



ESA NEWSLETTER

July 2011

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ESA Meetings (selected)

- **29.08.2011**
SMA
Conference Call
- **30.08.2011**
CIPR
Meeting - tbc
- **05.09.2011**
SVOWic IP
Conference Call
- **06.09.2011**
Board
Meeting
- **07.09.2011**
SFG WG Minimum
Quality
Requirements
Meeting – tbc

Dear Members,

The European Parliament has at least in parts paved the way for a substantial change of law and practice in the procedure for the authorisation of GMOs and their cultivation.

On 6 July, the EP (in first reading) adopted the report of French MEP Corinne Lepage on the controversial 're-nationalisation proposal' for GM authorisations according to which the general authorisation of the GM event will remain at EU level while the decision on actual planting or banning of GMOs for cultivation shall be transferred to Member States.

Although ESA lobbied for an inclusion of at least a reference to the need for thresholds for presence of GMOs in seed and fields (a request that had been taken up positively by the EP's Agriculture Committee but was rejected by the leading Environment Committee) we have not been able to achieve this in the final vote.

As the dossier now lies with the Council of Ministers, we will do our utmost to work with national associations as well as individual companies to introduce such a reference in the upcoming discussion.

Maybe the massive and on-going field destructions of maize in Hungary (Members were informed by ESA Info about this incident) finally opens the eyes of European and national administrations and politicians. While some of them express their concerns about increases in food prices and question the availability of sufficient food due to increased production of crops for renewable energy, thousands of hectares of maize are being destroyed with an economic damage of millions of Euro. Seed companies and their staff are threatened not only with disproportionate financial sanctions (up to 7.5 million EUR) but even subjected to criminal law and imprisonment up to 8 years! And yes – we are talking about a European Union Member State, about a democratic country and about today - and not some dictatorship in a third world country without any established rule of law. This situation is unacceptable. For the companies concerned, for the whole seed and farming sector but also for any citizen of the EU. The EU is first and foremost about a common set of rules and procedures, adopted by a common democratic process. What we witness here is arbitrary rule and despotism.

ESA is filing an official complaint against the Hungarian measures with the European Commission and we do our best to support our member association in Hungary and our companies in their efforts to resolve the situation. But foremost, we all need to talk about this unacceptable situation as well as its cause: the fact that despite 12 years of contemplation, the Commission has still not proposed a legislative text that finally establishes practical thresholds and a uniform testing protocol to bring legal certainty to the seed sector and to re-establish common sense and rule of law inside its own borders.

With best regards, yours

Garlich v. Essen, Secretary General



External Meetings (selected)

- **20.09.2011**
New Breeding Technologies Conference
Brussels (BE)
- **26.-28.09.2011**
IPC
New Delhi (IN)
- **11.10.2011**
Commission Conference on CPVR evaluation
Brussels (BE)
- **13.10.2011**
SANCO Stakeholder Dialogue Group Conference
Brussels (BE)
- **13.-14.10.2011**
CPVO DUS Experts for Agricultural Crops
Angers (FR)

Meeting of the ESA CIPR

On June 16, 2011 the ESA Committee on Intellectual Property Rights met in Brussels to do further work on the proposal it has made to the ESA Board in February this year on the question of limitation of patentability. When considering the CIPR's proposal in March the ESA Board has adopted several points of that proposal but requested the CIPR to provide further clarification on the proposal concerning the limitation of patentability of products. Therefore, the main task for the CIPR at its June meeting was to find ways to clarify for the members of the ESA Board what its proposal would mean in practice, and in particular, what it would mean for the patentability of so-called 'native traits'. The CIPR came to the conclusion that the most appropriate way to explain the practical consequences of the CIPR proposal is to use some explanatory pictures together with concrete examples of patent claims whereby Board members can be shown what are the consequences of the position in case a naturally occurring trait is transferred into the target plant via crossing and selection and what if the transfer is carried out via a technical process.

Furthermore, the CIPR also looked at an alternative proposal submitted to it in the beginning of June describing a possible industry-led solution. After a first exchange on the proposal the CIPR confirmed that first it has to be decided what the position of the industry is and following that decision it has to be looked at in what way or ways that position can be achieved. This has also been confirmed by the ESA Board in March this year.

On the basis of the conclusions of the CIPR further clarification on the CIPR proposal on patentability of products is going to be prepared for the September meeting of the ESA Board where a final decision on this question is expected. The CIPR will next meet then in November 2011. (SzCs)

ESA meets patent examiners of the European Patent Office

On June 7, 2011 ESA met the European Patent Office (EPO) in Clermont-Ferrand at the premises of Group Limagrain. From ESA's side the meeting was attended by 12 people (6 of them members of the ESA CIPR) and from the EPO's side by 5 people, the director of the EPO's Biotech Division and 4 patent examiners handling patent applications in the field of plants. Also a member of ISF's Intellectual Property Committee joined the meeting. Last time such a bilateral meeting took place between the two organizations was in 2009 and - not only because an open dialogue between the organizations is key but also against the background of the recent case law of the Enlarged Board of Appeal of the EPO in the Broccoli and Tomato cases - a follow-up to that meeting was already timely.

