



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

From:	Mr Vítor CALDEIRA, President of the European Court of Auditors
date of receipt:	5 November 2013
To:	Mr Linas LINKEVICIUS, President of the Council of the European Union
Subject:	Report on the annual accounts of the Community Plant Variety Office for the financial year 2012 together with the Office's replies

Delegations will find attached the European Court of Auditors' report on the annual accounts of the Community Plant Variety Office for the financial year 2012.

This report is accompanied by the Office's replies and will shortly be published in the *Official Journal of the European Union*.

Encl.: Report on the annual accounts of the Community Plant Variety Office for the financial year 2012 together with the Office's replies.¹

¹ In English only. The other languages of this report are available on the European Court of Auditors' website: <http://eca.europa.eu/>.

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА
TRIBUNAL DE CUENTAS EUROPEO
EVROPSKÝ ÚČETNÍ DVŮR
DEN EUROPÆISKE REVISIONSRET
EUROPÄISCHER RECHNUNGSHOF
EUROOPA KONTROLLIKODA
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



EUROPSKI REVIZORSKI SUD
CORTE DEI CONTI EUROPEA
EIROPAS REVĪZIJAS PALĀTA
EUROPOS AUDITO RŪMAI

EURÓPAI SZÁMVEVŐSZÉK
IL-QORTI EWROPEA TAL-AWDITURI
EUROPESE REKENKAMER
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EURÓPSKY DVOR AUDÍTOROV
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EUROPEISKA REVISIONSRÄTTEN

Report on the annual accounts of
the Community Plant Variety Office
for the financial year 2012

together with the Office's replies

INTRODUCTION

1. The Community Plant Variety Office (hereinafter “the Office”, aka “CPVO”), which is located in Angers, was created by Council Regulation (EC) No 2100/94¹. Its main task is to register and examine applications for the grant of Union industrial property rights for plant varieties and to ensure that the necessary technical examinations are carried out by the competent offices in the Member States².

INFORMATION IN SUPPORT OF THE STATEMENT OF ASSURANCE

2. The audit approach taken by the Court comprises analytical audit procedures, direct testing of transactions and an assessment of key controls of the Office’s supervisory and control systems. This is supplemented by evidence provided by the work of other auditors (where relevant) and an analysis of management representations.

STATEMENT OF ASSURANCE

3. Pursuant to the provisions of Article 287 of the Treaty on the Functioning of the European Union (TFEU), the Court has audited:

(a) the annual accounts of the Office, which comprise the financial statements³ and the reports on the implementation of the budget⁴ for the financial year ended 31 December 2012, and

¹ OJ L 227, 1.9.1994, p. 1.

² ***Annex II*** summarises the Office's competences and activities. It is presented for information purposes.

³ These include the balance sheet and the economic outturn account, the cash flow table, the statement of changes in net assets and a summary of the significant accounting policies and other explanatory notes.

⁴ These comprise the budgetary outturn account and the annex to the budgetary outturn account.

- (b) the legality and regularity of the transactions underlying those accounts.

The management's responsibility

4. In accordance with Articles 33 and 43 of Commission Regulation (EC, Euratom) No 2343/2002⁵, the management is responsible for the preparation and fair presentation of the annual accounts of the Office and the legality and regularity of the underlying transactions:

- (a) The management's responsibilities in respect of the Office's annual accounts include designing, implementing and maintaining an internal control system relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies on the basis of the accounting rules adopted by the Commission's accounting officer⁶; making accounting estimates that are reasonable in the circumstances. The Director approves the annual accounts of the Office after its accounting officer has prepared them on the basis of all available information and established a note to accompany the accounts in which he declares, *inter alia*, that he has reasonable assurance that they present a true and fair view of the financial position of the Office in all material respects.
- (b) The management's responsibilities in respect of the legality and regularity of the underlying transactions and compliance with the principle of sound financial management consist of designing, implementing and maintaining an effective and efficient internal control system comprising adequate

⁵ OJ L 357, 31.12.2002, p. 72.

⁶ The accounting rules adopted by the Commission's accounting officer are derived from the International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants or, where relevant, the International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board.

supervision and appropriate measures to prevent irregularities and fraud and, if necessary, legal proceedings to recover funds wrongly paid or used.

The auditor's responsibility

5. The Court's responsibility is, on the basis of its audit, to provide the European Parliament and the Council⁷ with a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions. The Court conducts its audit in accordance with the IFAC International Standards on Auditing and Codes of Ethics and the INTOSAI International Standards of Supreme Audit Institutions. These standards require the Court to plan and perform the audit to obtain reasonable assurance as to whether the annual accounts of the Office are free from material misstatement and the transactions underlying them are legal and regular.

6. The audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the accounts and the legality and regularity of the underlying transactions. The procedures selected depend on the auditor's judgement, which is based on an assessment of the risks of material misstatement of the accounts and material non-compliance by the underlying transactions with the requirements in the legal framework of the European Union, whether due to fraud or error. In assessing these risks, the auditor considers any internal controls relevant to the preparation and fair presentation of the accounts, as well as the supervisory and control systems that are implemented to ensure the legality and regularity of underlying transactions, and designs audit procedures that are appropriate in the circumstances. The audit also entails evaluating the appropriateness of accounting policies, the

⁷ Article 185(2) of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

reasonableness of accounting estimates and the overall presentation of the accounts.

