



ESA News



November 2012
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ESA Meetings (selected)

- **12.12.2012**
ESA SPO Section Meeting
- **16.01.2013**
ESA Executive Committee Meeting
- **24.01.2013**
ESA WGB Meeting
- **31.01.2013**
ESA WG Biotech Meeting

Dear Members,

We are close, very close, to achieving one of our main objectives in implementing the new ESA Position on Intellectual Property Rights for Plants and Seed: the introduction of a limited breeders' exemption in EU patent law. Following the statement after the European Council's surprising U-turn on the EU Patent proposal in summer, anything seemed possible on that hotly disputed dossier: from complete failure and abandoning this prestige project, from strengthening the innovation capacity of the EU to a simple acceptance of the deletion of the truly European provisions in this legislation by the EP. After months of intense negotiations between Member States, European Parliament and Commission, the institutions now agreed on a compromise by which the content of the provisions defining (and limiting) the EU patent are kept – but not in an EU level regulation but in an international agreement binding the states instead of the EU. This includes “our” specific issue – the introduction of a limited breeders' exemption for acts done for the discovery and development of new plant varieties into EU level patent law. While such an exemption already existed in the national patent laws of Germany and France in their specific implementation of the EU Biopatenting Directive, it was clear that such an exemption would never be introduced in a similar way in all other 25 EU Member States by national individual national political and administrative processes. An EU level decision that establishes a uniform patent protection and limitations to its effect therefore is the best possible outcome for the plant breeding sector. What are the lessons for us, for ESA, from this highly intense and partly emotional discussion over the past year? I think it has shown what we are capable of achieving as an industry and as an organization, even against the odds, when we are dedicated, coordinated, clear and united with a single message. Our issue was specific, unique to our sector which –in comparison- is rather small in comparison to pharmaceuticals or other industries. Still, we have been able to first raise awareness and then understanding for its importance, have managed to find allies and champions in other organisations and amongst MEPs, in the Commission and in Member States and finally political majorities in Parliament and Council.

This may serve as an example and as a motivation to us for the upcoming campaign on the revision of the seed marketing and plant health legislation. Again, it will be decisive whether or not we manage to provide expertise and experience in clear and understandable, single messages that are communicated on all EU and national levels in a coordinated campaign. The ESA lobbying workshop and our dinner debate with Members of the European Parliament mark the start of this campaign as well as our commitment to work closely with national associations and companies; but it also underlined the need to clearly assign the leadership for this coordination to ESA and its competent bodies to assure that we are effective in our advocacy. This does not exclude differentiated positions – quite the contrary; but only if we built those often quite technical differentiations into a common ESA Position, which then is supported by all Members across Europe, will we have a chance to have them taken into account in a general, quite likely highly politicized debate.

With kind regards, Garlich von Essen—Secretary General

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External Meetings (selected)

- **04.-05.12.2012**
CPVO - Annual meeting with Examination Offices
Angers (FR)
- **06.12.2012**
CPVO DUS Expert Meeting
Angers (FR)
- **06.12.2012**
Social Media & Law Seminar, Altius,
Brussels (BE)
- **07.12.2012**
UFS Meeting
Paris (FR)
- **15.01.2013**
CPVO Legislative WG
Angers (FR)
- **23—24.01.2013**
Green Week , Berlin
(DE)
- **28—30.01.2013**
OECD Meetings, Paris
(FR)

ESA European Lobbying Training Workshop

11 national associations (Germany, France, the Netherlands, UK, Hungary, Spain Italy, Austria, Sweden, Denmark and Romania) and 5 direct members (Bayer, Dow, Monsanto, RAGT, Syngenta) attended the ESA European Lobbying Training Workshop on 26 & 27 November 2012. In total, 41 participants discovered the ways in which European decision-making works in theory and in practice, how best to approach a lobbying strategy, how ESA intends to coordinate outreach and advocacy activities at European and national levels in order to better get its key messages across and what, in terms of policies and legislative challenges ahead, ESA will be advocating on in the coming months and years. If anything can testify to the success of this part of the Workshop, it is the numbers of ideas that participants left in the “Colourful Ideas Box”: in the afternoon, participants were invited to a “dynamic break” where they were requested – in addition to drinking coffee and networking – to each come up with concrete ideas and suggestions on possible lobbying activities to be carried out next year. The objective was to reach 25 and in the end, there were 27 “colourful ideas” in the box! In the evening of the 26th, ESA organised a dinner-debate in the European Parliament that was hosted by three MEPs from the Agriculture Committee: Britta Reimers (DE), Csaba Tabajdi (HU) and Julie Girling (UK) and attracted three additional MEPs: John Stuart Agnew (UK), Anthea McIntyre (UK)



