



ESA NEWSLETTER

November 2011

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ESA Meetings (selected)

- **02.12.2011**
SVOWic IP
Conference Call
- **05.12.2011**
SFG Endophytes
Conference Call
- **05.12.2011**
SVOWic
Lead Persons
Conference Call
- **06.12.2011**
SPO Meeting
- **07.12.2011**
WGB Meeting
- **08.12.2011**
WG Biotech
Meeting
- **14.12.2011**
WG FSS
Meeting
- **19.12.2011**
SFG WG PNT
Conference Call

Dear Members,

More than two years after the start of the evaluation, the Commission finally officially published the resulting reports of the independent evaluators on the EU legislation on FGM cultivation and GM food and feed. Contrary to the usual practice, the Commission decided against a larger scale 'dissemination conference' which usually serves to inform stakeholders and the public about the outcome and the next steps but chose to inform stakeholders by a specific meeting of the Advisory Group on the Food Chain on November 16th 2011. The reason had already begun to become clear to interested parties with the simultaneous publication of the Commission's appreciation of the outcome in a press release: while the reports are quite critical on the performance record of the legislation (and the actors involved), the EU's executive is of the opinion that it says something very different – that all is well or at least will be once its proposal for a re-nationalisation of GM authorisation would be adopted. Reminds one of the old fairy tale about the Emperor's new clothes: all can see that he's stark naked - but pretend that he's wearing a delightful robe...

What does all of this mean for Europe's plant breeding and seed production industry and for international seed trade? It means that nothing much is going to change in the immediate future. And that is of course bad news. While the report(s) underline that the issue of zero tolerance needs to be addressed and specifically draw attention to the fact that approvals are likely to continue to be much faster elsewhere than in the EU, the Commission doesn't pick up this point at all in any of its statements or official documents. Asked about this at the stakeholder meeting, the Commission confirmed that seed 'may be addressed' at some stage in the future but that the priority rests with the re-nationalisation proposal. It is obvious: the Commission doesn't have a 'plan B'. In case the proposal fails (which it likely to become evident by mid of 2012), we are back to square one. And in view of the end of term of Commission and Parliament, it will become less and less likely that a new effort will be made. Which then could mean that we may have to wait for a new policy initiative, by a new Commission - sometime in 2015.

What are the alternatives? The only practical approach seems to -irrespective of the outcome of the re-nationalisation proposal- continue talks on the need for uniform sampling and testing protocol and its enforcement by the EU to avoid such incidents as the one in Hungary this year or in Germany last year. It is clear: this is not what the seed industry considers to be a solution to the practical fact of adventitious presence of GMOs in seed. But it is a precondition for any practical management of this fact by companies and authorities alike. If we don't know what to measure and how to measure it, how can there ever be legal certainty of what a testing result will mean in practice for seed companies, for farmers and for public authorities?

ESA will continue to press for a proper testing protocol *and* a practical tolerance level for the presence of approved GMOs in seed. We may have to start with one – but we definitely need both.

With best regards, yours

Garlich v. Essen, Secretary General



External Meetings (selected)

- 01.-02.12.2011
CPVO Examination
Offices
Angers (FR)
- 01.12.2011
ICC ABS TF
Conference Call
- 02.-12.2011
WG of the Advisory
Group on the Food
Chain and Animal
and Plant Health on
fees for EFSA (BE)
- 07.12.2011
Preparatory WG on
Seeds (BE)
- 07.12.2011
COCERAL
Fusarium (BE)
- 08.12.2011
DG ENVI - CA
Meeting
endophytes (BE)
- 13.12.2011
CPVO WG
Endophytes (BE)
- 13.12.2011
FFC Meeting (BE)

2nd Conference on Specialty Crops and Minor Uses held in Brussels on 7th November 2011

Supported by ESA and a number of other food chain organisations, a follow-up conference on “Specialty Crops and Minor Uses” was held at Copa-Cogeca headquarters on 7th November 2011. The aim of the conference was to consider the progress made by the Commission and their consultants in evaluating the minor use problem and in considering the options to find suitable solutions for speciality crops and minor uses. Regulation 1107/2009 concerning the placing of plant protection products on the market, recognises the importance of the availability of plant protection products for minor uses in Europe and states that *“In order to ensure that diversification of agriculture and horticulture is not jeopardised by the lack of availability of plant protection products, specific rules should be established for minor uses.”* The Regulation also requires that the Commission presents a report by December 2011, looking at the establishment of a European fund for minor uses.

