Resolution on the patenting of essential biological processes

2012/2623(RSP) - 10/05/2012 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution by 354 votes to 192 with 22 abstentions on the patenting of essential biological processes. The resolution had been tabled by the S&D, EPP, ALDE and Greens/EFA groups. It recognises that patents promote the dissemination of valuable technical information and are an important tool for the transfer of technology. However, excessively broad patent protection especially in the area of breeding, can hamper innovation and progress and become detrimental to small and medium breeders by blocking access to animal and plant genetic resources.

Members note that Article 4 of Directive 98/44/EC and Article 53(b) of the European Patent Convention establish that plant and animal varieties and essentially biological processes for the production of plants or animals shall not be patentable. Nevertheless, patents on products derived from conventional breeding or on genetic material necessary for conventional breeding can undermine the exclusion established in Article 4 of Directive 98/44/EC and Article 53(b) of the European Patent Convention.

Parliament welcomes the decisions of the Enlarged Board of Appeal of the European Patent Office in the ‘broccoli’ (G 2/07) and ‘tomato’ (G 1/08) cases, dealing with the correct interpretation of the term ‘essentially biological processes for the production of plants (or animals)’ used in Directive 98/44/EC and the European Patent Convention to exclude such processes from patentability.

It calls on the EPO also to **exclude from patenting products derived from conventional breeding and all conventional breeding methods, including SMART breeding (precision breeding) and breeding material used for conventional breeding.**

Parliament also welcomes the recent decision of the European Patent Office in the WARF case and of the European Court of Justice in the Brüstle case, as they appropriately interpret Directive 98/44/EC and give important indications on the whole content approach. They call on the European Commission to draw the appropriate conclusions from these decisions also in other relevant policy areas in order to bring EU policy in line with these decisions.

Members also note that under Directive 98/44/EC the **Commission is required to report annually on the development and implications of patent law in the field of biotechnology** and genetic engineering, but that the Commission has not published any such reports since 2005.

They call on the Commission:

- to address in its forthcoming report the ‘broccoli and tomato decisions’ of the Enlarged Board of Appeal of the EPO;
- to address in its forthcoming report the potential implications of the patenting of breeding methods for plants and their impact on the breeding industry, agriculture, the food industry and food security;
- to ensure that the EU will continue to apply a comprehensive breeders‘ exemption in its patent law for plant and animal breeding.