



# ESA NEWSLETTER

October 2010

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## ESA Meetings (selected)

- **3.11.2010**  
**STAT**  
**Meeting**
- **8.11.2010**  
**SPO WG Uniform**  
**classification**  
**scheme**  
**Conference Call tbc**
- **9.11.2010**  
**SFG WG Artificial**  
**Turf**  
**Conference Call tbc**
- **11.11.2010**  
**CRLA**  
**Conference Call**
- **16.11.2010**  
**CIPR**  
**Meeting**
- **30.11.2010**  
**WGPH**  
**Meeting**
- **6.12.2010**  
**WGB**  
**Meeting**

Dear Members,

From 10 to 13 October, the ESA 2010 Annual Meeting took place in Brussels with a record attendance of more than 560 participants. With that, this has been an extraordinarily successful Congress, specifically as regards the further enlargement of our organisation which now includes new member associations from Switzerland and Croatia as well as many more companies that have become either individual or associate member. Clearly, ESA continues to attract a growing membership from all over Europe and with that consolidates its role as the single voice of the European seed sector. This development should be further re-enforced with the full integration of EESNET, the Eastern European Seed Network, which will be marked by a special meeting to be held in Prague in late November.

During the Annual Meeting, next to the General Assembly with important decisions regarding the institutional and financial strengthening of the association and a further focus on outreach and advocacy towards third parties, almost all specialised crop Sections met as well as the representatives of national seed associations. At almost all of these meetings, the EU's policies and regulatory options for supporting innovation in plant breeding were at the centre of attention and debate. As you know, currently the European Union is actively pursuing evaluations of numerous legal frameworks of importance to the seed sector, like e.g. the legislation on seed marketing, on phytosanitary requirements, on GMOs and, most recently, on the protection of intellectual property rights. These subjects and their specific relevance for the individual crops were widely discussed during the Section meetings.

In addition, the discussions on the follow-up of the current seventh framework programme for research and development have started and it has already become clear that stakeholder involvement such as the breeding sector's in the European Technology Platform 'Plants for the Future' will be decisive in shaping the new rules and instruments.

It is before this background that we decided to put the support for innovation and intellectual property protection at the centre of our General Assembly as well as our policy agenda for the coming year. For a competitive agri-food chain, an equally competitive plant breeding sector, both public and private, this support is a precondition. For this, we need societal support – and, of course, here the EU's funding programmes in the area of plant breeding and biotechnology can set important incentives; but we also need support for the proper protection and enforcement of breeders' intellectual property rights. Without, it will be difficult, if not impossible to sustain the level of investment and innovation needed to meet the grand challenges of food supply and environmental protection the EU has set itself.

In the coming weeks and together with our partners in the farming and the public research community, ESA will put a specific focus on further developing the seed industry's input to the ongoing discussions on agricultural sustainability, to the promotion of growth and jobs as well as societal welfare, throughout the agri-food chain and the economy at large.

With best regards, yours

Garlich v. Essen, Secretary General

## CPVO Open day for vegetables – October 6

On October 6<sup>th</sup> the 2<sup>nd</sup> open day for Vegetables were organised on invitation of GEVES (France) at the premises of the DUS testing station of Brion. Some 80 participants attended the open day. Several interesting presentations were given which can be found on the following website:

[http://www.cpvoextranet.cpvo.europa.eu/files/MR/Open\\_Day\\_Brion\\_Presentations.zip](http://www.cpvoextranet.cpvo.europa.eu/files/MR/Open_Day_Brion_Presentations.zip)

In this meeting T.Jaunet informed on the ESA SVOWic project regarding the harmonization of disease resistance terminology, while B.Scholte informed on the activities of the Anti Infringement Bureau.



The event was concluded by a visit to the GEVES laboratory for disease resistance testing in Angers. (BS)

## Meeting CPVO DUS experts for vegetable species – October 7 and 8

The annual meeting of the CPVO DUS experts took place this year on October 7-8 in Angers (FR). ESA was represented by Mrs. Schenkeveld (Rijk Zwaan), Mr. Lietava and Mr. Dugovic (Slovakia) and B.scholte. It was noted that the Netherlands has implemented fully the so-called one-key-several-doors approach. The CPVO reported a decline of the number of vegetable applications with -30%!