Progressing the results of the conference on speciality crops and minor use held in 2009, the 2011 Conference looked at solutions found outside the EU (in particular with the IR-4 programme) as well as the work being done in EU Member States – at national level and in cooperation between Member States.

Finally, the Conference looked to draw common conclusions for consideration by both the European Parliament and the Council of Ministers. The final aim is to support speciality crops and minor uses, ensuring that suitable crop protection solutions are available to maintain the viability of European production of speciality crops, including for breeding and seed production that contribute to the availability of high quality, healthy and affordable products for European consumers. (vE/SB)

CropWorld Conference underlines need for sustainable intensification of farming

Formerly known as the BCPC Congress, CropWorld Global has become a meeting place for all those involved in different aspects of crop production. The three-day conference held in London from November 1st to November 3rd (also including an extensive exhibition) attracted some 350 high level participants from seed manufacturers and agrochemical producers to government representatives and food retailers. Main issues addressed included global food security, enhanced breeding technologies, water and irrigation, agrochemicals and fertilizers, environmental and regulatory factors affecting crop production and the role of food retailers and producers. The SG provided an address on the upcoming changes to the regulatory environment of plant breeding and seed production in Europe and the possible consequences for the efficiency of EU crop farming. The conference clearly underlined the need for a societal debate and for political leadership to bring about a sustainable intensification of agriculture in order to address both, the challenges of food security and of environmental protection, in a coordinated and mutually re-enforcing manner (vE).



EU consultation on the implementation of the Nagoya Protocol

As it was announced in the previous edition of the ESA Newsletter, the European Commission opened a public consultation on the implementation of the Nagoya Protocol on October 24 with a deadline for replies from stakeholders on December 19. The ESA working group biodiversity will finalize the ESA response to the consultation at its upcoming meeting on December 7 and the final ESA input will be shared with all ESA members for their possible use in individual replies to the consultation. Regarding this matter, ESA is also involved in the work on a wider industry reply together with the International Chamber of Commerce.

For more information on this consultation please contact the ESA Secretariat. (SzCs)

EFSA Stakeholder Dialogue Group

On 17th/18th November, the EFSA Stakeholder Platform met with top representatives of the European Food Safety Authority for one of its regular exchanges on current and upcoming issues. Next to risk communication and stakeholder consultation mechanisms, the discussion also focused on the possible introduction of fees for EFSA assessments and the conditions under which such fees may be established (a respective proposal is currently contemplated by the Commission). Furthermore, it was confirmed that the mandate of the Stakeholder Platform and its members will be up for expression of interest in the coming weeks. (vE)

France adopts UPOV 91 Convention Vote on law on plant variety

Following a positive vote of the French Parliament this November, France has now acceded to the 1991 version of the UPOV Convention. The members of UFS (Union Française des Sémeuriers) welcomed the transcript of the International Convention UPOV (International Union for the Protection of New Varieties of Plants) of 1991 into the French law. It took France almost 20 years to achieve this improvement from the former version of the Convention passage of the law, while it had already been ratified by 21 other Member States of the European Union. The new legal situation brings clear improvements in the scope of protection and clarifies the legality of use of farm saved seed of protected varieties under the known conditions. (SB/vE)

Some new developments in the European Patent Office

On November 8, the competent Technical Board of Appeal held an oral hearing in the so-called *Tomato case* which did not result in a final decision regarding the patent at issue. The reason why the Technical Board was not able to conclude the case is that the appealing party proposed that a number of questions related to the patentability of plants resulting from an essentially biological process are asked to the Enlarged Board of Appeal for consideration. The hearing ended with the announcement by the technical Board of Appeal of its intention to refer questions of law to the Enlarged Board of Appeal of the EPO. The final decision of the Technical Board and the exact formulation of the questions are not yet known. (SzCs)



IPR course at Wageningen Business School – November 10, Wageningen, NL

For the first time this year, Wageningen Business School organized a specific IP course focussing on IP in seed business. The course was organized throughout three days, covered all aspects related to IPR protection in the seed business and the current discussions and was attended by 20 participants from seed and seed-related companies as well as from authorities.

