



ESA NEWSLETTER

June 2012

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ESA Meetings (selected)

- **09.07.—10.07. 2012**
ESA WG Plant Health Meeting
- **09.07.2012**
ESA WG PH Dinner Debate: Stanhope Hotel Brussels, BE
- **13.07.2012**
ESA STAT WG Labelling Meeting
- **16.07.2012**
ESA EXCOM Meeting
- **16.07.2012**
WG BR Meeting

Dear members,

traditionally, June is the month when seed industry people travel back from ISF Congresses and prepare for the start of harvesting, cleaning, conditioning, packaging and –of course- sales of the new seed crop.

Not so this year!

Not only was the ISF Congress held outside its regular schedule and with that almost a month later. June has also seen almost frantic regulatory and political activities in Europe: Cruiser, Kokopelli and the EU patent where at the top of our agenda in Brussels and in Member States. Where are we?

The ESA IP Position may have helped as it was the first comprehensive new position on IP for plants and seed that was developed and –most importantly- adopted during the past years. Many of the points discussed in our CIPR, the Board and the wider ESA membership of course came back at national level; but foremost in the discussions of ISF's IPC and its Breeders Committee. Clearly, the challenge to align the industry beyond the distinct regulatory borders of an individual country or a region such as the EU is a specific challenge. But following intense discussion, the ISF General Assembly adopted its new 'view on IP' by unanimity! This not only as such is a great achievement for the organisation. The importance of the world seed sector adopting a united position on this core subject can't be overestimated. This the more so, since the position contains the distinct elements of the ESA Position: the call for a limited breeders exemption which extends to the access to all (commercially or otherwise freely available) genetic material for further breeding. With that, the ISF view and the ESA Position are fully in line with each other – which also strengthens our case in the quest for workable practical provisions in EU legislation.

And the current discussion on the adoption of a new regulation for an EU Patent seemed to provide a first opportunity to make use of this. We have been very successful in lobbying for the introduction of a limited breeders exemption on the EU Patent. A respective amendment was tabled by the two largest political groups in the European Parliament and we were all geared up for the final vote to take place in the first days of July in Strasbourg. But a last minute change of mind of Member States prevented this long standing effort from being concluded successfully and the issue is now back in political limbo between EP and Council – with a quite unsecure outlook also for our specific issue of the breeders exemption. We will continue to push hard and together with our national associations to bring the item back to the political agenda. More detailed information will follow over the coming two weeks when the two EU institutions will make up their mind how to continue the works on the dossier.

On 12 July, we will –finally- hear the conclusions of the European Court of Justice on the Kokopelli case. Whatever the verdict may look like in detail, it must be expected that the Court will push for some form of 'liberalisation' of market access, potentially weakening the well-established principles of the current seed markets (listing requirements of DUS and - where applicable- VCU as well as certification). Clearly, the ruling will have an almost imme-



External Meetings (selected)

- **29.06.2012**
**CPVO R&D pro-
ject resistance;
kick off meeting
Paris (FR)**
- **09. - 13.07.2012**
**OECD
Annual Meeting
Helsinki (FI)**
- **17.-18.07.2012**
**Ring Test
Potatoes
Emmeloord (NL)**
- **29.-31.08.2012:**
**FELAS:XXIII Pan-
American Seed
Congress**

diate impact on the upcoming presentation of the Better Regulation proposals which we expect to come to Parliament and Council by the end of the year. We will analyse both the ruling as well as the consequent legislative proposals in great detail and see in what way and in how far ESA may have to take new developments into account in our preparation for the lobbying campaign on the future seed marketing and plant health legislation. A first analysis will take place at a meeting of the ESA Working Better Regulation on 16 July, just days after the ruling; and we will of course inform the wider ESA Membership about our interpretation of the ruling and the possible consequences for our sector.

