Resolution on the patentability of plants and essentially biological processes

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The European Parliament adopted a resolution on the patentability of plants and essentially biological processes.

The resolution was tabled by the EPP, S&D, Renew, Greens/EFA, ECR and GUE/NGL groups.

As a reminder, free access to plant material (including plant traits) is absolutely essential for the innovative capacity of the European plant-breeding and farming sectors, their competitiveness and the development of new plant varieties in order to guarantee global food security, tackle climate change and prevent monopolies within the breeding sector, while at the same time providing more opportunities for SMEs and farmers.

Any restriction or attempt to hamper access to genetic resources may lead to an excessive market concentration in the field of plant breeding, to the detriment of market competition, consumers and the European internal market and food security.

Products emanating from essentially biological processes, such as plants, seeds, native traits and genes, must be excluded from patentability.

Directive 98/44/EC legislates for biotechnological inventions, in particular genetic engineering.

All EU legislators involved have made explicitly clear that the EU legislator’s intention when adopting Directive 98/44/EC was to exclude from patentability products derived from essentially biological processes.

The 38 contracting states to the European Patent Convention (EPC) have confirmed that their national law and practice are aligned to effectively exclude products obtained from essentially biological processes from patentability.

Parliament called on the Commission and the Member States to do everything in their power to obtain legal clarity regarding the prohibition of the patentability of products obtained from essentially biological processes by the European Patent Office (EPO).

Member States and the Commission are both urged to protect the innovative capacity of the European plant-breeding and farming sectors and the general public interest and to ensure that the Union will effectively safeguard guaranteed access to, and use of, material obtained from essentially biological processes for plant breeding, in order – where applicable – not to interfere with practices guaranteeing farmers’ rights and the breeders’ exemption.

Parliament called on the Commission to:

- submit an *amicus curiae* before 1 October 2019 with the Enlarged Board of Appeal of the EPO, reinforcing the conclusions laid down in its Notice of 2016 that the EU legislator’s intention when adopting Directive 98/44/EC was to exclude from patentability products that are obtained through essentially biological processes, and to attach this resolution to its statement;

- engage actively with third countries when negotiating trade and partnership agreements with a view to ensuring the exclusion of essentially biological processes and the products thereof from patentability;

- pursue the exclusion from patentability of essentially biological processes and their products in the context of discussions on the harmonisation of multilateral patent law;

- report on the development and the implications of patent law in the field of biotechnology and genetic engineering and to further analyse issues related to the scope of protection of patents.