The CPVO reported on a discussion with the European Patent Office on the definitio of hybrids. The Office agreed to confirm the conclusion of the meeting to EPO in writing as also EPO representatives agreed that hybrids should be considered to be varieties conform to the UPOV convention and with that hybrids are not patentable as such.

A presentation was given on the Quality Assurance Scheme according to which 8 Examination Offices have been audited and which resulted in 24 cases of non-conformity mostly related to the size of the variety collection and technical protocols. The experts discussed the revision of several protocols and linked to the issue raised by Slovakia could not agree on the addition of an (\*) for a new race of Bremia in Lettuce. The meeting discussed also the problem of the breeders in Slovakia regarding obligatory testing for disease resistance in vegetables as addressed in SVOWic. As follow up of the work in UPOV the CPVO foresees for the coming year revisions of the technical protocols for artichoke and tomato. (BS)

### External meetings

(selected)

- 10.11.2010  
Advisory Group  
Seed Meeting  
Brussels (BE)
- 16.-18.11.2010  
OECD Extended  
Advisory Board  
Paris (F)
- 17.11.2010  
SANCO SDG  
Meeting  
Brussels (BE)
- 18.11.2010  
Advisory Group  
Food and Feed  
Chain Meeting  
Brussels (BE)
- 21.-22.11.2010  
ESA-EESNET  
Meeting  
Prague (CZ)
- 29.-30.11.2010  
CPVO DUS  
Expert Meeting  
Angers (F)
- 1.-2.12.2010  
CPVO Meeting  
with Eos  
Angers (F)



### **October 18 – 20 – Joint meetings by ANOVE and ESA in Spain to promote the use of certified seed.**

To assist ANOVE in their lobby to promote the use of certified seed and possibilities for setting up a system for the collection of royalties on Farm Saved Seed meetings were organised with the Ministry in Madrid as well as with regional authorities in Castilla Leon and Aragon. ANOVE/ESA were represented by Antonio Villaroel, Javier de Sebastian and B.Scholte. In addition a meeting was organised with representatives of the national association of co-operatives.

The meetings made clear that the situation in Spain is complicated due to the fact that many responsibilities have been transferred to regional level. In the meetings ANOVE/ESA informed on the European perspective and the importance of plant breeding in relation to competitiveness in agricultural. In addition the shortcomings of the current system were demonstrated in relation to pressure on the sale of certified seed combined with the lack of a royalty collection system on FSS as well as the increased illegal activities in Spain related to the sale of FSS (brown bagging), the sale of seed of varieties of amenity grasses which are not listed on the Common Catalogue and infringements of Intellectual property Rights in vegetables.



Overall the results of the meetings was relative positive although still a lot of work will have to be done by ANOVE. For this purpose Working Groups were set up in different regions to address the issues with the regional stakeholders.

A press release by the Spanish Ministry of Agriculture regarding the meeting can be downloaded from the following site (BS):

[http://www.mapa.es/gabinete/nota.asp?codi=38315\\_AH181010](http://www.mapa.es/gabinete/nota.asp?codi=38315_AH181010)

### **October 25 – ESA meets the EUROSTAT Working Group on Statistics**

Earlier this year the ESA SCP section has requested the Commission to revise Council Regulation 543/2009 regarding the collection of statistics by EU member States in order to obtain the statistics for lupines at the same time as for other protein crops.

ESA was invited to present its case and the importance of having official statistics to the European Seed Industry in the annual meeting of the respective EUROSTAT Working Group in Luxembourg.



