

3rd February 2016

Ms Elżbieta Bienkowska
Commissioner for Internal Market,
Industry, Entrepreneurship and SMEs
elzbieta.bienkowska@ec.europa.eu (by email only)

Ms Lowri Evans
Director-General
DG GROW — Directorate-General for Internal Market,
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OPEN LETTER: Stop patents on conventionally bred seeds, plants and animals

Dear Commissioner Elżbieta Bienkowska,

Dear Director General Lowry Evans,

We are writing to you to ask for an **urgent clarification of Directive 98/44/EC on the legal protection of biotechnological inventions**, to ensure that it is applied in its intended sense, i.e. that all breeding processes and breeding material, plant and animal characteristics, gene sequences or components, plants and animals, as well as food derived thereof are effectively excluded from patentability.

The Directive 98/44/EC prohibits the patenting of “*plant and animal varieties*” as well as “*essentially biological processes for the production of plants or animals*”. However, this prohibition has been eroded over the years. The European Patent Office (EPO) has granted around 180 patents concerning conventional breeding in plants, around 1400 such patent applications have been applied for, and 600 of them are still to be decided. Patents have also been applied for and granted with regards to the conventional breeding of farm animals.

The organisations behind the coalition of *No Patents on Seeds!* are concerned that this trend will **hinder innovation and foster further market concentration**. Such concentration is especially worrying in the EU vegetable seeds sector, where already 5 companies control 95 per cent of the market. Because of the broad reach of exclusive rights, and the existing legal uncertainty with regards to what can be cultivated or bred, these patents ultimately reduce consumer choice and lead to a decline in the diversity of agricultural crops and animals¹.

On 10 May 2012, the European Parliament had requested, “*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*” and “*the so-called whole content approach*” to be applied in the interpretation of current provisions in European patent law².

On 17 December 2015, the European Parliament re-affirmed its 2012 resolution, and further stated that “*products obtained from essentially biological processes, such as plants, seeds, native traits and genes, should be excluded from patentability*”. The Parliament also *calls on the Commission, as a matter of urgency, to clarify the scope and interpretation of Directive 98/44/EC, and in particular Articles 4, 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 to clarify that breeding with biological material falling under the scope of a patent is permitted*³.

¹ More information on the negative effects of broad patents on conventional breeding can be found in the Report of *No Patents on Seeds!* “Patents on plants and animals – time to act for European politicians” published in 2015.

² Resolution on the patenting of essential biological processes, 2012/2623(RSP), emphasis added.

³ Resolution on patents and plant breeders’ rights, 2015/2981 (RSP), emphasis added.

On 11 January 2016, the Dutch Minister of Agriculture, Mr Martijn van Dam, speaking to the Parliament's Committee on Agriculture and Development, called for action in the field of patents. He stated that we should be "*very careful to give patent rights to inventions that are more or less natural*" as "*natural aspects of plants should not be patented because they give the chance to monopolise a large amount of the food chain*". Countries like the Netherlands and Germany have already clearly excluded patents on products derived from conventional breeding in their national laws.

We fully support these demands and call on you to clearly see the signs stemming from European institutions and national governments to stop patents in conventional breeding of plants and animals.

As guidance, we have prepared a **technical backgrounder**, that you may find attached to this letter, which defines what we would call minimum requirements that we think need to be taken into account in the clarification of the scope and interpretation of Directive 98/44/EC, and in particular its Article 4. We believe that the EU Commission should especially clarify that:

- The definition of essentially biological processes encompasses all relevant steps and purposes used in conventional breeding,
- Patents granted on plant or animal related inventions do not cover plant varieties and animal races (varieties) derived from conventional breeding, nor with plant or animal characteristics and their genetic components that can be derived from conventional breeding or are existent in native traits,
- The whole content approach is used to decide whether the prohibition of Art. 4 applies. Thus the technical teaching regarding the invention is taken into account, as well as pre-treatment steps, unavoidable consequences, exclusive and unavoidable uses.

In conclusion, the **European Commission should clarify that in the area of conventional breeding, all breeding processes and breeding material, plant and animal characteristics, gene sequences, plants and animals, as well as food derived thereof are excluded from patentability.**

We would in this context kindly **request a meeting with you** to discuss the aforementioned legal questions and underlying political concerns, so as to ensure that the interests of consumers, farmers, and traditional breeders are met in this sensitive topic. We are convinced that the questions at stake are of highest relevance not only for plant breeders but to overall society, since access to seeds and farm animals are closely related to the resources needed for the daily living of all of us. Maintaining and safeguarding free access to material needed for plant and animal breeding, but also agricultural production as a whole, has to become a political priority.

With kind regards,

The coalition *No Patents on Seeds!*, its member organisations, and partners:

Arche Noah (Austria),
The Berne Declaration (Switzerland),
Bionext (Netherlands),
BiotechWatch (Greece),
Campact (Germany),
Foundation for Agricultural Biodiversity AgriNatura (Poland),
GeneWatch (UK),
Greenpeace,
IFOAM EU-Group,
Misereor (Germany),
Development Fund (Norway),

NOAH (Denmark),
No Patents on Life (Germany),
ProSpecieRara (Switzerland),
Red de Semillas (Spain),
Rete Semi Rurali (Italy),
Réseau Semences Paysannes (France),
Social Ecological Institute (Poland),
Skiftet (Sweden)
Slow Food International (Italy)
Swissaid (Switzerland)
WeMove.EU