and Amelia Andersdotter (SE). Six MEPs and representatives from six political groups were represented at the dinner, as well as the Secretariat of the AGRI Committee and the Permanent Representation of Ireland who holds the Presidency of the Council early next year. Following a presentation by ESA on the European plant breeding

sector, MEPs were invited to raise questions. The key points of the discussion focussed on the proposals for a new EU seed law, MEPs questioning what would be the main benefits of this new legal framework. The timing for such a dinner-debate was perfect, in order to start raising awareness of the coming legislation and to start raising the profile of the sector towards the European Parliament. Finally, on the second day of the workshop, ESA organised a tour of the European Parliament and participants then regained the ESA office for a 1-hour feedback session. The main lesson of the workshop was that effective advocacy work at European level requires strong coordination between the European and national levels. The main outcome of the workshop was the agreement to reinforce the interaction between ESA and its national associations in order to make this happen. And the workshop did precisely that: create a team within ESA that will facilitate the coordination of outreach and advocacy activities on European decision-making. (JP)





5 Questions to ESA President Gerard Backx:

How and why did you decide to look for a career in plant breeding? Can you tell us a bit about your professional development from graduating in plant breeding to becoming CEO of the worlds' leading company in the marketing of seed potatoes?

I decided to study plant breeding half-way through my secondary school. Every day on my way to school, I was passing by a farm with trial fields belonging to the Dutch certification institute (NAK) at Emmeloord in the Netherlands. I knew at that point that I would be interested to attend the agricultural university. Those trial fields have given me the inspiration to choose a subject as interesting as plant breeding. But having realized my plans, and having studied at the agricultural university for a few years, I realized that I was not really a "research guy". Thus, something I wanted to avoid at all costs: to end up in a lab or being involved in huge research projects. It came really handy that I got a student job at the seed potato company *Hetteema* (which is now part of HZPC) for 6 months which made me realize that I am born to perform the commercial side of the plant breeding business. As a consequence, I finished my degree in plant breeding with marketing as a second major subject.

I also got a bit lucky; during my degree in seed marketing I was involved in a project for the agricultural seed company *VanderHave* which after my graduation in 1984, asked me to join them for a commercial job. That's how I started to sell sugar beet seeds within a few European countries, quickly followed by the Middle East and some African countries as well.



Newly elected ESA President Gerard Backx during the General Assembly 2012 in Brussels

A few years later, in 1990, I was asked to manage the grass seed department of *VanderHave* – an enterprise which in 1996 merged with *Zeneca* seeds into the company *Advanta*. Although I was a board member of *Advanta* in only two years' time, this period has not been easy for me. Due to the shareholders construction I decided to leave the board and to create more value for the company by focusing myself on the management of the sugar beet activities of *Advanta*, with its headquarters in Tienen, Belgium.

In 2001 I was then asked to lead *HZPC*, a company that just started out of a merger of two seed potato companies. Effectively, the merger still had to be realized. I have gratefully accepted this challenge since I sensed a few opportunities within this company. From that period onwards *HZPC* has developed into the worlds' leading company for the marketing of seed potatoes and thus grew from a purely Dutch company to a truly global enterprise with subsidiaries in different countries. All these successes were driven by the view to introduce and commercialize our varieties wherever possible.





5 Questions to ESA President Gerard Backx (2nd page)

Do you remember your first meeting in the framework of ESA? What do you think has changed most in the association over the years?

