

**Meeting of the ESA Board of 23.03.2012  
09h00 – 15h00  
ESA Office**

Annotated AGENDA	NOTES
<p><b>I. Opening, welcome and Anti-Trust Guideline</b></p> <p>Members will be requested to take note of the ESA Anti-Trust Guideline and to act accordingly.</p>	ESA_11.0246.1
<p><b>II. Minutes from the last meeting and actions resulting</b></p> <p>The Minutes of the meeting of September 2011 were approved according to the ESA procedure following integration of comments received.</p> <p>The SG will provide an update on the actions agreed in so far as the points are not coming back to the agenda of this meeting.</p> <p style="text-align: center;"><u>Policy issues</u></p>	ESA_11.0718.1
<p><b>III. Intellectual Property Protection</b></p> <p><b>i. Information on final ESA Position on IP for plant-related inventions</b></p> <p>Following the adoption of the principles of the new ESA position on IP by the Board at the meeting of September 2011, the CIPR was charged with finalising a respective Position Paper in its following meetings (November 2011 and February 2012).</p> <p>The final paper (v. ESA_12.0100) was published immediately after the February meeting of CIPR and is also made available to Board Members as a preparatory document for this meeting. The Chair of the CIPR may provide further information if required.</p>	ESA_12.0100
<p><b>ii. EU Patent</b></p> <p>ESA members have repeatedly been informed by the Secretariat on the progress of discussions at European Parliament and Council level on the adoption of a new Regulation establishing a unitary patent protection (so-called EU Patent). ESA's main concern has been and still is the introduction of a limited breeders' exemption in the final text. While such</p>	ESA_12.0137 ESA_12.0062

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a limited breeders exemption is in fact supported by almost all political groups in the EP as well as a number of Member States, a formal respective amendment to the text of the Council is still missing mainly due to the fact that discussions are currently overshadowed by the question of the seat of the future patent court (disputed between France and Germany) and the upcoming French national elections. While ESA has approached Permanent Representations and MEPs at Brussels level, Association Members are asked to contact their respective responsible Ministers. Meanwhile, it is expected that formal discussions at Council level will only be resumed after the French elections. The SG may provide further information on request.

#### IV. Better Regulation

- i. ECJ Case Baumaux vs. Kokopelli and potential impact on future seed marketing legislation

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ESA\_12.0094.1

The Secretariat has informed all ESA Members about the progress of the Kokopelli case up to this date and most recently by extensive coverage in the ESA Newsletter of February 2012. A short information and outlook is provided in file ESA\_12.0139.

The Commission has confirmed its intention to publish the legislative package in the third quarter of 2012. While the proposal for the Food and Feed Control legislation seems slightly delayed, the proposals for seed marketing and plant health seem to be on time – which is another indication that the potential impact of the Kokopelli ruling may already be incorporated in the Commission's approach.

#### V. ESTA project

- i. Update on current status

The ESTA project entered the phase of implementation with a trial of the draft standard in a number of companies and countries. This verification of the ESTA Standard shall allow for the roll-out of implementation as of April 2012 for OSR and maize (and possibly sugar and fodder beet). Next crops on the list for defining dust reference values are vegetables (where no major problems are expected) and cereals. The draft standard is supplied to Board Members for information and approval (v. below).

- ii. Proposal for a financial framework and management

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It had been agreed to finance the elaboration of the standard up to the phase of implementation by a specific call for contributions of interested members plus a limited contribution from the ESA budget (max. 25.000 EUR p.a. for a max. of 2 years) up to an overall amount of 100.000 EUR p.a. for a period of max. 2 years.

Financial commitments of Members reached approx. 80.000 EUR for year one but one major contributor declared that its contribution covered the full period of 2 years; consequently, the overall income from Members

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will fall short of the envisaged 160.000 EUR and reach only approx. 145.000. At the same time, the overall expenditure for the ESTA project so far is broadly in line with the projection so that the project may be financed with the commitments of members and the contribution from ESA up to April / May 2012.

