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The President

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Your enquiry regarding the patentability of NGT plants.

Dear Minister,

Many thanks for your letter of 27th February 2025 enquiring as to the possibility of the EPO ceasing to grant patents for plant traits. Please rest assured that the patentability of plants is also a matter of high importance for the EPO and one which we take very seriously.

By way of introduction, allow me to briefly explain the EPO's regulatory framework. The EPO is an independent international organisation comprising 39 contracting states, including all EU Member States. The conditions for granting European patents were laid down by the contracting states in the European Patent Convention (EPC). In 1999, the contracting states decided to insert the patentability provisions of the EU biotech directive (98/44/EC) into the EPC. In 2017, the contracting states enacted another change to the EPC in order to keep the EPO's regulations and practice aligned with EU law on the patentability of plant-related inventions.

Accordingly, plants made by purely biological methods cannot currently be patented at the EPO. Prior to July 2017, plants with biologically introduced traits could be patented if the traits were found to be novel and inventive. As a result, some three hundred European patents have been granted for such inventions since the early 1980s. Today, on the other hand, in line with the EU biotech directive, plant characteristics are only patentable under the EPC if they are introduced solely by means of genetic technology.

Please understand that the EPO, as a technical organisation bound by the EPC, cannot unilaterally cease granting patents that meet the legal requirements for patentability set out therein. Rest assured, however, that the EPO rigorously searches and examines every patent application on technical plant traits for full compliance with the law – and only about one third of such applications fulfil the stringent conditions that apply to all

European patents. This thorough examination is in line with our mission as the patent office for Europe: to deliver high-quality patents that foster innovation and economic growth.

We are, of course, closely monitoring the ongoing discussions on the legislative proposal tabled at EU level. If the EPO contracting states decide to revise the EPC regarding the patentability of plant traits introduced using genetic technology, we will ensure that this change is swiftly implemented in our examination work.

Let me close by emphasising that transparency on plant-related IP rights is important to all actors in the field. Therefore, the EPO regularly engages with all stakeholders and shares information and expertise with the aim of contributing to a fact-based discussion and providing stakeholders with reliable evidence that supports informed decision-making. In this spirit, I fully support you sharing the contents of this letter with the Dutch Parliament.

Thank you, once again, for contacting me on this important matter and should you require any further information or support, then my expert teams remain available to you.

Yours sincerely,

A rectangular grey box used to redact the signature of António Campinos.

António Campinos