Finally, there is the challenging area of seed treatment. Following the adoption of the ESTA standard and its publication (see also on the ESA website where we introduced a specific section on ESTA related activities), we are now approaching the phase of practical implementation of an EU wide quality assurance system for seed treatment and treated seed. And there is still a lot of practical work to be done! We are in the process of the practical roll-out in Member States, with the help of national seed associations, the colleagues of the crop protection industry and in some cases even regulators. Framework agreements are being developed for the relation between ESTA and national systems (where these exist as e.g. in Germany, the UK etc.) and –last but not least- we will start the process of hiring a dedicated ESTA Manager to drive the process over the coming years. We have already achieved a lot here; but if we don't follow up now and if we don't follow up fast and with dedication, still all maybe jeopardized as regulators face more and more intensive pressure from highly motivated interest groups that advocate a ban of all seed treatment products; and of course specifically of insecticides perceived to be harmful to bees.

ESA has kept you well informed about these developments in the past months and weeks. And we are already facing the next concrete challenge with the banning of the specific product of Cruiser by the French Minister for Agriculture – despite negative statements of the European Commission, many other Member States and the seed and farming sector. This ban not only has a huge and immediate impact on the oilseed rape business at a critical time of the campaign. It is also still quite unclear what the practical consequences of this national measure will and legally may be for the rest of Europe, for the free movement of treated seed which we fought for so hard in the discussions on the new pesticide regulation. While we are in continuous discussion with the Commission and the colleagues in France specifically and will keep Members informed by dedicated communication, it is clear that the successful introduction of an EU wide quality assurance scheme will become even more critical if we wish to maintain this important part of the seed business and continue to supply farmers and growers with the technology packages of seed and crop protection that they need to stay competitive.

All in all, it has been a busy and hectic month for the seed industry. With many new challenges emerging as we seemed to be close to ticking off some important 'to do's' in our agendas.

A lot achieved, a lot in progress, and still much to do could be the bottom line of this short overview. I am looking forward to continue this work with you, our membership, in the months to come.

With best regard

Garlich v. Essen, Secretary General



ESA—now on *Wikipedia*

We thought it's time to gradually implement new media ... And started with the most popular and widely known tool, *Wikipedia*, the free online encyclopedia. According to results presented at the event "EU Embraces Social Media" hosted on 20 May in the European Commission, also attended by the ESA Secretariat, the following astonishing result has been revealed :

Wikipedia is the most used new media site by both MEPs and Brussels Influencers. 88% of MEPs and 93% of Influencers use W. for professional purposes at least monthly.

Surveyed were 102 MEPs as well as 258 Brussels Influencers (including Commission, Parliament, EU Agency and Permanent Representation officials, journalists, NGOs and academics), by self-completion postal questionnaire and online.

We strongly encourage you to visit ESA's entry on *Wikipedia* to help us increase the number of "hits" on search engines like *google* as well as to create links between us and your own company/ association. We highly welcome suggestions as well as any questions. (KB)

To enter the ESA LinkedIn page, please use the following link:

http://en.wikipedia.org/wiki/European_Seed_Association



Visit to ESA Members—Florimond Desprez

On a sunny 28 June, Katharina Bednarz and Jean-Paul Judson visited Florimond Desprez in Cappelle en Pévèle, France. The one-day visit provided an extensive insight into the activities, history and achievements of the company as well as important national and international topics. Mr. François Desprez, Managing Director of Florimond Desprez, president of UFS, the French seed association, and former president of ESA gave a presentation on the historic company which was followed by a tour of the different sites of Florimond Desprez including seed testing premises, laboratories and phytopathology facilities. The afternoon was followed by a very interesting and informative discussion with Mr. François Desprez regarding different communication channels and public affairs. The pleasant stay was rounded up by a walk through the seed processing plant facilities. Jean-Paul and Katharina want to once more thank Mr. François Desprez and his staff members for an informative, productive and very pleasant visit. (KB)





ESA—now also on LinkedIn

After creating an ESA entry on Wikipedia, we have now also started to use *LinkedIn*, the largest professional network.