Being active in grass seeds and sugar beet seeds, I have been involved in the Dutch Seed Association, now Plantum, and also in two of the European organizations which later merged into ESA. I recognized a strong value for our sector to be organized on European level. For this reason, I constantly tried to get the seed potato companies more actively engaged with in ESA. As a logical consequence, I wanted to be a good example and thus took the lead in the chairmanship of the potato section in ESA. This was in 2003 or 2004 I believe.



G. Backx taking over the role as ESA President from Ch. Amberger at the ESA General Assembly 2012

What does being ESA President mean to you? How do you see your role?

Being ESA President is an honor! I really like the world of plant breeding and I am proud to be active in this sector for so many years. I realize the importance of an organization like ESA and for me it is very important that the sector communicates well with the administrators and politicians that are deciding on the "rules of our game". We need to make decision-makers aware how important certain technical rules are to the seed sector and how legislative

changes may affect our future. Furthermore, they have to realize how quickly our business is changing and that the legislation needs to fit around it.

In which areas do you see the biggest challenges for the EU seed industry and what would be your top priorities for ESA during your term of office?

First of all: The future priorities should be ESA's priorities- not my own ones! The European Commission is soon turning the discussion on Better Regulation into legislation. This means that we have to follow this process carefully and influence where possible and required. Being more important than ever, the European Parliament is another major player we need to keep an eye on. At that moment in time we need a strong lobby for our priorities and have to remember carefully that our industry is a very specific one with many topics being of long term focus. Unfortunately this is not always paid attention to by politicians who very often only care for the near future. We need to make sure we will not end up with any legislation that will limit the enormous, and by far not always visible, contribution of our sector to the food sector as a whole, inside as well as outside of Europe.

I am glad the ESA staff today is capable to follow and influence the decision-making processes in Europe. Nevertheless, if required, the President and/or board members will have to act as well.

Belgium prides itself of being the home to the best chips (or 'fries') and just now the 'fritures' across the country again compete for the title of best chips shop. You are a potato expert – what is it that really makes the best fries?

The right potato variety is the essence! Start with them - I can mention and recommend a few very good ones. (KB)





ESA portal on patent information

As you may remember ESA did a survey among its members with some questions on patent information which survey was open for a month between October 12 and November 12, 2012. The results of the survey were discussed in the ESA CIPR on November 20 and the decision was made to urgently set up an ESA portal aimed at providing a helping tool for breeders to find information on the patent status of varieties.

As a first step the portal will cover Europe and it will function as a real database with information on the crop, the variety denomination and the number of the patent involved with a link to such patent. The ESA Secretariat is now working on the technical set-up of the database and will provide you with further information on the expected timing soon. (SzCs)

From IP to golf—Farewell to Aad van Elsen

On November 19, 2012 the ESA CIPR has given farewell in the framework of a friendly dinner in Brussels to Aad van Elsen who had been a member of the committee since the very beginning. Aad has always been a very active member of the CIPR and contributed a lot to all the work carried out by the committee. The CIPR will very much miss his personality and his interventions. We all wish Aad all the best and a lot of fun in his future and we hope he will make good use of his winter golf gear. (SzCs)



European Innovation Partnership

ESA has been invited by Commissioners Geoghegan-Quinn (Research & Innovation) and Ciolos (Agriculture) to take part in the Steering Board and the Sherpa Group of the European Innovation Partnership for Agricultural Productivity and Sustainability, that will be set up next year. This new instrument, which forms part of the broader EU innovation policy, intends to facilitate knowledge and technology transfer in policy areas of strategic importance for the EU. This invitation is a result of ESA's active participation, over the year 2012, in research & innovation policy via its Research & Innovation Working Group. The EIP provides a platform for exchange with other agricultural input industries, research institutes, farmers, public authorities and civil society, to advise the European Commission on how to best fill the gap between agricultural research and implementation of innovative solutions on the farm. More importantly, the EIP will be a crucial instrument for the European Commission in defining research priorities over the 2014-2020 period, and this will also of course influence on the types of projects that will be funded. It is therefore essential that ESA is well represented in this forum, in order to make the voice of the plant breeders heard. With that in mind, ESA took part in a stakeholder conference on the EIP on 19 November 2012 and publicly stated that innovation, and bringing innovation to the farm, is the core business of the plant breeding and seed industry. The Secretariat will keep you informed of future developments in this area. (JP)





