



# ESA NEWSLETTER

January 2011

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## ESA Meetings (selected)

- **07.02.2011**  
**WGBR Meeting**
- **08.02.2011**  
**STAT WG DUST Meeting**
- **08.02.2011**  
**ESA STAT Steering Group Conference Call**
- **09.02.2011**  
**ESA STAT WG Transport Meeting**
- **09.02.2011**  
**SFG WGH Monitoring Conference Call tbc**
- **14.02.2011**  
**SFG WG De-awning Conference Call**
- **15.-16.02.2011**  
**CIPR Meeting**

Dear Members,

2011 promises to become an interesting and important year for the seed industry in Europe and for ESA as its top level organization – but also for the sector worldwide.

In the EU, discussions on the modernization of the seed marketing legislation (Better Regulation) and a new plant health regime will continue and should lead to the presentation of a coordinated legislative proposal in early 2012. In ESA, our respective Working Groups will continue to work not only on the fine-tuning of our respective technical and general positions but also develop the outreach and lobbying plan towards European Parliament and national governments as well as interested third parties by which we hope to convince decision makers of the specific importance of our industry and of the need for adapted legislation that helps increasing investment in research and development, innovation and competitiveness of the whole agri-food chain.

Later in 2011, we will see the presentation of the conclusions of the evaluation of the EU's Community Plant Variety Rights legislation. This presentation will surely also include a specific chapter on the thorny issue of increasing use of farm saved and decreasing payment of royalties for this use. Over the past year (and resulting from an ESA initiative), we have worked under the Chairmanship of the CPVO with the Commission and COPA-COGECA to provide concrete suggestions for an improvement of the current situation and most specifically on a fair, simple and EU-wide application of the information obligation. But there is more to the Community Plant Variety Right than 'just' Farm Saved Seed. And our CIPR and the ESA Board have worked very hard to make sure that the European seed industry will have a good base for its further input to IP discussions in the area of plants and seed. With the finalisation of our internal discussions in March this year, we will be well prepared for the much wider societal debate to come.

Of course, there is still the biggest political minefield out there – the future EU policy on GMOs and on the so-called 'Renationalisation proposal'. Already in a couple of weeks, Member States will be asked to 'Put up or shut up' as it was once expressed, i.e. to finally pass pragmatic rules for the low level presence of not (yet) authorised GMOs in feed imports - or to accept that Europe might face not only severe disruptions of feed supplies but also considerably higher prices for feedstuffs as well as -finally- food. Provided acceptance of the Commission's respective proposal, it is difficult to imagine that the approach will remain limited to feed only. We will certainly continue our quest for sustainable thresholds for seed and legal certainty by an agreed and uniform sampling and testing protocol; we have seen many hopes shattered over the past decade, but maybe we are in for a more fundamental change of public opinion and policies in the area of farming and technology than we can imagine. Surely, recent publications and opinions polls suggest this – so maybe there are good reasons for the seed industry to look forward to this year 2011!

With best regards, yours

Garlich v. Essen, Secretary General



### **ESA Meetings (continued)**

- **22.02.2011**  
**SVOwic IP**  
**Conference Call**
- **23.02.2011**  
**WGB Meeting**
- **24.02.2011**  
**WGBR Meeting**
- **28.02.2011**  
**SVOwic Product**  
**specifications**  
**comparison**  
**Conference Call**
- **01.03.2011**  
**SPO WG GMO**  
**Conference Call**

### **Vote on EU patent – January 27, 2011**

On January 27<sup>th</sup> 2011, the European Parliament's legal affairs committee gave its consent to the use of "enhanced cooperation" as requested by 23 EU Member States to go forward with the EU patent.

Enhanced cooperation is a specific procedure within the EU which allows for a number of Member States to establish closer cooperation among themselves on a certain matter where a unanimous agreement cannot be reached. Given that a compromise on the EU patent has not been achieved for several years and the latest efforts also failed in autumn 2010 due to Italy and Spain opposing the proposed language regime, a number of Member States decided to go ahead with the EU patent by making use of the enhanced cooperation procedure.

Some opinions consider that this fast-track approach favours interests of German and French industry, which would be highly privileged by the proposed trilingual linguistic system for the EU patent instead of a cheaper monolingual regime based on English only. However, it is a matter of fact that the current patent system in Europe is complex and highly expensive and a unitary patent system – as aimed at the EU patent – would bring about important improvements in this respect.

The EP's legal affairs committee voted before receiving the official opinion from the Parliament's legal service - required to assess the "compatibility with the Treaties" of the proposed procedure. The legal opinions from the Commission and the Council have, however, already cleared the proposal. The EP is expected to give its final consent to the establishment of an enhanced cooperation regarding the EU patent at its plenary session in mid-February. (SzCs)

### **The "Broccoli Brunch" – January 28, 2011, Essen (DE)**

On January 28, Sz. Csörgő attended an event entitled the "Broccoli Brunch" organised by the German law firm *Luther* as a side event to the International Plant Exhibition (IPM) in Essen.

The event focussed on giving a brief summary and interpretation of the recent Broccoli decision of the Enlarged Board of Appeal of the EPO. The presentation was given by two representatives of the law firm, a legal practitioner and a patent attorney, and stated that the decision itself is an important step towards clarity regarding the patentability of breeding processes.

