



Council of the
European Union

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NOTE

From: General Secretariat of the Council
To: Council

Subject: Decision by the Technical Board of Appeals of the European Patent Office
regarding the possibility to patent the results of classical plant breeding
- *information from the Netherlands delegation*

Delegations will find in annex 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 18 March 2019.

Information note from the Netherlands delegation

The Netherlands would like to draw the attention of the Council to a recent decision (T 1063/18) by the Technical Board of Appeal of the European Patent Office (EPO). In this decision of the 5th of December 2018 the Technical Board of Appeal ruled that a product resulting from traditional plant breeding can be patentable.

In the past years a lot of effort was put into the debate concerning the patentability of products of essentially biological processes, resulting in the interpretative Notice (2016/ C 411/03) from the European Commission in November 2016, supported by both Council and the European Parliament. In this Notice, that was implemented by the EPO in rule 28(2) of the Implementing Regulations in July 2017, the Commission stated that according to the intention of the legislator of the Biotech directive (98/44/EG) (implemented in article 53(b) of the European Patent Convention), the products of essentially biological processes should not be patentable.

The Netherlands still fully supports this interpretation and therefore asks the European Commission and other Member States to continue advocating this interpretation both within the European Union as well as within the European Patent Office.