The meeting started with introductory presentations from both sides which was followed by a discussion on a number of concrete examples of patent claims provided by ESA. Via the examples the discussion first tackled the question how the EPO sees the practical application of the Broccoli decision and, in particular, its potential effects beyond process claims. As regards patentability of breeding processes the EPO confirmed that in case the claimed process involves the crossing and selection of whole genomes of plants whatever technical step might be added to that it will not make the process patentable. However, the EPO also stated clearly that the Broccoli decision exclusively deals with essentially biological processes and has no



implications whatsoever on the patentability of products. The EPO confirmed that according to the European Patent Convention the patentability of products has to be judged on the criteria of the European Patent Convention including novelty, inventive step and industrial applicability of the claimed product.

Besides Broccoli, participants also looked at examples of so-called “broad claims” which are claims that may involve subject matter which goes much further than what the invention really is; as well as examples where breeders agree that the invention claimed does not fulfil the novelty requirement. In this respect it was discussed with the EPO examiners how they assess novelty and the relevant prior art. The EPO mentioned that they welcome references to prior art from the applicant. EPO examiners also expressed their wish to receive third party observations from breeders describing possibly novelty destroying prior art in case a doubt emerges in breeders concerning the novelty of a claim under application. Such third party observations can currently be submitted via letters but the EPO is now in the course of developing an on-line system that will facilitate submission of such third party observations in the future. A further improvement in the EPO’s approach that was mentioned during the meeting is that in case of patent claims directed to plants, where the requirements for sufficient disclosure demand it, examiners systematically request the applicant to include a reference to the seed deposit in the claim in order to limit the claim to what the invention really is.

Following the discussion on the concrete examples of patent claims a member of the ESA delegation presented the case of site-specific mutation technology to the audience as an example of new technology that might soon become routine but core in the day-to-day work of breeders and which may risk being massively applied for and granted patents if patent examiners are not sufficiently informed about the quickly developing prior art.

As a last item, on the request of EPO examiners the Chair of the ESA CIPR informed about the discussions which are currently on-going in ESA on a new IP position whereas other members of the ESA delegation informed about similar discussions in the Netherland and Germany.

Both organizations concluded that the meeting provided an open and fruitful discussion and an excellent occasion for exchange on potentially contentious topics. It was agreed that the tradition of such bilateral meetings shall continue in the future. (SzCs)

Final Report of Plant ETP Conference of 17 May 2011

The Plant ETP Conference of 17 May 2011, which took place in Brussels at Copa-Cogeca, brought together more than 100 leaders of European companies and organisations active in the plant-based agri-food chain, the main players from the academic world and the farming community, policy makers and administrators with responsibility for the EU’s research and innovation funding schemes, and high-level representatives of the European Parliament. The final report of the Plant ETP conference is now available on our [website](#). The report includes a summary of all the presentations and the key messages and concerns raised during the discussions. (SB)



SPS Market Access WG – July 7

On July 7, the so-called Market Access Working Group regarding Sanitary and Phytosanitary issues met in Brussels. This Working Group is managed by DG Trade and provides a platform for stakeholders and Member States to address trade barriers all over the world in relation to Sanitary and Phytosanitary issues. Main issues of discussion are related to meat, dairy products and fresh vegetables. Bert Scholte has attended the meeting and has drawn the attention of the Commission in particular to problems seed companies are facing in the export of seed to specific countries. Examples were provided of restrictions in Australia related to the import requirements for tomato in relation to Pepino Mosaic Virus (PepMV) and Potato spindle tuber viroid (PSTVd) and Mexico where specific detailed requirements are in place per species, per country of origin and per country of distribution causing problems when re-exporting seed via certain European countries. Furthermore, specific requirements for the import of seed in Brazil were addressed as well as the export problems seed companies are facing when exporting seed to the Ukraine. The Commission has taken note of the concerns raised and will address the issues in bilateral meetings with the different countries in the future. Further information will be provided in future meetings of the Market Access Working Group. (BS)

ESA Company visit at Limagrain - 11 July 2011



On 11th July 2011, the ESA team visited Limagrain in Avelgem Kerkhove (Belgium). Marc Ballekens, Director of strategy and marketing, Bernard Vandendriessche, Director of production and processing, and Huib H.W. Beelen, General Director, welcomed the ESA team and held a presentation on the organisation and activities of Limagrain. Afterwards, the ESA team presented the structure and working procedures of the association as well as the policy priorities in the different fields with a specific focus on the role of Limagrain as an individual member within the association.