7. The Court considers that the audit evidence obtained is sufficient and appropriate to provide a basis for its statement of assurance.

Opinion on the reliability of the accounts

8. In the Court's opinion, the Office's annual accounts present fairly, in all material respects, its financial position as at 31 December 2012 and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation and the accounting rules adopted by the Commission's accounting officer.

Opinion on the legality and regularity of the transactions underlying the accounts

9. In the Court's opinion, the transactions underlying the annual accounts for the year ended 31 December 2012 are legal and regular in all material respects.

10. The comments which follow do not call the Court's opinions into question.

COMMENTS ON INTERNAL CONTROLS

11. The CPVO carried out a physical verification of its assets in December 2012. However, no physical verification report was produced. It is therefore not possible to verify the accuracy of the corresponding accounting records.

OTHER COMMENTS

12. Recruitment procedures showed significant shortcomings affecting transparency and equal treatment of candidates: the weightings and thresholds set were not always applied, no consistent evaluation method was used throughout the various recruitment procedures and the possibility of appeal was not mentioned in the vacancy notice.

FOLLOW-UP OF PREVIOUS YEAR'S COMMENTS

13. An overview of the corrective actions taken in response to the Court's previous year's comments is provided in **Annex I**.

This Report was adopted by Chamber IV, headed by Dr Louis GALEA, Member of the Court of Auditors, in Luxembourg at its meeting of 15 July 2013.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

Follow-up of previous year's comments

Year	Court's comment	Status of corrective action (Completed / Ongoing / Outstanding / N/A)
2011	The high level of carry-overs and cancellations is at odds with the budgetary principle of annuality.	Completed
2011	Weaknesses were noted as regards the recording of four legal commitments in advance of budget commitments (18 791 euro). Purchase orders are frequently dated prior to the approval of the budget commitments.	Completed
2011	The Office did not adopt the Implementing Rules of the Staff Regulations as regards the engagement and use of contract staff and the temporary occupation of management posts.	Ongoing

Community Plant Variety Office (Angers)**Competences and Activities**

<p>Areas of Union competence deriving from the Treaty</p> <p><i>(Extract of Article 36 of the Treaty on the Functioning of the European Union)</i></p>	<p>Free movements of goods</p> <p>Such prohibitions or restrictions [the protection of industrial and commercial property] shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.</p>
<p>Competences of the Office</p> <p><i>(Council Regulation (EC) No 2100/94 and Strategic Plan 2010-2015)</i></p>	<p>Objectives</p> <p>To apply the system of European Union plant variety rights as the sole and exclusive form of European Union industrial property rights for plant varieties.</p> <p>To foster innovation in plant varieties by high quality processing of applications for Community plant variety rights at affordable costs while providing policy guidance and assistance in the exercise of these rights for the benefit of stakeholders.</p> <p>Tasks</p> <ul style="list-style-type: none"> – to decide whether to refuse or grant applications for Union plant variety rights, – to decide on objections, – to decide on appeals, – to decide on the revocation or cancellation of a European Union plant variety right.
<p>Governance</p>	<p>The President</p> <p>Directs the Office. He is appointed by the Council from a list of candidates proposed by the Commission after obtaining the opinion of the Administrative Council.</p> <p>The Administrative Council</p> <p>Oversees the Office's work programme and draws up rules governing the Office's working methods. It is composed of one representative of each Member State and one representative of the Commission, plus their alternates.</p> <p>Decisions regarding the grant of Community plant variety rights are adopted by Committees composed of three members of staff of the Office and by the Board of Appeal in appeal proceedings.</p> <p>Control of the legality of the Office's acts</p> <p>Review by the Commission of the legality of the acts of the Office's President in respect of which European Union law does not provide for any control on legality by another body and of the acts of the Administrative Council relating to the Office's budget.</p> <p>External audit</p> <p>European Court of Auditors.</p> <p>Discharge authority</p> <p>Administrative Council.</p>
<p>Resources made available to the Office in 2012 (2011)</p>	<p>Final Budget</p> <p>14,3 (14,4) million euro</p> <p>Staff as at 31 December 2012</p> <p>Number of posts in the establishment plan: 46 (46)</p> <p>Posts occupied: 45 (45)</p> <p>Total staff: 45 (45), undertaking the following tasks:</p>

	<ul style="list-style-type: none"> - operational: 17,5 (17,5) - administrative: 21,5 (21,5) - mixed: 6 (6)
Products and services 2012 (2011)	<p>Applications received: 2 868 (3 184)</p> <p>Rights granted: 2 640 (2 584)</p> <p>European Union rights in force at 31 December 2012: 20 362 (18 907)</p> <p>International Cooperation on Plant Variety Protection</p> <ul style="list-style-type: none"> - Contribution to enforcement of plant variety rights. - Contacts and cooperation with the following organisations: European Commission (DG SANCO, Standing Committees), UPOV¹, CIOPORA², ESA³, OAPI⁴, OECD⁵, MAFF⁶ (Japan).

¹ Union pour la Protection des Obtentions végétales.

² International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants.

³ European Seed Association.

⁴ Organisation africaine de la Propriété intellectuelle.

⁵ Organisation for Economic Co-operation and Development.

⁶ Ministry of Agriculture, Food & Fisheries (JP).

Source: Information supplied by the Office.