Some of you may already have seen our ESA Company page on *LinkedIn* (<http://www.linkedin.com/company/european-seed-association-esa->)

We recommend you to share the page with your own network and hope for many more „followers“ of the regular sector and association news as well as the latest job openings. According to the study referred to above, *LikedIn* is “popular among Brussels Influencers particularly representatives of business (46%), trade associations (57%), EU NGOs (61%), think tanks, academics and journalists”. (KB)

Call for participation: New ESA Working Group Communication

ESA established a new horizontal working group on the Promotion, Communication and Image (WG COMM). Its primary aim will be to identify key messages across the seed sector as well as to find suitable communication channels to bring those messages across. Once these key messages are formulated, in a second step the WG will look into creative ways to implement them. We might want to brainstorm on particular incidents related to crisis communication and how we can speak consistently, with “one voice” so -to-say. The first conference call took place on Tuesday, 3 July, which will be followed by a first physical meeting sometime in September. For the time being this working group shall not be bound to any ESA committee and shall remain relatively “informal” (no chairperson, ad-hoc conference calls, no terms of reference). To reach a balance of opinions and communications priorities amongst our members, it would be especially welcome if also small and medium sized companies would participate and express their input regularly, at least in a written form or via CC. Please contact me for further questions or to discuss more details in case of interest. (KB)

Commission agrees on a temporary experiment regarding field inspection under official supervision for generations prior to basic seed.

On June 25 the Commission has adopted an implementing decision regarding a temporary experiment regarding field inspection under official supervision for generations prior to basic seed. Such a provision existed already for certified seed. In the framework of the Better Regulation process ESA has advocated from the beginning to extend this possibility also to generations higher than certified seed. The experiment applies to all species except potatoes and will last from January 1st 2013 until December 31st 2017. Further information can be obtained from the Secretariat (BS)

Celebrating Nunhems' 95th anniversary

With great pleasure the ESA Secretariat participated in Nunhems' big event: Its 95th anniversary as well as the opening of its new research laboratory. It was truly a successful and memorable event in which also “Prerane”, one of the projects of the Nunhems Foundation in India, was successfully promoted. (KB)





UPOV TWV – Venlo (NL), June 11-15

The UPOV Technical Working Party for Vegetables (TWV) met from June 11-15 in Venlo (NL) at the Floriade congress center. The meeting was attended by 47 participants representing 16 countries and two observer organisations. ESA was represented by B.Scholte.

Several TGP documents were discussed in relation to statistical methods to be used for the assessment of Uniformity, Molecular Techniques, data bases and other items of importance. There was an interesting presentation of the expert from France regarding a database on peas holding the variety descriptions of over 2500 varieties with an analysis of the discriminative power of different characteristics. This database is an interesting tool for the assessment of the value of certain characteristics to be used for distinction which could serve as a model for other species.

The TWV addressed also a proposal from the CPVO to differentiate levels of uniformity regarding the state of expression of obligatory disease resistance characteristics in relation to varieties not bred for such disease resistance. This proposal was prepared as follow up of the discussion in CPVO initiated by vegetable breeders in central Europe. Several experts questioned if the proposed solution would help solving the problem. The expert from Slovakia mentioned that breeders in this country started a case at the level of the Slovak Constitutional Court claiming that the requirement of obligatory disease resistance testing for listing purpose is not legitimate. A ruling is expected in the next few months. On behalf of ESA I have underlined the importance of the issue and the need to investigate on possible solutions. Regarding the CPVO proposal I have proposed to analyse the (candidate) varieties listed in Central Europe to check if the proposed solution would work at all. The TWV agreed with the proposal which will also be addressed in the next meeting of the CPVO DUS experts for vegetables in December this year.

The TWV discussed a large number of Technical Protocols. To prepare the ESA input in these technical discussions a special ESA SVOwic Working Group has been set up consisting of Mrs Schenkeveld (Rijkzwaan), Mr Chabrier (Sakata), Mr Lietava (Zelseed), Mr Pellegrini (Assosementi), Mr. Prasil (CMSSA) and Mr Smets (Syngenta). The WG had a Conference Call prior to the TWV meeting. This new approach worked out rather well and several proposals were taken over by the TWV. The following Technical Guidelines were finalised and will be put forward for adoption to the UPOV Technical Committee in March 2013: Coriander, Endive, Lettuce, Tomato, Poppy, Oyster Mushroom, Spinach, Tomato and Watermelon.

