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European Union

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**NOTE**

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From: General Secretariat of the Council  
To: Council

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Subject: Plant Breeders Rights and the European Patent Office's decision  
- information from the Netherlands delegation

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Delegations will find attached an information note from the Netherlands delegation on the above mentioned subject to be dealt with under "Any other business" at the meeting of the Council (Agriculture and Fisheries) on 13 July 2015.

**Note from the Netherlands delegation**

**on Plant Breeders Rights and the European Patent Office's decision**

The Netherlands would like to draw the attention of the Agrifish Council of 13 July 2015 on the recent decision of the enlarged board of appeal of the European Patent Office of March 25 2015; case nr. G0002/12; method for breeding tomatoes having reduced water content and product of the method and a similar one re Broccoli). This decision makes it possible to patent plant traits even if they are the results of classical breeding. The Netherlands consider this a very worrisome development that will have a fundamental impact on food production and food security. The holder of a patent can block innovation in plant breeding by not granting a license. This effect does not occur in plant breeders rights, in which competitors can freely build on each other's work, as long as they improve it.

The Netherlands deplores this situation and would like to raise the awareness of both the European Commission and other Member States in order to change this situation. The Netherlands is working on a detailed position paper on the issue, which we will present later this year, but is interested in the opinion of the Commission and other Member States.

The Dutch position on amendments to European patent law concerning plant breeding Introduction

Over the past five years, there has been considerable attention for the wish of plant breeders to be allowed to use patented biological material for the breeding, discovery and development of other plant varieties without the consent of the patent holder (the limited breeding exemption), as well as to be allowed the commercial use of biological material from newly- developed varieties (the comprehensive breeding exemption), provided the biological material of the new varieties retains the traits attributed to the patented invention.

The breeders do not want to be dependent on patent holders when making use of patented plant-related inventions. The Netherlands for unrestricted access to, and availability of, biological material for plant breeding, thereby promoting further innovation in the sector. This would boost European competitiveness while at the same time addressing global food security issues.

In this way, cultivated products can be developed that best meet the needs of growers and consumers. For growers, this is important with an eye to growing conditions, increasing agricultural productivity and food security. Unrestricted access is also important in order to avoid dependence on particular suppliers, and to prevent monopolies and monoculture, which can mean greater susceptibility to pests and diseases. Consumers, too, will benefit, as diversity allows their preferences for food flavour, composition, and shelf life to be met.

It would be regrettable if, in patent law for biotechnological inventions, new differences between various Member States were to arise or current differences allowed to persist, especially with regard to plant breeding. The revision of Directive (EC) No. 98/44 is expected to address the limited breeding exemption, the non-patentability of the results of, or inventions related to the results of, essentially biological processes for the production of plants, and a comprehensive exemption and/or limited patentability of plant-related inventions.