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To the President of the European Patent Office (EPO), Mr António Campinos

Stop the patenting of plants and animals derived from conventional breeding!

Dear Mr Campinos

In June 2017, the Administrative Council of the European Patent Organisation decided that patents on plants and animals derived from “essentially biological” breeding processes could not be granted. Consequently, the Implementing Regulations of the European Patent Convention (EPC) were amended and the new rule 28(2) was adopted. This rule reads as follows: “Under Article 53(b), European patents shall not be granted in respect of plants or animals exclusively obtained by means of an “essentially biological process”.

However, in December 2018, the Technical Board of Appeal of the EPO, after examining a patent held by Syngenta (EP2753168), stated that Rule 28(2) was in conflict with Article 53(b) EPC and should, therefore, not be applied. Based on this interpretation of European patent law, the EPO could now grant further patents on plants and animals derived from conventional breeding, despite all contracting states as well as the European Union agreeing that such patents are not allowed according to Article 53(b) EPC. This development has created serious legal uncertainty that is severely damaging to European patent law and the functioning of European plant protection law; and will ultimately endanger European plant breeding, future food security and agrobiodiversity.

In order to avoid damage to European society, we call on you to:

- suspend all ongoing patent procedures covering plants and animals derived from conventional breeding. This measure should also encompass plants derived from so-called random mutagenesis since there are cases pending under Art 53(b) in connection with Rule 28 (2).
- to start a process in cooperation with the EU and the contracting states of the EPO to gain sufficient legal clarity and certainty to make sure that conventional plant and animal breeding is excluded from patentability as a whole. Also in future, breeders need to have access to plant varieties to breed and market their own new varieties freely. If patents are granted on genetic engineering, the scope of these patents will clearly need to be restricted to the specific technical processes.

We are aware, Mr Campinos, that as president of the EPO, you take the interests of the patent sector and affiliated industries into account, but we would also like to remind you of your responsibility to respect the needs, rights and the interests of broader society, including those of breeders, farmers and consumers. Without the latter, there will be an imbalance between patent law and the interests of general society in which the patent system will lose its justification.

Signatories: Arbeitsgemeinschaft bäuerliche Landwirtschaft (AbL); Arbeitsgemeinschaft der Umweltbeauftragten der Gliedkirchen der Evangelischen Kirche in Deutschland (AGU); Arche Noah; Bäuerliche Erzeugergemeinschaft Schwäbisch Hall (BESH); Bäuerliche Gesellschaft Demeter im Norden; Bingenheimer Saatgut; Bioland; Bund Ökologische Lebensmittelwirtschaft (BÖLW); Bundesverband Deutscher Milchviehhalter; Bundesverband Naturkost Naturwaren (BNN); Bundesstelle Katholische Landvolkbewegung (KLB); BUND Naturschutz in Bayern e.V.; Bund für Umwelt und Naturschutz Deutschland (BUND); Brot für die Welt; Cultivari Getreidezüchtung Darzau; Die freien Bäcker; Evangelischer Dienst auf dem Land (EDL); FIAN; Forschung und Züchtung in der Landbauschule Dottenfelder Hof;Frösamlerne; Gää e.V.- Vereinigung ökologischer Landbau; Gen-ethisches Netzwerk; GLOBAL 2000; Gesellschaft für ökologische Forschung; Getreidezüchtung Peter Kunz; IG Nachbau – Gegen Nachbau-Gebühren; IG Saatgut; Katholische Landvolk Bewegung Freiburg; Kein Patent auf Leben!; No Patents on Seeds!; Keyserlingk-Institut; Kultursaat e.V.; Sambucus; Sativa; Verband Katholisches Landvolk (VKL); Plataforma Transgénicos Fora; ProSpecieRara; Public Eye; Save our Seeds!; Slow Food Deutschland; Swissaid; Umweltinstitut München; WeMove Europe; Zivilcourage Miesbach; Zukunftsstiftung Landwirtschaft.