The participants were quite interested in the activities of ESA and have sympathy with the request, which will come back in the WG after internal consultation in the different Member States. It was interesting to see that especially representatives from Germany, Greece and Italy were active in the discussion. (BS)

### **62<sup>nd</sup> session of the UPOV Administrative and Legal Affairs Committee (CAJ) – Geneva, October 19, 2010**

On behalf of ESA Sz. Csörgő attended the sixty-second session of the UPOV CAJ in Geneva. Concerning basically all agenda items (variety denominations, electronic application systems, UPOV-ROM database, molecular techniques) work is in progress in the different technical working parties of UPOV and therefore no more than a report on those activities was given to the CAJ and more substantial results are expected for the spring session of the CAJ to be held on April 7, 2011. As regards the development of information materials no explanatory notes have been submitted to the CAJ for its consideration or approval as the Advisory Group (AG) of the CAJ had not concluded its respective work by the time of the CAJ's session. Explanatory notes on the following topics are being worked on by the CAJ-AG: definition of breeder; acts in respect of harvested material; EDVs; exhaustion of the breeder's right. At the sixty-first session of the CAJ the Delegation of the EU reported that discussions had taken place within the European Union in relation to the notion of "own holdings" in the and proposed that the CAJ-AG consider the possible objectives of developing an explanatory note on this topic. A similar request had already been submitted to the CAJ in 2008 by the delegation of ISF. However, just as in 2008, the office of UPOV „in recognition of the difficulty in developing a common definition of "own holdings" that would be suitable for all members" proposed that the CAJ-AG should not seek to develop such a definition, which the CAJ took note of. (SzCs)

### **Evaluation of the Community Plant Variety Protection (CPVR) legislation**

As you have been informed extensively in the past months and also in the framework of the open part of the ESA General Assembly held on October 12, 2010 in Brussels, the European Commission has launched a review of the CPVR legislation. The first stage of this review consists in an evaluation of the current legal framework conducted by an external evaluator (GHK, a London based consultancy) mandated by the Commission. In this first stage ESA has been invited to fill in an extensive questionnaire on the features of the CPVR regime. The draft and final ESA answers to that questionnaire have been elaborated by the ESA Committee on Intellectual Property and Breeder's Rights (CIPR), on the basis of the positions finalized by the CIPR in the course of the past years, and have been circulated to all ESA members for information and possible further comments. Many of you have also been contacted either directly or have registered for being contacted and we hope that the ESA answer proved useful in helping you to provide your answers to the evaluator.

On October 21, 2010 Sz. Csörgő and B. Scholte met the evaluator for a personal interview in Brussels to provide further details on specific topics on the basis of the ESA answers to the questionnaire. The interview provided a good,





in-depth discussion on topics related specifically to the scope of the breeder's right, farm saved seed, enforcement of the breeder's right and different technical details concerning DUS testing. The first stage of the evaluation will close on October 31 and will be followed up by an interim-report from the evaluator planned for the end of November. (SzCs)

### **Biodiversity summit in Nagoya – CBD COP10, October 18-29, 2010, Nagoya, Japan**

The 10<sup>th</sup> conference of the parties to the UN Convention on Biological Diversity is taking place in Nagoya between October 18 and 29 and is primarily aimed at the adoption of a Protocol on Access and Benefit-sharing. The summit has not yet ended but news and reports do not seem to be too promising so far informing that by mid-term of the two-weeks summit basically no progress has been made in the negotiations. The outcomes of this summit are highly important for the seed and plant breeding sector therefore it is followed with much attention. Anke van den Hurk (Plantum NL) is participating to the negotiations under the delegation of ICC, the International Chamber of Commerce, and is representing the interests of the seed industry. (SzCs)

### **CPVO – ESA meeting – October 22, 2010, Brussels**

In preparation for the meeting of the Administrative Council (AC) of the Community Plant Variety Office (CPVO) ESA met the delegation of the CPVO to discuss the items on the agenda of the next AC. On behalf of ESA Mrs. M. Suelmann, Chair of the ESA CIPR, Sz. Csörgő and B. Scholte participated to the meeting where the following items have been discussed:

#### *Report of the President*

The President of the CPVO reported on the status of protected varieties and on developments in the protection ratio compared to last year. It appears that in total the number of applications has been 3% higher than in 2009 however there has been a big decrease of 18% in applications related to vegetable crops which however probably has to do with some recent structural changes in the sector and the stopping of certain breeding programmes consequently rather than with a real decline in the willingness to protect of companies. According to the data of the CPVO currently some 17,500 varieties are under CPVR protection. The number of applications concerning GM varieties is still very low.

#### *Observer status of breeder's organisations at the AC*

The president of the CPVO informed that applications from three breeder's organisations had been received for observer status. In the meantime ESA has received the information that its application has been accepted and therefore it has gained observer status at the CPVO AC as from the next meeting of the AC.



