniformity, Stability) examination is virus-free, and breeders from third countries must be acquainted to the EU phytosanitary procedures before sending over plant material.

25 years of experience shows that cooperation with breeders' organisations, such as CIOPORA, has been instrumental and there is even more the CPVO would like to do to raise awareness about the strengths and challenges of the EU PVP system.

CHALLENGES AND OPPORTUNITIES OF THE FUTURE

Following a request by the CPVO Administrative Council, the Commission will this year propose that the term of protection for certain species, including flower bulbs, woody small fruits and woody ornamentals, will be prolonged from 25 to 30 years.

In the coming years, international outreach activities will intensify and the CPVO will establish an EU PVP Academy so that information on how plant variety rights are administered in the EU in accordance to UPOV-91 can become more accessible.

In a broader policy context, the CPVO follows closely all relevant policy initiatives of the European Commission, especially their new IP strategy released in November 2020 with a new focus on SMEs. We have also started analysing how the EU PVP system can contribute to more sustainable policies, and we are keen to have a good understanding of the market dynamics in our sector.

In this context, a sectorial study will be carried out by the European Observatory on Infringements of Intellectual Property Rights to assess the benefits of the EU PVP system on the EU economy, including at Member

States and regional's levels. It will also look at how the EU PVP system can leverage sustainability in agriculture and horticulture in the context of the EU Green Deal and the UN Sustainable Development Goals. The study should be published by the end of 2021.

Even more important to us, the European Commission has indicated its intention to reevaluate the legislation governing the EU PVP system in 2022. This may be the perfect opportunity to reflect on any possible shortcomings and to propose targeted adjustment with the aim to meet the innovation, digital and environment challenges of the 21st century.



Martin Ekvad

Martin Ekvad is President of the Community Plant Variety Office (CPVO) since 2011. Prior to his elevation to the position of President, he held the position of Head of the CPVO Legal Unit from 2003. From 1996 to 2003 Mr. Ekvad worked as a lawyer (Advokat, Member of the Swedish Bar Association) in the law firm Linklaters, in Brussels and in the law firm Magnusson Wahlin Advokatbyrå, in Stockholm.