UPOV Council – November 1st 2013

On November 1st the UPOV Council met in Geneva. The meeting was attended by 127 participants representing 47 countries, 8 observer countries and 10 observer organisations. ESA was represented by B. Scholte

Information from (Candidate) UPOV Members

It was noted that France and Panama had signed up to UPOV 1991. The draft laws of Ghana and Tanzania received a positive opinion from the UPOV Council subject to the adoption of specific revisions in the draft legislation of both countries.

Information documents

Explanatory note on Variety denominations under the UPOV Convention - This document was approved without further discussion

Rules governing the granting of observer status to States, intergovernmental organizations and international NGO's in UPOV bodies – Also this document was approved; however after a long discussion initiated by Bolivia and Aprebes insisting on more transparency and access for especially regional organizations of small and subsistence farmers to the UPOV Consultative Committee and the CAJ – Advisory Group. As compromise the European Union proposed to open up a part of the CAJ-AG meeting to observers. In the end the proposed Rules were adopted as proposed. However it was noted that these rules could be amended in future on the basis of the discussion of today.

Rules governing access to UPOV documents – adopted without further discussion

Alternative Dispute Settlement Mechanisms– adopted without further discussion

Annual report of the UPOV Secretary General – Francis Gurry

Francis Gurry attended the full meeting and presented the annual report. In 2010 13.000 applications were filed and 90.000 titles were in force; UPOV had 70 members by the end of 2011; 50 of which signed up to 1991 Convention; 19 to the 78 Act and 1 to the 61 Act. The SG pleaded for a constitutional clean up and to go for 1991. It was noted that Technical Guidelines are in place for 90% of all applications received involving 22 Member States. Both the Pluto data base as the distance learning (DL) course are considered as a success. The DL was followed by 679 persons in the last year; Also WIPO and UPOV are looking into the importance of social media. The re-construction of the WIPO building has been completed and holds now 500 persons. A new conference hall is being constructed which is somewhat delayed due to security reasons which have to meet the UN standard. The new conference hall is to be finalized by the end of 2013.

Election New President and Vice-President UPOV Council

Kitisri Suskapinda (USA) was elected as new President for the coming 3 years and Luis Salaices (Spain) as new Vice-President. (BS)

UPOV Symposium on the Benefits of Plant Variety Protection for Farmers and Growers.

On Friday, November 2, Bert Scholte participated in the UPOV Symposium on the Benefits of Plant Variety Protection for Farmers and Growers. The symposium was the 3rd in a row and this time and was attended by some 150 participants.

The event was split into two sections; the first one focusing on the role of PVP in improving incomes for farmers and growers. Thor Kofoed (Chairman COPA Working Party on Seeds) gave a key-note speech underlining the importance of plant breeding and the need of farmers of improved varieties and objective information (VCU testing) on the basis of the Danish model. He informed about the stagnation of yield increase in cereals in the EU due to the





lack of investment and favored the PVP system over patents. In the first session interesting examples of the positive effects of PVP were given on the progress of small-holder flower growers in Kenya, the use of PVP to add value for fruit growers in France, examples from maize and other row crops by Pioneer, the impact on grower cooperatives in Spain and other examples from Brazil and South Africa.

The second session focused on the role of PVP in enabling farmers and growers to become breeders themselves. Interesting presentations supporting the importance of PVP were given by a successful farmer-breeder of rice in Korea, the Ashiro Rindo story in relation Gentic flower breeding and production in Japan and the importance of PVP for farmer-breeders of potato in the Netherlands. Via Campesina (France) did not enter into the subject of the role of PVP but presented their concerns regarding restrictions in the EU for marketing of varieties not meeting the DUS requirements.

