



ESA NEWSLETTER

March 2010

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ESA Meetings (selected)

- **29.03.2010**
WGPH
- **30.03.2010**
SPO WG
Meeting
- **08.-09.04.2010**
STAT QUAS
Steering Group
and STAT
Meeting
- **12.-13.04.2010**
SCP Meeting
Cambridge (UK)
- **20.-21.04.2010**
SOF Meeting
Boissay (FR)
- **21.04.2010**
WGBT Meeting
- **22.04.2010**
TF FSS Meeting

Dear Members,

At the meeting of the ESA Board mid March, one of our discussions centred around the -quite general- question of communication of seed industry positions towards decision makers, interested third parties and, last but not least, ESA's members.

While the Board concluded that the issue clearly merits a more in-depth debate and charged the SG to prepare respective discussion papers and proposals for the next Board meeting in September, it also became obvious that there was general agreement that we need to do more and better as an industry. We are strong, and in some instances maybe even unrivalled, as regards our technical expertise and experience on many practical issues related to plant breeding and seed production. On these, seed industry representatives often have the possibility to lead discussions and to suggest concrete improvements to rules or regulations as well as to common practices in the market place. But we do less well when it comes to responding to general policy debates or societal issues. Many, if not most of these debates are based on misperceptions of the role of agriculture and of related industries, on lack of knowledge and limited information. Today, more than half of Europe's population lives in cities. And what is more, this majority has already been raised in cities and has neither personal nor professional relations nor experience with a farming environment. It is thus only natural that this (growing) majority must develop its opinions, ideas and concrete policy demands on the base of the information provided by third parties. We have to recognize that groups such as Greenpeace, Friends of the Earth or Animal Angels, to name but a few, target this audience professionally, with dedicated staff, resources and using all available modern media and communication tools such as blogs, live streams and internet communities. The concepts are known – and have proven successful as was also demonstrated on a much bigger scale with the Obama campaign for the US Presidency. Clearly, the (European) seed industry must not and can not copy/paste such concepts and expect to see immediate and lasting change to societal perceptions and expectations. But what we can –and must!- do is to analyse which ones of these concepts and tools can help us to better address the political, administrative and societal framework in which we operate. This includes the communication towards our proper clientele in the agri-food chain like farmers and growers, crop protection industry, or agricultural trade. But we must reach out beyond that to assure that in the end, we do find the necessary support of political and societal majorities for our well-founded arguments and proposals.

With Better Regulation for seed marketing, the revision of plant health rules, new concepts for the use of GM and other biotechnologies and the upcoming debate on the role and options for intellectual property protection for plants and seeds, our whole legal framework either is already or will be up for debate. So far, this debate has mainly been a technical, maybe even technocratic one. But we will soon enter the phase where it will foremost become a political and societal debate, a debate about needs and values and expectations of citizens and their elected representatives, both on national and EU level. Addressing and responding to these needs, values and expectations will be one of our big challenges for the coming years and it is surely the right time for us to evaluate what we have done and how we have done it in the past - and what we think is and will be required for the future.

With best regards, yours

Garlich v. Essen, Secretary General

UPOV – 61st session of the Administrative and Legal Affairs Committee

The UPOV Administrative and Legal Affairs Committee (CAJ) held its 61st session on March 25, 2010 in Geneva. The main matters of discussion were as follows:

Information materials: The CAJ approved two explanatory notes, one on the ‘Definition of variety’ and another one on ‘Conditions and Limitations concerning the Breeders’ authorization in respect of propagating material’ and agreed to propose these notes to the UPOV Council for adoption in its next session in October. In addition, the CAJ entrusted the Advisory Group (CAJ-AG) to consider the objectives of the possible development of explanatory notes on the ‘Exhaustion of the breeder’s right’ as well as on the notion of ‘Own holding’.

The CAJ also considered the input received from UPOV members concerning a possible explanatory note on ‘Matters arising after the grant of a breeder’s right’ and entrusted the Office to prepare a consolidated document for discussion by the CAJ-AG which should consider whether such an explanatory document should cover nullity, cancellation, variety denomination and exhaustion – as so far decided – or should encompass also other issues as suggested by some UPOV members.

Electronic application systems: It was noted that the proposal concerning the ‘Standard reference by authorities to the UPOV model application form and TQ’ was already agreed upon by the CAJ in October 2009 and that the standard references for posting on the freely accessible part of the UPOV website will be proposed for adoption by the UPOV Council at its next session in October 2010. As regards the proposal on ‘Use of information provided in an electronic version of the UPOV model application form and TQ’ no consensus was reached. In that respect the delegation of the EU expressed that despite the initial support it brought to this proposal, in the light of the recent developments as regards the launching of the CPVO electronic filing system, it could not continue supporting this proposal any more. The president of the CPVO clarified that as a first step the system developed by the CPVO in-house will be made available for EU Member States and mentioned that once robust cooperation in the EU is achieved consideration can be given to making the system also available to UPOV members.