### *Taking of DNA samples during technical examination*

The CPVO has proposed that extraction and storage of DNA samples of rose varieties becomes a mandatory procedure as this could be a helpful tool both in order to check the identity of the reference material as well to be used as support in enforcement cases. It appears that CIOFORA would rather favor an optional system but given that CIOFORA's arguments need to be studied further the AC will postpone this item for its next meeting. In this respect, B. Scholte underlined that ESA is discussing with the CPVO regarding the same issue in case of potatoes and expressed that ESA agrees to a mandatory system on reasonable terms for potatoes.

### *Cost calculation and fees*

The CPVO reported that this year a cost calculation exercise have been conducted in the view of re-defining the examination fees paid by the CPVO to the examination offices (EO). On the basis of the information collected from the EOs the CPVO is now in the process of calculation and is expecting to have the new fee structure in place by 2012 which will very likely also result in a change of the application fee levels. However no substantial increase is expected.

### *Quality Audit Service*

The Quality Audit Service aimed at the assessment of the quality provided by the EOs is an ongoing programme which has already conducted the assessment of 8 EOs. As the first results of the system are now available it appears that it provides a good tool for the assessment of quality.

### *Judgement in the Schniga case*

On September 13 the General Court of the EU issued a ruling in the case opposing Schniga to the CPVO. The case concerned an apple variety for which the CPVO granted plant variety rights which decision was appealed buy the holder of the closest reference variety on the grounds that the CPVO should not have allowed a second submission of the plant material for technical examination and that the variety was not distinct. The Board of Appeal agreed with the appellant on the first ground and stated that the second submission should not have been allowed and annuled the decision of the Office. The decision of the Board of Appeal then was appealed by the applicant and the CPVO decided to defend its own original decision before the General Court and argued for the annulment of the decision of the Board of Appeal. The CPVO argued that the material submitted in the first submission was infected but this was likely to originate in the wrong information given by the CPVO to the applicant. The General Court annuled the decision of the Board of Appeal and ruled that the CPVO was right in allowing the second submission of plant material in order to continue with the examination of the application. Given that in the appeal procedure the Board of Appeal annuled the decision of the CPVO on the first ground of appeal the question of distinctness of the variety has not been examined so far. The Board of Appeal therefore will *ex officio* take the appeal up again and decide on the question of distinctness.



### *Attribution of candidate varieties to EOs*

Given the Quality Assurance System for the entrustment of EOs the criteria applied by the CPVO to decide how to attribute candidate varieties to EOs for technical examination is likely to change a bit. The CPVO is planning to give more attention to the wish of the breeder expressing a preference for one or the other EO entrusted under the QAS.

### *Enhanced cooperation in variety denomination testing*

The CPVO has started the system in March 2010 which is aimed at the harmonization within the EU of the implementation of variety denomination rules. The CPVO is encouraging national PVP offices to use the system and seek advice from the CPVO. So far 1500 requests have been received but only 16 Member States have been using the system. ESA is supporting this system very much but at the same time was enquiring whether the CPVO could be less stringent on certain denomination rules such as a misleading association in case of fancy names as well as the requirements for code names. The CPVO will look into this matter.

### *On-line application system*

The CPVO gave an update on the state of affairs but mentioning that in species where the system is already in place 20% of the applications is received on-line. There are plans to extend the system and also a pilot project is planned with 2 EOs for sharing the system for national PVP and listing purposes. ESA welcomed the developments but underlined that currently companies face many hurdles when willing to apply on-line as currently information from the company databases cannot be automatically transferred to the CPVO on-line application system which entails that in practice all the information has to be retyped which takes even more time than before. On the request of ESA it was decided to set a meeting between some EOs, the CPVO and some breeders to discuss how these practical problems could be best solved.

### *CPVO logo*

The CPVO has prepared a brainstorming document on the issue of the possible development by the Office of a logo that could be used by breeders on the seed bags to indicate the protected status of the variety. After some discussion there was agreement that the best solution could be that the legislator introduces a symbol into the basic regulation which then can be affixed by the right holders to the denomination of the protected variety. (SzCs)