

Follow up to the European Parliament non-legislative resolution on the patentability of plants and essentially biological processes

- 1. Resolution tabled pursuant to Rules 136(5) and 132(4) of the European Parliament's Rules of procedure**
- 2. Reference numbers:** 2019/2800(RSP) / B9-0040/2019 / P9_TA-PROV(2019)0020
- 3. Date of adoption of the resolution:** 19 September 2019
- 4. Competent Parliamentary Committee:** Committee on Agriculture and Rural Development (AGRI)
- 5. Brief analysis/assessment of the resolution and requests made in it:**

The resolution supports the policy views already expressed by the Commission in its Notice of 8 November 2016 “on certain articles of Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions”, namely that plants obtained by essentially biological processes should not be patentable.

The resolution calls on the Commission and the Member States to take action to obtain legal clarity regarding that matter, especially at the level of the European Patent Organisation. In particular, it urges the Commission to submit, an *amicus curiae* statement with the Enlarged Board of Appeal of the European Patent Office, before the related deadline of 1 October 2019.

- 6. Response to requests and overview of action taken, or intended to be taken, by the Commission**

The Commission shares the overall vision presented in the resolution.

The Commission is closely following this issue, and has debated it with the Member States¹; it reiterated on many occasions the views expressed in the Commission’s 2016 Notice (in particular before the Administrative Council of the European Patent Organisation).

In the context of the examination of the related question of law that the President of the European Patent Office (EPO) has submitted to the Enlarged Board of Appeal of the EPO (case G 3/19), the Commission, representing the European Union, has submitted, on 1 October 2019, an *amicus curiae* statement to the Enlarged Board of Appeal of the EPO, still following the same line².

The Commission will closely monitor this issue, especially the outcome of the above-mentioned procedure before the EPO’s Enlarged Board of Appeal, and might take additional steps depending on that outcome.

¹ In particular in the 18 March 2019 meeting of the AGRIFISH Council, and in further meetings on 6, 11 and 23 September 2019

² The statement can be found at <https://www.epo.org/law-practice/case-law-appeals/eba/pending/g3-19.html>