Molecular techniques: Under this agenda point the CAJ looked at document ‘Guidelines for DNA-profiling: molecular marker selection and database construction’ and agreed to propose it for adoption by the UPOV Council at its next session. The CAJ also considered document ‘Possible use of biochemical and molecular markers in the examination of DUS’ together with the conclusions of the Technical Committee (TC) and agreed that further work on the document is necessary whereby a revised draft will be considered by the BMT and technical working parties during the course of 2010 and consolidated draft by the TC at its next session in 2011.

Exchangeable software: In addition to the agreement on the UPOV proposal on exchangeable software, the delegation of the EU expressed its willingness to offer access to the CPVO variety denomination database including the ‘variety denomination similarity tool’.

The next session of the CAJ will take place in October 2010. (SzCs)

ESA Meetings (continued)

- **22.-23.04.2010**
ESA IP
Conference
(Sheraton,
Brussels)
- **27.04.2010**
CRLA
Conference Call
- **28.04.2010**
WGBR
Meeting
- **29.04.2010**
WGPH
Meeting
- **03.05.2010**
CIPR
Meeting



External meetings

(selected)

- **31.03.2010**
Plants for the Future Meeting
Brussels (BE)
- **13.-14.04.2010**
EFSA's stakeholder platform meeting
Brussels (BE)
- **15.04.2010**
CPVO IP enforcement seminar
Athens (GL)
- **15.04.2010**
COM WG of the Advisory Group on the Food Chain, Animal and Plant Health
Brussels (BE)
- **19.04.2010**
COM DG AGRI Advisory Group Seed
Brussels (BE)

CIOPORA Plant Breeders' Rights conference

On March 3, 2010, Sz. Csörgő attended the conference on 'Protection of plant innovation in Spain and Coexistence of Patents and Plant Breeders' Rights' organised by CIOPORA. The first part of the conference focussed on plant variety protection in Spain and included presentations on the Spanish legislative framework for plant variety protection as well as an interesting overview of practical enforcement issues by Antonio Villaroel, Secretary General of GESLIVE. The afternoon session, dedicated to the issue of coexistence of patents and PBRs, was opened by a presentation of Mr. Edgar Krieger, Secretary General of CIOPORA. In his presentation he identified potential threats to innovation that can, on the one hand, come from a PBR protection if such protection is too weak and can, on the other hand, come from patent protection if such protection is not granted on proper quality standards and is associated with a situation of patent thickets. The issue of patent thickets was also touched upon by Ralf Badur, from Syngenta, who - in his presentation - drew a comparison between the breeding industry and the entertainment industry and presented potential solutions this latter industry is using to address patent thickets. An interesting presentation followed by Ashok Chakravarty from EPO who, besides explaining the basics of the European patent system, mainly focussed on the interpretation of exceptions from patentability, such as essentially biological processes or the patentability of hybrids. A description of the US patent and PVP systems by USPTO and a solution-seeking presentation from Professor Joseph Straus concluded the session whereby he advocated for the necessity of patent protection for the industry arguing that no other IP protection for new techniques is available and warned about the potential distortions of competition an IP system not providing for proper protection against free-riding can lead to. (SzCs)

Plant variety protection in Belgium – recent developments

ESA was informed that recently the Belgian government approved the pre-draft of a new law on plant breeders' rights which is based on the UPOV 1991 Convention. Some time ago ESA addressed a letter to Semzabel on this topic which turned to the Belgian Ministry of economic affairs urging that Belgium aligns its legislation to UPOV 1991. The efforts appear to have finally had some effects and positive developments in Belgian legislation are now under way. Following the opinion of the 'Conseil d'Etat' the text will be forwarded to the Parliament for consideration. (SzCs)

ESA IP Conference – 22-23 April, 2010

Final steps in the organisation of the ESA conference on 'IP protection in plants and seed' are under way. So far a good number of ESA members have shown interest which entails that the number of currently registered participants is already around 100. As already stated before this conference will be a very important meeting for the players of the European seed industry therefore – in case you have not yet done so - we encourage you to register! Registration is still open! (SzCs)



Developments in 'Better Regulation'

Very recently the European Commission has launched a second round of consultation of stakeholders within the framework of the 'Better Regulation' exercise concerning seed marketing legislation. In that new quantitative questionnaire, which needs to be relied by the end of April, the responsible evaluator consortium tries to gather further data on a number of aspects of the evaluation of the seed marketing legislation.