**The SG proposes that the financial shortfall will be covered by the running ESA budget (surplus 2011) instead of approaching Members another time for specific commitments.**

In parallel, discussions on the long term financing of the ESTA management were started. A WG consisting of J.W. Breukink, James Wallace (AIC, UK) and the SG established a first DRAFT proposal with the following elements:

- Fee based and cost-covering long-term financing of the scheme
- Start-up financing support by the three PPP providers (BASF, Bayer, Syngenta) for a period of three years over which a possible shortfall will be covered by the PPP companies
- employment of a dedicated ESTA Manager with experience in quality assurance by ESA under a general Belgian contract (rather than project related) to safeguard flexibility in case the scheme cannot be realised as planned
- Elaboration of a fee structure that will allow a self-financing of the ESTA management by examination / accreditation fees which shall be cost-covering only but include an overhead for ESA and STAT related workload and administration

Following principal support of the EXCOM, the draft was further discussed with representatives of the PPP companies and STAT and a revised proposal was elaborated with the following main elements:

- Overall magnitude of expenses forecasted at 150.000 EUR p.a.
- ESTA system to be calculated on a fee / treated unit base to differentiate between small and large scale use of system

In file ESA\_12.0141, Board members are supplied with a draft outline of the system and its details.

**The Board is asked to principally adopt the approach outlined in the proposal and to agree to start the selection process for the ESTA Manager as soon as possible.**

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iii. Formal approval of ESTA Standard by the ESA Board

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In line with the agreed proposal for the future governance of the ESTA project, the ESA Board is asked to formally decide on the nomination of the ESTA Board and to adopt the final ESTA Standard. In the future, the ESTA Board will be responsible to take management decisions on ESTA related issues, including on technical amendments of the Standard.

It is proposed to nominate the Members of the ESA Executive Committee and the Chairman of the ESA STAT as the ESTA Board. The ESTA Manager may attend ESTA Board meetings but has no voting rights.

VI. GMOs

i. ESA actions in relation to re-nationalisation proposal and seed thresholds

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ESA\_10.1100.3

It has been widely reported that the Danish Presidency considers the re-nationalisation proposal one of its priorities. Consequently, a number of discussions have been held at MS level (Council WG etc.).

It was agreed in ESA to make use of the opportunity of the subject being on the agenda of both the COREPER (Committee of Permanent Representatives = EU Ambassadors) and the Council of Environment Ministers on 29.2. and 09.03. respectively, to once again underline the need for AP provisions for seed.

The SG developed a respective letter which was sent to ESA Members, accompanied by Position Paper ESA\_10.1100.3, and which was also sent to the Permanent Representations in Brussels. Members were asked to make use of the text and paper and to send similar requests to national Ministers for Agriculture and Consumer Protection.

As regards the issue of a “technical solution” and/or a threshold for presence of EU-approved GMOs in seed, it should be noted that the item has recently been addressed at three different levels:

- Standing Committee on Seeds (by the delegation of Greece)
- In context with the re-nationalisation discussion (v. above)
- By notification of France to the EU Commission under Regulation 98/34 of a national measure setting a level of 0.1%.

Specifically the last one could potentially become an angle to re-vive the discussion at Commission level.

n.b.: scope and technical approach of the French notification are still unclear and currently subject to a legal assessment by UFS.

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**ii. Outcome of ENVI Council of 09.03.2012**

The Presidency compromise failed clearly to achieve the necessary qualified majority at the Council on 09.03.2012. It is now unclear whether or not the Presidency will continue to work on the subject or if the proposal must now finally be considered politically dead.

Officially, the COM has never suggested a 'plan B' in case of a failure of its renationalisation proposal. It is therefore also unclear if and in what way the COM may still engage to resolve the other outstanding issues like most specifically the extension of the scope of the technical solution to food and the question of seed thresholds.

It should be noted that at the meeting of the Advisory Group Seed on 08.03.2012 (i.e. a day prior to the ENVI Council), the COM (SANCO; service for biotech) did already confirm its intention to work on a proposal for laying down respective legislation by fall 2012. This is the first more or less 'official' commitment from SANCO on the subject since the taking of office of this Commission.

**VII. New Breeding Techniques****i. Final report of Experts and resulting ESA strategy**esa\_12.0029  
ESA\_12.0142

The European Commission (SANCO) finalised the draft report of Member States Experts (v. esa\_12.0029; n.b.: heavy file!) early 2012 without further consultation with these experts.

