

## **6. Patents on seeds**

**Jean-Luc Gal DG GROW/F5**

**CDG ARABLE CROPS – COP / SEEDSs**

**Brussels, 06/02/2018**

# Relations between patents and plant variety rights

- According to article 4 of Directive 98/44, plant varieties are excluded from the patentable subject matter and are governed by the plant variety right Regulation (2100/94) while plants might be patentable if the patentability criteria are met.

# Essentially biological processes

- Article 4(1)(b): essentially biological processes for the productions of plants and animals are not patentable,
- This was confirmed by the Enlarged Board of Appeal of the EPO (Tomatoes I and Broccoli I),

# Patentability of the Product?

- However what about the products emanating from essentially biological processes ?
- Decisions of the EBoA (Tomatoes II and Broccolis II): products (including plant material and fruits) obtained through essentially biological processes may be a patentable subject matter.

## 3 November 2016 Commission notice

- The notice took position in favour of the exclusion from patentability of products (plant, animals and their parts) obtained by essentially biological processes,
- The rationale for the notice is based on the will of the EU legislator when enacting Directive 98/44, and on the provisions of the Directive

# Conclusions of the Council- 20/02/2017 (1)

- present in 2017, on the basis of Article 16(c) of Directive 98/44/EC, **a report** on the development and implications of patent law in the field of biotechnology and genetic engineering, so as to address remaining issues identified by the expert group and that may need to be clarified **in order to increase certainty in this field**

# Conclusions of the Council- 20/02/2017 (2)

- URGES Member States, in their capacity as members of the European Patent Organisation, to advocate that **the practice of the European Patent Organisation is aligned with these conclusions.**

# Development in the frame of the European patent Organisation

- *Administrative Council meeting: 28-29/06/2017*
  - CA/56/17 amendment of rules 27(b) and 28 aiming at refusing the patentability for plants and animal exclusively obtained by means of essentially biological processes



# Next steps

- The Commission together with Member States and relevant stakeholders will pursue its reflexion on plant-related issues in the frame of the provisions of directive 98/44.
- Two meetings with Member States took place on 6 July 2017 and 31 January 2018

# Issues which have been discussed

- *Patentability of New Breeding Techniques and scope of protection of patents related to products obtained thereof*
- *Patentability of 'native traits' and scope of protection of these patents*
- *Plant Variety Rights and Patents*
- *Breeder exemption*
- *Compulsory cross licensing*
- *Farmer's privilege*

- *Thank you for your attention*
- *Any further question?*
- *[Jean-luc.gal@ec.europa.eu](mailto:Jean-luc.gal@ec.europa.eu)*