The next meeting of the TWV will take place from May 20-24, 2013 in Nagasaki (Japan). During this meeting the following technical guidelines will be addressed: Bottle Gourd, Brown Mustard, Cassava (*), Chives, Cucumber, Leaf Chicory, Lentil, Melon, Pea (*), Pepper and Chicory (Witloof). The TG indicated with an (*) are expected to be finalised in 2013. (BS)

ISTA Annual Meeting – Venlo (NL), June 12-14

The ISTA Annual meeting 2012 took place in the same week as the TWV meeting and also in the same congress centre in Venlo. More than 270 participants attended the meeting representing 51 countries and observer organisations. B. Scholte attended especially the parts of the agenda in relation to the proposal for a permanent regime for 25 ton seed lots for grasses. ISTA has approved the proposal for without any further discussion with Australia and Hungary voting against. With the adoption a discussion is closed which started almost 20 years ago. The discussion on the 25 ton seed lots will continue on the level of OECD and the European Union. (BS)



New study on Plant Genetic Resources for food and agriculture

On 6 June, ESA attended a seminar on “Plant Genetic Resources” organised by the European Academies Sciences Advisory Council (EASAC). EASAC intends to provide science-based evidence for policymaking on a range of issues and this was a launch event for their most recent study on “Plant Genetic Resources for food and agriculture: roles and research priorities in the EU” (full study [here](#)). The study looks at plant genetic resources properties, conservation and research priorities in the light of the need for increased productivity of agriculture and crop diversification. EASAC does not only focus on studies related to plants, but some of their future studies may be of interest: on “sustainable biofuels” (September 2012) and on “genetics for sustainable intensification of plant production in the EU” (autumn 2013). These studies are driven by academics, but ESA will be in contact with EASAC in order to offer input to these studies. (JP)

ESA progress on Horizon 2020

Horizon 2020 plans to have a budget of 80€ billion between 2014-2020 to fund research & innovation projects across the European Union, from fundamental to applied research, up to projects that are industry-led and closer-to-market. This important step is to make sure that excellent research funded in Europe actually does enable innovative products, processes and services to reach the market and provide added-value to European citizens. With the huge investments in R&D in plant breeding made by seed companies, as well as R&D into new types of technologies that are impacting the sector (bioinformatics, speeding up the breeding cycles...), ESA, through the ESA Working Group on Research & Innovation, is active in making sure that Horizon 2020 fully takes into account the possibility to fund plant breeding research as well as research into technologies of key importance to the plant breeding sector. ESA is carrying out this advocacy work in close collaboration with the European Technology Platform “Plants for the Future”, COPA-COGECA and EPSO (European Plant Science Organisation). Following several contacts made with MEPs, ESA has successfully tabled all its amendments in the AGRI Committee of the European Parliament that will provide an Opinion to the lead Committee: ITRE (Industry & Research). The support from national associations has been crucial in achieving this good result. (JP)

CAP Reform: an issue for permanent grassland

ESA has been actively monitoring the discussions within Council and Parliament on the CAP Reform, particularly in relation to the issue of permanent grassland. The CAP Reform holds specific rules for agricultural practices that are beneficial for the climate and the environment – the so-called “greening” proposals – and in this context, permanent grassland is defined as “land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or longer”. From our estimations, the current proposal would have the effect of freezing up to 30 million hectares of productive and cultivated grassland and have a damaging impact on the grass seed market. In line with the recommendations from the SFG Board, ESA has drafted a position paper and 3 targeted amendments in order to ensure the renewal of cultivated and productive grassland, extend the crop rotation period to an absolute minimum of 10 years across the EU, and allow Member States more flexibility in defining their own rules beyond that. This would better take into account the diversity of crop rotation periods for productive grassland across the European Union. The ESA Secretariat is currently meeting with representatives from Council and Parliament to explain this position and put forward our amendments. (JP)



CPVO Working Group on Legislative Matters, June 6, 2012, Paris

In the context of the revision of the CPVR Regulation (Basic Regulation) the President of the CPVO decided to form a working group (WG) of experts dealing with various legislative matters related to the Basic Regulation. The working group consists of representatives from the CPVO, DG SANCO, Bundessortenamt, GEVES, Naktuinbouw, CIOPORA, Plantum and ESA who agreed not to limit themselves to stating positions but to make the WG a platform for open discussion. The first meeting focused on the following subjects:

Notion of “propagating material”:

According to the UPOV Convention it is the propagating material of the protected variety which falls under the basic scope of the protection. The Basic Regulation however does not use the term “propagating material” in the context of the scope of the right, instead it uses “variety constituents” which covers entire plants or parts of plants as far as such parts are **capable of** producing entire plants. On the other hand, the EU legislation on seed marketing uses the term “propagating material” with a different meaning obviously. The WG agreed that the definition of variety constituents in the Basic Regulation fits very well the purpose of plant variety protection and it is even better that this notion has no link to the seed marketing legislation.

