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CC
Chairman of the AC
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Brussels, 26/04/2017

Dear members of the Administrative Council,
Dear members of the Patent Law Committee,

Following the adoption of the resolution of the European Parliament on patents and plant breeders' rights on the 17th of December 2015 (and regarding resolution 2012/2623 of the European Parliament of 10 May 2012), the European Commission came forward with the adoption of a Commission notice on the 3rd of November 2016 on clarifying certain articles of Directive 98/44 on the protection of biotechnological inventions. In the notice, the Commission takes the view that the EU legislator's intention when adopting Directive 98/44/EC was to exclude from patentability products that are obtained by means of essentially biological processes. The Competitiveness Council unanimously adopted the clarifying notice expressed by means of Council conclusions on the 3rd of February 2017.

Two years after the decision of the Enlarged Board of Appeal of the European Patent Office (EPO) concerning cases G2/12 (on tomatoes) and G2/13 (on broccoli) all European institutions have deliberated on this issue and concluded that it should not be possible to grant patents for products that are obtained from essentially biological processes.

Although the notice of the European Commission is not legally binding and taking into account that the EPO is an independent body, I together with my colleagues would like to highlight the urgency to restore the balance between the protection of intellectual property and the free access for breeders to biological material. This is necessary in order to safeguard the innovative strength of our breeding sector. Therefore I welcome the stay of proceedings for decisions which depend on the patentability of plants (or animals) obtained by essentially biological processes.

I hope the EPO Administrative Council is prepared to secure in its own policy - without prejudice to judgements by the CJEU - the call to stop the patentability of products obtained from essentially biological processes in such a way that these products can no longer fall under the scope of a patent.

Yours sincerely,

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