External meetings (continued)

- **05.05.2010**
CPVO Working
Group on FSS
- **05.05.2010**
EP ETP Event
Brussels (BE)

In principle ESA is not happy with the questionnaire which, at first sight, appears to be unclear, introduces new concepts without explanation and is poorly worded. Although the new questionnaire is not addressed to ESA but only to national bodies and/or companies, still, we will follow the approach taken before and the ESA working group Better Regulation will provide national associations and companies with some guidance on how to approach their answers and give them a draft answer to use. The ESA Secretariat has already launched a pre-consultation on the questionnaire and will compile the incoming input into a draft ESA answer which then will be circulated again. The answer will be finalized by the working group 'Better Regulation' as soon as possible and at its meeting on April 28 the latest. (SzCs)

UPOV - 46th session of the Technical Committee

The UPOV TC met in Geneva from March 22-24 and discussed matters arising from the technical Working Parties. It also discussed and approved TGP 8 regarding Trial design and Techniques used in DUS testing, TGP 14 regarding a Glossary of terms used in UPOV documents, TGP 7 regarding the Development of Test Guidelines and TGP 5 on Experience and Cooperation in DUS testing.

The TC also addressed changes in the classification system regarding variety denominations following a re-classification of the species Tomato into the family Solanaceae. In order to retain tomato rootstock species in the same variety denomination class as Tomato alternatives were suggested to be confirmed by the technical Working Party for Vegetable species.

The TC re-discussed the issue of variety description databases. Two years ago a proposal from ESA / ISF to set up such a database received little support. Following initiatives in the Netherlands and of the CPVO the issue was taken up again and the TC agreed to develop a common search tool under the UPOV-WIPO arrangement.

Finally the TC adopted 7 new test guidelines and revisions of 8 test guidelines in relation to asparagus, fruit species and ornamentals. (BS)



ISF Spring meetings, Zurich 10.-11.03.2010

The Secretaries General of national seed associations that are member of ISF met in Zurich on 10.03.2010; since 2009, the SGs of regional associations have also been invited to attend these spring meetings to foster the relations between the different levels of the seed industry organisations. Next to the regular update on developments in the different countries and regions and the preparations for the upcoming Congress and post-congress seminar in Calgary, discussions focussed on the issue of the review of the ISF view on Intellectual Property and specifically on the process of the further work and for the final presentation and adoption. While the aim to arrive at a unanimously agreed position for adoption at the Congress in Belfast was confirmed, it was also made clear that thorough discussion was of the essence and that it was considered more important to arrive at consensus than to meet an exact deadline. The SG informed ISF that ESA is currently going through a similar process but that in view of the start of the Commission's review of the Communities' IP legislation for plant varieties, ESA had to set itself a much stricter timeline and will present its new position on IPRs at the ESA Annual meeting in October 2010. (vE)

BDP Conference on Intellectual Property Rights, Bonn 11.-12.03.2010

The German Plant Breeders' Association BDP held an internal conference on the technological and legal challenges for the current and a possible future system for the protection of intellectual property rights on plants in Bonn on 11th and 12th March 2010. The Conference which was well attended by breeders, legal experts and representatives of companies with responsibility for the commercial activities saw a number of interesting and eye-opening presentations from external experts, BDP secretariat and some BDP members and produced a lively debate throughout the conference as well as during a joint dinner. In his concluding remarks, Ferdinand Schmitz, outgoing SG of BDP, once again underlined the strategic importance of IP rights for the breeding sector and reminded participants of the need to honour the principle societal contract establishing such exclusive rights in exchange for innovation. The Conference was also attended by the ESA Secretariat and provided some interesting aspects and ideas for the upcoming ESA Conference on IPRs for plants and seed at the end of April in Brussels (v. also below). (vE)

BDP says good bye to Ferdinand Schmitz

After more than a decade at the helm of the German Plant Breeders' Organization BDP as its Secretary General, Ferdinand Schmitz received an impressive farewell from friends, colleagues and members during a special afternoon session following the BDP's seminar on IPRs (v. article above). More than 300 representatives of the sector had gathered on the Godesburg, an ancient fortress on the outskirts of Bonn, which provided a spectacular setting for the event. Next to a number of speeches recalling and highlighting the career of Ferdinand Schmitz in BDP, participants enjoyed an engaged lecture from Norbert Röttgen, German Minister for the Environment and long term friend of Ferdinand Schmitz, who critically analysed the different aspects of sustainability in today's political and societal discussions and processes and called upon the plant



breeding sector to continue to actively engage in such discussions, also where no direct business impact would require such engagement.

