



EUROPEAN COMMISSION

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*Mr Jean Bizet
Chair of the European Affairs Committee
of the Sénat
Palais du Luxembourg
15, rue de Vaugirard
F – 75291 PARIS Cédex 06*

*cc. Mr Gérard Larcher
President of the Sénat
Palais du Luxembourg
15, rue de Vaugirard
F – 75291 PARIS Cédex 06*

Dear President,

The Commission would like to thank the Sénat for its Opinion on the legal protection of plant varieties.

The Commission welcomes the points made in the Sénat's Opinion and notes that they relate to the monitoring of the application of Directive 98/44/EC on the legal protection of biotechnological inventions. The Commission believes that its recently adopted Notice on certain articles of Directive 98/44/EC on the legal protection of biotechnological inventions, which was published in the Official Journal on 8 November 2016¹, responds to a large extent to the points raised by the Sénat and provides clarifications on the matters mentioned in the Sénat's Opinion.

In particular, paragraph 19 of the Opinion calls on the Commission to reaffirm the non-patentability of products derived from essentially biological processes. The principal conclusion reached in the Notice (p. 7) concurs with this request. Secondly, in paragraph 20, the Opinion calls on the Commission not to reopen Directive 98/44/EC, as this would be a long and perilous exercise. This approach is followed in the Notice, (p. 7) where the Commission favours the approach of clarifying the intentions of the EU legislator when it adopted the Directive, rather than considering a formal revision of the Directive.

Finally, the Sénat Opinion addresses, in paragraph 18, certain issues related to farmer's privilege that go beyond the scope of Directive 98/44/EC, and in paragraph 19, the question of a limitation of the scope of the claims of a protected invention and its subsequent derived inventions. While these issues are not specifically addressed in the Notice, the Commission agrees that they could potentially merit further consideration at the appropriate moment.

¹ OJ C 411 of 8.11.2016, pp. 3-19.

The Commission hopes that these clarifications address the issues raised by the Sénat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Elżbieta Bieńkowska
Member of the Commission*