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*Plenary sitting*

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**B8-1395/2015**

14.12.2015

## **MOTION FOR A RESOLUTION**

further to Question for Oral Answer B8-1112/2015

pursuant to Rule 128(5) of the Rules of Procedure

on patents and plant breeders' rights  
(2015/2981(RSP))

**Paolo De Castro, Evelyn Regner, Lidia Joanna Geringer de Oedenberg, Eric Andrieu, Viorica Dăncilă, Nicola Caputo, Mary Honeyball, Marc Tarabella, Enrico Gasbarra, Michela Giuffrida, Karin Kadenbach, Momchil Nekov, Tibor Szanyi, Ricardo Serrão Santos, Juan Fernando López Aguilar, Doru-Claudian Frunzuliță, Paul Brannen, Maria Noichl, Liisa Jaakonsaari, Christel Schaldemose**  
on behalf of the S&D Group

**European Parliament resolution on patents and plant breeders' rights  
(2015/2981(RSP))**

*The European Parliament,*

- having regard to its resolution of 10 May 2012 on the patenting of essential biological processes<sup>1</sup>,
  - having regard to Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions<sup>2</sup>, in particular Article 4 thereof, which states that plant and animal varieties and essentially biological processes for the production of plants or animals shall not be patentable,
  - having regard to the European Patent Convention (EPC) of 5 October 1973, in particular Article 53(b) thereof,
  - having regard to the decision of the Enlarged Board of Appeal of the European Patent Office (EPO) of 25 March 2015 in Cases G2/12 (on tomatoes) and G2/13 (on broccoli),
  - having regard to the Implementing Regulations to the EPC, in particular Rule 26 thereof, which states that for European patent applications and patents concerning biotechnological inventions Directive 98/44/EC is to be used as a supplementary means of interpretation,
  - having regard to the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised at Geneva on 10 November 1972, 23 October 1978 and 19 March 1991 (hereinafter referred to as the ‘UPOV Convention 1991’),
  - having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights<sup>3</sup> (hereinafter referred to as ‘Regulation (EC) No 2100/94’), in particular Article 15(c) and (d) thereof,
  - having regard to the Council Agreement on a Unified Patent Court of 19 February 2013<sup>4</sup> (hereinafter referred to as ‘the UPC Agreement’), in particular Article 27(c) thereof,
  - having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas access to biological plant material encompassing plant traits is absolutely necessary for boosting growth and innovation and developing new 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;

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<sup>1</sup> OJ C 261 E, 10.9.2013, p. 31.

<sup>2</sup> OJ L 213, 30.7.1998, p. 13.

<sup>3</sup> OJ L 227, 1.9.1994, p. 1.

<sup>4</sup> OJ C 175, 20.6.2013, p. 1.

- B. whereas intellectual property rights are an important means of safeguarding the economic incentives for developing new plant products and ensuring competitiveness;
  - C. whereas products obtained from essentially biological processes, such as plants, seeds, native traits and genes, should be excluded from patentability;
  - D. whereas Directive 98/44/EC legislates for biotechnological inventions and in particular genetic engineering; whereas, however, as indicated in recitals 52 and 53 thereof, it was not the legislator's intention to provide for the patentability of products obtained from essentially biological processes within the scope of the directive;
  - E. whereas numerous applications on essentially biological plant products are currently awaiting a decision from the EPO, and whereas there is therefore an urgent need for clarification as regards the scope and interpretation of Directive 98/44/EC, in particular Article 4 thereof;
  - F. whereas it is a fundamental principle of the international system of plant variety rights based on the International Convention for the Protection of New Varieties of Plants (the UPOV Convention), and of the EU system based on Council Regulation (EC) No 2100/94, that the holder of a plant variety right cannot prevent others from using the protected plant for further breeding activities;
  - G. whereas Directive 98/44/EC implicitly acknowledges the freedom to use material falling within the scope of a patent for experimental purposes, as follows from Articles 12(3)(b) and 13(3)(b);
  - H. whereas the breeders' exemption provided for in Article 27(c) of the UPC Agreement will only be applicable to patents granted under the unitary patent system and will not automatically apply to national patents in the EU, and whereas this will result in a non-harmonised situation as regards the possibility of breeding with biological material falling within the scope of a patent;
1. Expresses its concern about the recent decision of the Enlarged Board of Appeal of the EPO in Cases G2/12 (tomatoes) and G2/13 (broccoli), which could lead to an increase in the number of patents, granted by the EPO, for natural traits which are introduced into new varieties by using essentially biological processes such as crossing and selection;
  2. Calls on the Commission to clarify the scope and interpretation of Directive 98/44/EC, in particular Article 4 along with Articles 12(3)(b) and 13(3)(b) thereof, in order to ensure legal clarity regarding the prohibition of the patentability of products obtained from essentially biological processes and the fact that breeding with biological material falling within the scope of a patent is permitted;
  3. Calls on the Commission to communicate its forthcoming clarification regarding the patentability of products obtained from essentially biological processes to the EPO so that it can be used as a supplementary means of interpretation;
  4. Calls on the Commission and the Member States to ensure that the Union safeguards guaranteed access to and use of material obtained from essentially biological processes

for plant breeding in order not to interfere with Member States' practice of guaranteeing a breeders' exemption;

5. Calls on the Commission to report on the development and implications of patent law in the field of biotechnology and genetic engineering, as required in Article 16(c) of Directive 98/44/EC and as requested by Parliament in its resolution of 10 May 2012 on the patenting of essential biological processes;
6. Instructs its President to forward this resolution to the Council, the Commission and the European Patent Office.