ESA was requested to contribute to the program of the course and give an overall presentation on the discussion around the question of interface between patents and plant breeders' rights and the related ESA IP position adopted by the ESA Board in September 2011. Sz. Csörgő represented ESA at the course and presented the ESA position to the participants. The presentation is available on request from the ESA Secretariat. (SzCs)

Meeting of the ESA CIPR of November 21, 2011

The ESA CIPR held a meeting on November 21 in Brussels which was the first meeting of the Committee after the adoption of the IP position by the ESA Board. Since the Board took the final decision on the IP position in September it charged the CIPR with putting the position into a paper format as well as with working on the effective implementation of the position. The meeting of the CIPR therefore focused on these two tasks. A first draft of the position paper was discussed and is in the phase of finalization now. Once the last touches on the text are done by the CIPR the paper will be sent for suggestions to the members of the ESA Board and will be finalized soon.

The other major matter the CIPR dealt with concerned the implementation of the ESA position. It was decided to engage in several routes in parallel in order to make sure that a result is achieved and that all points of the ESA position are covered. It is primarily the ESA Secretariat that is taking the lead in carrying out the actions related to the implementation of the IP position. (SzCs)

CPVO – Administrative Council; November 15/16

On November 15/16 the Administrative Council had its autumn meeting in Angers. Some 50 participants attended the meeting representing most of the EU Member States, observers from associated countries and breeder's organisations. ESA was represented by Mrs Suelmann, Chair of the Committee on Intellectual Property Rights, and B. Scholte. The meeting was chaired by Mr. von Kroeher (DE) and was attended by Martin Ekvad in his new position of CPVO President. The most important issues addressed are highlighted underneath:

- Evaluation Community Plant Variety Rights system

The Commission informed on the outcome and follow up of the European Conference held in October regarding the evaluation the CPVR system. The Commission currently is in the process of drafting an action plan but a first



legal text is not to be expected before spring 2013. The Commission also indicated that the necessary changes to the Basic Regulation regarding possible additional tasks of the CPVO will be handled in the course of 2012 in the framework of the evaluation of the Seed Marketing Directives.

- Fee structure

The AC decided on a proposal of CPVO to reduce the application fee of Euro 900 to Euro 650 as from January 1st 2013. At the same time the CPVO will analyse possible additional possibilities to balance the CPVO budget until the next AC meeting which is in March 2012. The reduction of the application fee means an annual reduction of 750.000 Euro for the applicants.

- Application requirements in case of „take over“ of DUS reports

As follow up of a meeting in relation to the on-line application system ESA addressed a possible change to the application requirements and proposed to suppress the requirement of providing a CPVO Technical Questionnaire in case of „take over“ of DUS reports. Such a change would simplify the application process for the applicant considerably. Alternatively a copy of the TQ of the respective National application could be provided. The AC decided to look into this possibility and to continue the discussion in the next meeting on the basis of an analysis of the CPVO and to look at the possible legal consequences of such a change.

- Registration of (non-protected) EDV's

According to Art 87 h of the Basic Regulation, the CPVO is obliged in certain circumstances to register non-protected EDV's in the register. So far 28 varieties have been registered as such, all of them being ornamentals. The AC discussed a background paper drafted by CPVO to obtain guidance in this respect. The AC considered different legal consequences and decided after a lively discussion to continue the discussion in the next AC in March. The CIPR will address the issue in their spring meeting to prepare an ESA position on the matter.

- Quality Assurance system

The AC decided to entrust the Danish Examination Office in Tystofte for DUS testing. It was noted that on the initiative of the Danish authorities the species *pisum sativum* was deleted from the list of species.

- CPVO Technical Protocols

The AC adopted the TP for Oilseed rape which will enter into force retroactively as from August 1st 2011. It was noted that with the adoption of this TP a discussion is ended which started more than 6 years ago involving several Examination Offices and breeders.

The next AC meeting will take place on March 20/21 2012 in Brussels. (BS)

The next ESA Newsletter 2011 to be published on 22.12.2011