It was also mentioned that the decision is directed to essentially biological processes and does not say anything about plants however whether it may have any impact on patent claims directed to plants remains a certain dilemma.

The ESA CIPR will discuss and analyze the Broccoli decision in details at its upcoming meeting in mid-February. (SzCs)



### **External Meetings (selected)**

- **01.02.2011**  
**EPSO bioeconomy  
communication  
Meeting  
Brussels (B)**
- **02.02.2011**  
**IPR Dialogue with  
COM  
Meeting  
Brussels (B)**
- **03.02.2011**  
**EATC/FD Meeting  
Brussels (B)**
- **08.-09.02.2011**  
**ISF Intellectual  
Property  
Committee  
Meeting  
Miami (USA)**
- **10.02.2011**  
**CPVO AC  
Meeting  
Brussels (B)**
- **28.02.-01.03.2011**  
**ISF Meeting  
Tampa (USA)**

### **Outcome of ESA survey on website and communication**

In December 2010, ESA sent a survey to all ESA members to find out if ESA members were satisfied with the ESA website, especially regarding the new tools that have recently been added to the ESA website.

Some 40 answers were received of which more than 90% were generally positive and some 10% voiced criticism and (partly) made suggestions for improvements on specific aspects.

While members are very satisfied with the internal part of the website and specifically appreciated the new tools (search function; possibility to print all or selected documents), there is a general opinion that information on the public part could be improved and that ESA Positions and Codes should be more prominently displayed. This is currently being addressed by the Secretariat and will be implemented over the coming months. Further content for the public part shall be developed in the coming months, e.g. describing the industry, positions on current issues such as sustainable agriculture etc.

Already throughout the year 2010, communication activities were considerably intensified, both towards the public and defined external groups (Standing Committees, COPA, ECPA etc.) as well as towards the ESA Membership with our regular monthly ESA Newsletter, actual updates on the EU Common Catalogue, meetings of the SCs, updates of the ESA homepage, ESA Info papers etc.. While this is generally appreciated and while the Secretariat has been encouraged to continue in this direction, both by answers to the questionnaire and in direct contacts, a few members have expressed concern about the sheer amount of information and their (limited) capacity to digest it.

The technical update of the ESA website and the inclusion of new tools such as a search function, selected print options etc. is much appreciated by members. With these additions, the Members Area of the website is now on a very good technical standard and a well developed service tool for the different ESA bodies. However, possibilities for a more general information on developments for the full membership (Members Area), a discussion platform on e.g. draft positions (Members Area), but foremost the quality and extent of information available on the public part of the website shall now be addressed in 2011. (SB / vE)

### **Export of plants and plant products and phytosanitary requirements**

Transparency remains the main WTO SPS issue for plants and plant products.

In particular, access to third countries' import legislation receives utmost attention, as it concerns a wide range of products and trading partners. Legislation should be accessible, e.g. via the web pages of the International Plant Protection Convention, IPPC, and import requirements for products of interest to EU exporters easily available. EU exporters still find it difficult to access new markets when import requirements are only available in specific import permits, not yet decided on, or requiring special technical studies in the importing country as these studies may for some trading partners take years to accomplish.



While it is widely accepted that invasive species, or rather the strategy, notifications and implemented measures within this area, need to be followed closely, it is also necessary to ensure that any such measures fulfil the WTO obligations on transparency, technical justification and least trade restrictive nature.

Phytosanitary legislation on invasive species may cover e.g. ornamental plants with a potential to establish in new environments but also e.g. weed seeds carried by consignments of grain. For export of seeds, some positive developments may be noted: the foreseen revision of two International Standards for Phytosanitary Measures, ISPMs 7 and 12, holds the potential to resolve at least partially the issue of securing phytosanitary information on seed lots that are to be further re-exported.

Meanwhile, a provisional procedure, addressing this issue, has been agreed between EU and USA and could serve as a blueprint for a future more general solution. Nevertheless, ESA will continue to work for a specific ISPM for seed that could complement the revised ISPMs 7 and 12 by addressing remaining seed specific issues. And it seems that more and more officials acknowledge that seed and ware potatoes are still requiring the joint and substantial efforts of the European Commission, EU Member States and EU industry; this awareness is not least due to an increased communication from the seed industry via the DG Trade SPS Market Access Working Group. (vE)

### **Europe is told to be more open to technology in agriculture**

According to a report entitled '*Future of Food & Farming*', decisive action is required if the food demands of a growing population are to be met. Whilst major expansion of agricultural land is considered "unwise" as emissions are released through land conversion, scientists favour a sustainable intensification of agriculture by combining biotechnological, agronomic and agro-ecological approaches.

The study, led by Sir John Beddington, Chief Scientific Advisor to the UK Government, sets out priorities to ensure that a rapidly expanding population can be fed in a healthy and sustainable way and without the use of substantially more land. The report singles out investment in technology, including use of GMOs, as essential in view of the magnitude of the challenges for food security in the coming decades. In addition, efficiency of water use is highlighted as a major priority as well as the reduction of waste all along the food chain.

The report received a wide echo in the English and international print media - and it is interesting to see that even such publications that so far were known for their radical anti-GM stance now at least became engaged in a more open manner in this debate. (vE)

**The next ESA Newsletter 2011 to be published on 03.03.2011**