However, the Basic Regulation makes reference to “propagating material” in the context of the FSS provision. The WG found that in this provision “propagating material” is in fact used within its meaning as defined in the seed marketing legislation and therefore is appropriate. The Commission however informed that the new seed marketing regime will not use the term “propagating material” any more but will use “plant reproductive material” instead. The WG agreed to await the new definition of “plant reproductive material” in the seed marketing legislation and examine whether that still fits with the purposes of the FSS provision of the Basic Regulation. The WG will therefore come back to this topic.

The EDV concept:

The CPVO has recently addressed breeders’ organizations with the issue of registering unprotected EDVs, which is possible currently under Article 87(2)(h) of the Basic Regulation. The CPVO is however seeking opinions from breeders’ organizations regarding the usefulness and the exact implementation of this provision. The WG was of the view that first it would be very good to clarify the definition of EDV as much as possible and decided to discuss any proposals for clarifications at the next meeting.

As regards the registration of EDVs in the Register the WG agreed that currently the CPVO should follow a policy where such registration will only be made if the request is submitted by two separate persons and a variety denomination is proposed. No request for further supporting documentation will be made by the CPVO but the information will be published with a disclaimer. As regards the future, the WG agreed that probably this provision should be deleted during the revision of the Basic Regulation but possibly a separate register with such information could be set up and administered either by industry or by the CPVO.

Regulation regarding variety denominations contains some inconsistencies and decided to remedy those.



Provisional protection:

According to the current law enforcement of the right regarding any infringements which might have occurred between the application and the grant of the right is only possible retroactively once the right is granted. On the request of one participant the WG looked into the question whether there should be a possibility for the holder of a CPVR to enforce his right already on the basis of the application, before the grant. The WG discussed and agreed that the difference compared to patent law is justified by the fact that in plant variety protection the protection period starts with the grant while in patent law it starts at application. It was however agreed that maybe a possibility to apply for an interlocutory decision together with the deposit of a guarantee could be introduced in the revised Basic Regulation. This topic will be further discussed at the next meeting.

Enforcement:

The WG agreed to the conclusions of the evaluation in this respect and decided to urge the Commission to follow-up on this issue. It was also proposed to the Commission to look into the EU Trademark Regulation for possible solutions.

Novelty:

Article 10 of the Basic Regulation states that a variety shall be deemed to be new if, at the date of application, variety constituents or harvested material of the variety **have not been sold or otherwise disposed of to others**. The WG discussed what should be considered as the starting point for the sales or other disposal: the date when the sales contract is signed; the date of payment; or the date of delivery – as in practice several years can pass between these acts. The CPVO stated that currently it is the date of the invoice which is taken into account in case there is no dispute. After having also considered the relevant UPOV explanatory note, the WG agreed that it should be the moment of the physical handover which should determine the start of the grace period.

In relation to Article 10 the WG also had a look at paragraph 2 which states that “disposal of variety constituents to an official body for statutory purposes” should not be considered as disposal for the purposes of considering novelty. The WG agreed that given that trials are not only carried out by official bodies the wording should be changed simply to “trials” and some further clarification should be added to the text.

Additional information from the Commission:

As regards the revision of the CPVR regime, the Commission informed that the Action Plan was already discussed within DG SANCO but it still has to go through the Cabinet as well as the formal inter-service consultation with other Commission services. Therefore, the presentation of the Action Plan is planned for the Cypriot presidency, probably on September 4, 2012. As regards the implementation of the Action Plan, it was stated that further WGs may be formed under the aegis of the CPVO or the Presidency.

It was also mentioned that the package of S&PM, Plant Health and Food and Feed Control regulations is presented to the competent Council working party on June 27. The next meeting of the CPVO WG is foreseen for the end of September 2012. For further information please contact the ESA Secretariat. (SzCs)

The next ESA Newsletter is to be published on 31 July 2012