More information can be found on: http://www.upov.org/meetings/en/details.jsp?meeting_id=26104

Overall the symposium was rather general, triggering little discussion and attended by mostly delegates and observers of the UPOV Council. (BS)

Assinsel Belgium meets at the ESA Office

Assinsel Belgium, the breeders association in Belgium, met on November 7 at the ESA Office in Brussels. The ESA Secretariat presented the state of affairs regarding the evaluation of the Seed Marketing Directives and Plant Health as well as the implementation of the European Seed Treatment Assurance scheme (ESTA). The participants discussed the possible consequences for seed companies in Belgium. They also addressed a royalty collection system for FSS for cereals as follow up of the achievements in potato where an agreement was reached between farmer's organisations and breeders regarding royalty payment of FSS as from 2011. (BS)

CPVO Administrative Council

The CPVO Administrative Council (AC) met on November 27/28 in Angers (FR). Some 45 participants attended the meeting representing most of the EU Member States. In addition representatives from Switzerland, Croatia, the Commission and breeders organisations attended. The ESA delegation consisted of Mrs Marian Suelmann, Chair of the CIPR, and B.Scholte. The most interesting items discussed are highlighted underneath:

Statistics: The number of applications in 2012 until November 20 is 5% lower compared to the same period last year; in agricultural crops the number of applications is stable; in fruit crops a strong increase was observed and in ornamentals and vegetables the number decreased. The number of on-line applications has increased to 59% of the total. However the use of the on-line application system seems to stabilise. ESA has requested for a detailed analysis and also suggested to look at possible improvements of the system which on some points is still not user friendly.

Revised fee structure. The survey carried out by CPVO on a possible revision of the fee structure showed a clear majority of the AC in favour of having a direct relationship between the applicant and the examination offices in connection with a 100% cost recovery. On the basis of the survey the CPVO has proposed a change of the fee structure as from January 2015. In the discussion France, Germany and the UK expressed their concerns on the proposed approach underlining the complexity of the topic. Also the Commission was of the opinion that a careful approach is needed and that certain changes would require a change of the legislation. On behalf of ESA I have re-confirmed the ESA position in favour of a direct relationship





and full cost recovery. The AC agreed in the end that a further analysis is needed to be presented in spring 2013 before decisions can be taken.

New regime for Plant Reproductive Material. Ladislav Miko (DG SANCO) informed on the timeline of the process which faced some delay due to the stepping down of Commissioner Dalli. He informed that the Inter Service Consultation is on-going and is prolonged to December 4th. Different services provide input especially in relation to Biodiversity related issues. Translation will take 6-8 weeks. However the Commission is still optimistic to have a final version adopted by the Commission by the end of the 1st Quarter in 2013. Mr Miko called upon the AC Members to contact their MEP's to inform on the specificities of the PRM regime as there is a lack of understanding on this very technical dossier. Mrs Mannerkorpi informed afterwards on the content of the regime and the changes being made during the ISC. It is noted that the one-key-several-door concept has been taken up in the latest version as requested by ESA.

Streamlining of EU Agencies: The Commission informed on a blueprint agreed upon by the EP / Council and the Commission regarding the streamlining of the current more than 30 EU Agencies of which CPVO is one. The agreed upon blueprint could have a major impact on the Human Resources of the Office due to heavy administrative reporting obligations.

Several Member States and ESA pointed out the danger of these additional obligations on the effectiveness of the Office regarding the CPVO's core activity of granting PBR Rights. In reply to a request of ESA to be involved in the implementation process the Commission confirmed that stakeholders would be consulted in the process.

ad-hoc WG Legal Affairs: The President informed on the outcome of the discussions in the recently set up WG Legal. The AC discussed the proposed approach regarding EDV's in detail and agreed with proposal to list non-protected EDV's on the basis of a claim of the breeder but that the breeder in this case needs to declare that the EDV is a variety according to paragraph 5 of the Basic Regulation. The AC agreed with the proposal of the WG to continue the discussion on provisional protection and novelty. In relation to possible further issues ESA stated that these issues should be limited to the ones in the framework of the Basic Regulation and the UPOV convention in referring to the terms of reference of the ad-hoc WG. It was noted that the discussion on the extension of the duration of protection for certain species was put on hold pending the outcome of the Evaluation of the Basic Regulation. As the evaluation of the Basic Regulation itself is put on hold breeders organisation could take up this issue again based on the criteria agreed upon.

