**Question for oral answer O-000293/2011**
**to the Commission**
Rule 115
**Evelyne Gebhardt, Bernhard Rapkay**
on behalf of the S&D Group

Subject: Patents for plants and animals derived from conventional breeding

Several reports by environmental organisations show that Europe is seeing a growing trend in the number of applications to the European Patent Office (EPO) for patents on plants derived from conventional breeding.

In 2010, the EPO's Enlarged Board of Appeal decided that methods used for conventionally breeding plants are not patentable (G2/07 and G1/08). The patent cases under discussion in this decision were a patent on broccoli (EP1069819) and on tomatoes (EP1211926), both derived from conventional breeding. These patents claimed the process for breeding as well as the parts of the plants. In G2/07 and G1/08, the EPO acknowledged the limitations of Article 2(2) of the Directive on the legal protection of biotechnological inventions (Directive 98/44/EC, the 'Biotech Directive') and furthermore interpreted Article 53(b) of the European Patent Convention (EPC) on the basis of relevant case law. EPO's enlarged Board of Appeal decided that the process for breeding had to be regarded as 'essentially biological' and therefore could not be patented because of Article 4 (b) of EU Directive 98/44/EC and the corresponding Article 53b of the EPC, which exclude patents on 'essentially biological processes for the production of plants or animals'.

These decisions do not solve the legal questions or the underlying problems regarding conventional breeding. For example, in May 2011, the EPO granted a further patent on melons derived from conventional breeding (EP 1 962 578). Products such as plants and fruits were regarded as an invention. This interpretation of European patent law implies that conventional ('essentially biological') breeding would be patentable, even if the process for breeding was excluded.

We call on the Commission to send a strong signal that plants and animals derived from conventional breeding cannot be patented in Europe.

Does the Commission consider that the current practice of the EPO gives too broad an interpretation of Article 4(b) of EU Directive 98/44/EC? Could the Commission clarify the meaning of Article 2(2) of the Biotech Directive?

Tabled: 9.11.2011
Forwarded: 11.11.2011
Deadline for reply: 18.11.2011