On behalf of ESA and its Secretariat, the SG thanked Ferdinand Schmitz for the many years of loyal cooperation and his strong personal commitment and contribution to the success of ESA as an organisation. (vE)

ESA-COPA high level meeting on innovation, Brussels 18.03.2010

In view of the ongoing general political discussions on the future of the Common Agricultural Policy (CAP), the role of input industries and specifically plant breeding for innovation of and in EU farming and, most specifically, the current debate organised by the CPVO on the results and possible consequences of its Farm Saved Seed study (v. also last ESA Newsletter), the SGs of COPA-COGECA and ESA agreed to organize an informal policy exchange on the fostering of innovation in plant breeding between representatives of the COPA-COGECA Presidium and the ESA Board. Next to the Secretariat, from ESA President C. Amberger, Vice-President G. Backx, the Chair of the ESA Section Cereals M. Gohn and the current and former Chair of the ESA Working Group on Farm Saved Seed, N. Moore and F. Desprez participated. The meeting, which took place at the premises of COPA-COGECA on 18th March, confirmed a strong alignment of the principle appreciation of the current situation and the challenges of the future but also showed specific differences, e.g. on the most appropriate way forward to establish a better and more uniform system for royalty collection on farm saved seed and on the question how best to deal with the issue of the 'small farmer' exemption. Still, all participants welcomed the open and constructive dialogue which shall be continued before the end of the year, not least as a means to support the further discussion in the framework of the CPVO's Working Group on Farm Saved Seed. (vE)

SANCO Stakeholder Dialogue Group meets with Commissioner Dalli

The new Commissioner for Health and Consumer Protection, John Dalli, met with DG SANCO's Stakeholder Dialogue Group during its meeting of 25.03.2010 in Brussels. The Stakeholder Dialogue Group has been set up by the Commission to provide expertise and guidance on consultation processes, engagement of stakeholders and adequate procedures and tools for policy and legislation development as regards the transparent involvement of societal groups. Its members are appointed by the Director General of SANCO and serve a four year term on a personal title (for more info on the SDG consult http://ec.europa.eu/dqs/health_consumer/sdg/index_en.htm). During the open discussion With SDG Members, the Commissioner clearly confirmed his commitment to promotion of innovation and competitiveness in the agri-food sector and underlined the need for sound science as a base for informed political discussion and decision making. He also informally confirmed the Commission's intention to find a new balance between EU and MS level decisions on the cultivation of GMOs and for the presentation of a first draft proposal by summer. (vE)



Commission sets tight deadline for Member States to pass legislation on seed treatment applications for 4 insecticides

The European Commission on March 12th passed a new Directive regarding the use of insecticides as seed treatments. The Directive calls upon Member States to lay down specific requirements that will assure good seed treatment practice and thus safety to bees and other non-target organisms by 31.10.2010 at the latest.

The Directive which is limited to 4 insecticide treatments (clothianidin, fipronil, thiametoxam, imidacloprid), does not specify what measures have to be taken but rather what has to be achieved (reduction of dust, good quality, safety to bees etc.) and, consequently, does not prescribe dust thresholds or any other specific means but rather the issues that need to be addressed by the MS legislation which are assurance of professional ST application, use of best available technology, reduction of dust to minimum levels, use of suitable sowing equipment and suitable labelling of seed bags.

Following a first analysis, the Directive is not contradictory to the ESA QAS approach; but it sets a very ambitious and much earlier deadline than the envisaged timetable of the ESA QAS.

The ESA Working Group on Seed Treatment and Technologies STAT will discuss the issue on the base of a first draft working paper at its meeting of 09/04/2010 and the Secretariat will keep all ESA Members informed on the further process. Most urgently, the Secretariat will lobby for a control of the implementation that still safeguards the free movement of treated seed (no technical barriers to trade by different protocols, dust thresholds or accreditation provisions on MS level). (vE)

Appointments to ESA Committees

At its meeting of March 17, the ESA Board appointed Christoph Herrlinger as new Chairman of ESA CRLA and appointed Olivier Lucas, Nigel Moore and Szabolcs Ruther as new members of the CRLA. For the ESA CIPR, the Board also confirmed the membership of Bernard Bosc and elected Stephanie Franck as new member. The Secretariat wishes to thank the outgoing Committee Members Ferdinand Schmitz, Gregoire Berthe, Penny Maplestone and Karol Marciniak (CRLA) and Christoph Herrlinger (CIPR) for their engagement and work for the common interest of the European seed industry and welcomes the new Committee Members and looks forward to the future collaboration. (vE)

Next ESA Newsletter to be published on 03.05.2010