Seminar: The President informed the AC regarding an initiative to organise a seminar on the interface between PBR and patents. On proposal of ESA it was agreed to postpone the organisation of such a seminar as the ruling of the ECJ on the tomato case is expected in the first half of 2013. The AC also agreed having an enforcement seminar either in Croatia or Italy.

Organisation of meetings: The AC agreed with a proposal from the Office to look into possibilities of video conferencing in combination with a possible reduction of the number of meetings. A proposal to agree on a single working language in meetings could not be pursued due to opposition of France, Germany, Italy and Spain.

Quality Assurance System: Gerhard Schuon (QAS) informed on the QA activities in the past year. An evaluation of the system showed that the entrustment requirements are appropriate and the assessments provide confidence in the system. The AC agreed to change the audit strategy to a more risk based approach. The AC decided to entrust Examination Offices in Italy (CRA and INRAN), France, Ireland (potato only), Sweden and Finland for the species requested. Also Bulgaria was entrusted after the reduction of the scope. (Water melon and barley were taken from the list of species). After three years all Examination Offices have been audited. Three assessments are still on-going and are expected to be concluded in spring 2013. The AC approved the list of Technical Experts in temporary suspending 3 persons which are also member of the AC itself. In addition the members of the Audit Advisory Board were confirmed for another term of three years. The AAB is set up to address possible complaints regarding QAS which so far have not been filed. In the AAB ESA is represented by B.Scholte.





The AC agreed with the revised explanatory notes regarding variety denominations in taking up some of the comments made by ESA. The next AC meeting will take place on February 27/28 2013 in Angers. (BS)

Ad-hoc Committee on Sustainable Use of PGRFA

The Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture has set up – following the resolution of the last Governing Body – an Ad-hoc Technical Committee on Sustainable Use of PGRFA. The seed industry was invited to delegate a technical expert to this committee. On behalf of ISF, Sz. Csörgő participated to the meeting of the Committee. The main items of discussion focused on an on-line survey on sustainable use of PGRFA and the elements of the program of work on sustainable use of PGRFA which the next Governing Body has to decide upon. The on-line consultation on sustainable use will be launched by the Treaty Secretariat soon, still before the end of the year and will be open for 14 weeks for replies. ESA – as usual – will coordinate the answer of the European seed industry and will count on the feedback of its members. More information will be provided to ESA members in due course. (SzCs)

Discussing enhanced communication: ESA meets BSPB, KWS & Bayer Crop Science

On November 12 Katharina Bednarz from the ESA Secretariat visited beautiful Cambridge to meet with some communication experts and discuss further priorities for ESA in this field. Penny Maplestone from the *British Society of Plant Breeders* (BSPB) accompanied her to a scheduled visit to the offices of *Bayer Crop Science*, located in



in the highly innovative Cambridge Science Park. Communications & Government Affairs Manager of *Bayer Crop Science* Julian Little, who also chairs Working Group Communication within *EuropaBio* and Daniel Pearsell, Director at *Front Foot Communications* were giving insights in how *BSPB* and *Bayer Crop Science* communicate both, to their membership and externally, to relevant decision makers and the media. After this informative debate and

some lunch, the tour continued to Royston, where KWS is located in the UK. Director Nigel Moore, also ESA's Vice-President, was welcoming and preparing a detailed presentation on KWS's various activities. Another part of the talk was dealing with Nigel's views on ESA's challenges ahead, especially in terms of external communication. Due to British weather "par-excellence" (rain all day through!) an outside visit was not really feasible, but the picture taken at the exit underlines nevertheless the warm and sunny atmosphere in which ESA was received. Katharina once more thanks Julian, Daniel and Nigel for taking the time to meet up and especially Penny for organising this visit beforehand as well as bringing everybody together. (KB)



The next ESA Newsletter will be published on 20 December 2012