After the presentations, the ESA team had the opportunity to visit the factory site of Limagrain and received detailed explanations about processing and packing of treated seeds. Subsequently, the ESA team was invited to a field visit guided by Jozef Dermaut, head of the plant breeding station. Main focus was on the breeding and production activities in wheat and barley (which was just harvested at the time) as well as peas, grasses and mixtures for set-aside and environmental protection schemes. The ESA team would like to send special thanks to Limagrain for this informative and enjoyable visit. (SB)



New President of the CPVO

On 12 July 2011, the Council of the EU decided to appoint Martin EKVAD as new President of the CPVO for five years. His term is expected to start on 1 September 2011.

Martin Ekvad is of Swedish nationality. Currently, he is the Head of the Legal Unit of the CPVO. Before he started to work at the CPVO in 2003, Martin Ekvad worked as a lawyer in the law firm Linklaters, in Brussels, and in the law firm Magnusson Wahlin Advokatbyrå, in Stockholm. Before working in the private sector, he was employed at a Swedish civil court for two years.

In his present position as Head of the Legal Unit of the CPVO, Martin Ekvad is responsible for legal advice regarding the Community plant variety rights system and defends the CPVO's position before the Board of Appeal and the EU Court of Justice. He provided legal advice to the former President Bart Kiewiet concerning inter-institutional issues and matters such as staff regulations, financial regulation, access to documents and data protection. As a member of the CPVO management team, he has been advising the President on matters of policy and management.

Martin Ekvad is well known to ESA. He has regularly participated in the formal as well as informal exchanges between the ESA CIPR and Secretariat and senior staff of the CPVO in preparation of meetings of the Administrative Council and also participated to the recent Working Group on Farm Saved Seed of CPVO, COPA and ESA. (SB)



ESA and COPA Presidents agree to work for partnership for innovation

Following a bilateral meeting on 13.07.2011, the Presidents of ESA and COPA, Christoph Amberger and Gerd Sonnleitner, agreed to charge the SGs of their organisations to develop a concrete work plan to establish a 'partnership for innovation'. Following an exploration where the cooperation between ESA and COPA could be intensified in the future, specifically in view of the need for a stronger promotion of innovation and competitiveness of the farming and seed sectors, the Presidents concluded that a regular exchange on President's level shall be implemented. Next to the revision of the CAP, the future variety registration and seed marketing Directive as well as the current situation of New Breeding Techniques and the re-nationalisation of GM approvals were raised during the discussion as areas where an intensified exchange between ESA and COPA would be mutually beneficial. ESA Members may also find the Common Statement on the Members Area of the ESA Website under [ESA Publications](#) . (vE)

Working Group Sugar Beet – July 20

On July 20 Rob van Tetering, Chairman of the ESA Working Group Sugar Beet, visited the ESA Office on invitation of the Secretariat to address the ongoing evaluation on the EU Seed Marketing Directives, the EU legal framework on Plant health, GMO and Community Plant Variety Rights. In addition, the ESA initiative on Seed Treatment (ESTA) was discussed including the labelling of treated seed as agreed upon by STAT. It was agreed that the current developments in the EU justify organising a meeting of the WG in the near future. A possible joined meeting with the ISF Working Group Sugar Beet is envisaged. (BS)

MEP Britta Reimers and her policy team visit NPZ Hohenlieth

Following a series of contacts with the Secretary General, MEP Britta Reimers (German Liberals; Member of the EP Committee for Agriculture) was invited by NPZ Hohenlieth for a company visit and an exchange on the current issues of importance for the seed sector in Europe. On 20th July, Mrs Reimers, accompanied by her Brussels team as well as the party's press officer, was welcomed in Hohenlieth by Dietmar Brauer, Managing Director of NPZ who provided an introduction to the company's history, its current structure and activities. The SG provided further details on the timetable for the further evaluation and subsequent legislative procedures in the area of seed marketing, plant health, plant variety protection and GMOs. This introduction was followed by an extensive site and field visit during which all parts of the seed production chain, from basic research to variety development, seed production, harvesting, treatment, packaging and final logistics were shown and explained in detail. Mrs Reimers and her team were clearly impressed by the high quality assurance and traceability efforts as well as by the multiple co-operations and activities of NPZ in Germany, Europe and worldwide which demonstrated the globalisation of plant breeding. Final questions related mainly to the unresolved issue of presence of GMOs in conventional seed and the associated legal uncertainty as well as to the future of innovation in general and more specifically of new plant breeding techniques in Europe.



It was agreed to maintain and intensify the contacts, not least in view of the upcoming legislative work which will especially involve the EP's agriculture committee.

Such company visits are highly effective as regards outreach and advocacy of the seed sector, in particular towards non-specialists. The Secretariat is currently elaborating an update of its visiting programme which shall be discussed and endorsed by the ESA Board in September. Our aim as a sector must be to reach a good number of MEPs from all relevant political groups and countries with such visits over the coming 18 months. Knowledge or at least an informed appreciation of the role of the seed industry in general and of individual companies will be key to a successful lobbying. (vE)

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