The report (not yet public) classifies the techniques and resulting products as summarised in file ESA\_12.0142.

In short, it is the conclusion of the responsible ESA bodies that the findings of the Expert report should be endorsed by ESA (referring to the majority positions) in order to promote the report as the 'standard' for the further work by COM, EFSA (and MS) as the most important techniques / resulting products are exempted from the application of Directive 2001/18 with the notable exceptions of cis-genesis, Zinc Finger 3 and Agro-infiltration with t-DNA integration.

At the same time, it was underlined that parts of the report as well as the EFSA Opinion on cis-genesis could also be (ab)used to argue for a much wider examination of new varieties and/or breeding techniques and the resulting crops (= "case by case assessment") which would be detrimental to the interest of the seed industry in general and specifically of smaller and medium sized companies. Also the possible link to the ESA approach on the revision of the Novel Food regulation should be noted, where ESA asks that only where technologies not used prior to the cut-off date of 1997 lead to substantially different products, these should be falling under the scope of the new Regulation.

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**Administrative issues**

**VIII. ESA Code of Conduct**

**i. Information on status of signatories**

ESA\_11.0245.1

As agreed, the Secretariat approached Members with the request to formally sign the general ESA Code of Conduct as adopted by the Board. A reminder was sent early 2012 and meanwhile a large number of companies have signed the code. The SG will give an update during the meeting.

It has become clear that still some confusion exists regarding the need for separate codes (e.g. Code of SFG companies) which has slowed down the process of signing. Furthermore, some questions are asked regarding the (process of the) consequences of indecent practices like e.g. suspension of admittance to the European Seed Trade Meeting. Here, the Secretariat is of the opinion that the text put to members with the request for signature is what has been agreed by the Board.

**IX. ESA Finances 2011**

**i. DRAFT financial result 2011**

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Board Members are supplied with the DRAFT financial result for the financial year 2011, based on the draft auditors report.

n.b.: as in previous years, the draft auditors report is still subject to a discussion between the ESA Treasurer, the accountant and the auditor and may consequently be modified in some details.

However, the order of magnitude of receipts and expenses as well as their assignment to the general categories may already be considered a solid base for further discussion (v. below), in particular as regards the proposal from the Secretariat to consolidate the final accounts by expulsion of members that have continuously failed to pay their membership fees (v. under ii).

**ii. Proposal to consolidate accounts and for expulsion of members not paying their contributions**

A number of ESA Members have continuously failed to pay their membership fees, despite constant reminders and approaches from the Secretariat.

In view of the very positive draft financial result for 2011, the SG was asked by the Executive Committee to contact debtors again with a view to a regularisation of accounts or expulsion.

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**Based on unsuccessful contacts, the SG proposes to the Board to decide on the formal expulsion of the following members:**

- **ASPM: Seed Association of Bulgaria (does no longer exist)**
- **HCSA: Greek Seed Trade Association (no contact possible; n.b.: in case of expulsion, the fees established for Greece will in the future have to be paid by the remaining ESA Member EEPES).**
- **Pieterpikzonen: outstanding payment (2008) disputed in view of lack of ESA activity in the area of Home and Garden Seed.**

**The Board is asked to decide on the proposal.**

Subject to approval of the proposal above and based on agreement by the Executive Committee, the amounts shall then be written off as extraordinary costs in order to consolidate the ESA accounts with effect of 2012.

iii. Updated budget 2012 and outlook 2013

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In view of the substantial changes as regard ESA's financial framework, the SG has been asked by the Executive Committee not only to –as usual- prepare an updated budget for the running year 2012 but also to present a further outlook on the year 2013.

Board members are supplied with a respective overview and the SG will supply further detailed explanations during the presentation.

X. ESA Annual Meeting 2012 ff  
i. Annual Meeting 2011: feedback

As agreed, the Secretariat launched a satisfaction questionnaire to all participants of the Congress 2011 which confirmed a very positive appreciation of ESA members and guests of the location, facilities and services supplied during the Congress. It is also confirmed that a clear majority supports the move to alternative locations and there is a strong group advocating that this should be done every year and not solely every other year. Generally, the location (city / country) is considered less important than the facilities (trade rooms etc.) which also is the main point of criticism as regards Brussels.

ii. General Assembly 2012: information on planning

As in previous years, the Secretariat has secured the Sheraton and hotels nearby (Thoon and CrownPlaza, both on Place Rogier) for the practical set up of trade and ESA meetings.

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All meetings will take place at the Sheraton where the main restaurant (1st floor) will be made available to ESA exclusively for the lunch breaks. All ESA meetings (incl. General Assembly) will take place on the 30th floor (incl. a separate coffee break area) and all trade will be held on floors 2 and 3. This should improve the practical flow of events and shorten distances and waiting time.

An important aspect of a successful AM 2012 shall be the invitation of a high-level keynote speaker for the General Assembly (see also PoA IX).

On this point, the following approach was agreed by the EXCOM:

- Subject: expectations from users to the plant breeding industry and possibly relation to revision of seed marketing legislation (BR proposal to be published by October 2012)
- Users: farmers and processors
- Keynote speech(es) and/or panel
- Reactions: EP rapporteur or shadow rapporteur on BR

Based on this approach, the SG is currently elaborating a detailed programme with respective speakers who will be contacted asap..

### iii. ESA AM 2013: decision on location

The Board has been informed earlier that the Secretariat was working on a selection of locations in order to establish the possibilities for organising the Annual Meeting 2013.

Meanwhile, a detailed planning is being developed for Prague as neither Warsaw nor Vienna offered the desired combination of facilities and acceptable prices.

**The Board is invited to support the proposal to hold the 2013 Annual Meeting in Prague.**

Provided adoption, the SG will conclude the necessary agreements and more detailed information will be supplied at the September Board meeting.

n.b.: the Secretariat has been informed by the Serbian seed association of the possibility to hold the Annual Meeting 2013 in Novi Sad; similarly, the Secretariat was informed by the Turkish association that the meeting may be organised in Antalia.

No specific decision is required on these offers (v. below)

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iv. ESA AM 2014ff: decision criteria and procedure

ESA\_12.0145

To allow for a smooth preparation of future Annual Meetings, the secretariat proposes to formalise both principal criteria for locations as well as a decision making procedure and timetable.

Board members are supplied with a respective draft proposal for discussion and adoption (v. ESA 12.0145).

XI. ESA Membership applications

i. Ukrainian Seed Partnership Association

ESA\_12.0146

The Secretariat received the membership application of USPA, the “Ukrainian Seed Partnership Association”. In line with the ESA Statutes, the application would be for Association Membership.

n.b.: ESA already has the “Seed Association of the Ukraine” as Association Member from the Ukraine. It should also be noted that a number of ESA Members have repeatedly reported difficulties in their relations with Ukrainian authorities as regards seed imports and that it has been suggested that a membership of the respective companies in the USPA would be pre-condition to future access to the Ukrainian market. Board members are asked to supply further information as regards their experiences and to decide whether or not, in line with the proposal from the Secretariat, further information is required as regards the role of the USPA in the Ukraine and its relation to the existing ESA Member SAU.

The formal proposal for decision can be found in ESA\_12.0146.

ii. Dupont

ESA\_12.0147

The Secretariat received the membership application of Dupont. In line with the ESA Statutes, the application would be for Associate Membership (specific interest in ESA STAT).

The formal proposal for decision can be found in ESA\_12.0147.

Any other business

XII. Miscellaneous

i. CAP reform and possible ESA Position(s)

The discussion on the revision of the Common Agricultural Policy post 2013 are on-going. In the current proposals, two points have been identified as specific areas of concern for ESA:

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- **Possibility for Member States to provide for coupled subsidies for a defined list of products, including seed**
- **Restrictions/limitations for re-sowing of permanent pastures**

**Both points are currently discussed in the relevant ESA bodies (specifically ESA SFG).**

**It should be noted that ESA also explores possibilities to come to a common or aligned position with COPA.**

**Members will be kept informed on any future position that may be taken.**

ii. **Report from ESA bodies (where required)**

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iii. **Information from the Secretariat on other issues**

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**XIII. Closure and confirmation of date of next meeting (06.09.2012)**

**The next meeting of the ESA Board is scheduled for 06.09.2012 (10.30h); the Board is asked to confirm date and time.**