



Recommendation 1425 (1999)¹

Biotechnology and intellectual property

Parliamentary Assembly

1. The Assembly recalls its [Recommendation 1213 \(1993\)](#) on developments in biotechnology and their consequences for agriculture.
2. It is aware that the patent system, as a system for the protection of intellectual property, is an integral part of the market economy and therefore can be a driving force for innovation in many technological questions.
3. A guideline on patent legislation should help to develop criteria for granting patents continuously according to technological progress, in favour of both the interests of the claiming party and the interests of the public in regard to public order, morality and general aspects of the state economy.
4. Living organisms are able to reproduce themselves even if they are patented, and in view of this special quality of living organisms the scope of a patent is difficult to define, which makes it nearly impossible to find a balance between private and public interests.
5. The Assembly deems it necessary to oblige scientists, as well as scientific research and development units working in the field of biotechnology, to conform with the Convention on Biological Diversity (Rio de Janeiro, 1992), guaranteeing both the principle of free scientific access to worldwide genetic resources and the interests of developing countries in sharing the benefits of technological progress.
6. However, it is aware that for ethical reasons there are also severe reservations against patenting living organisms.
7. It considers that the issue of patenting living organisms should comply with the provisions of the Convention on Biological Diversity (CBD), and that greater account should be taken of the interests of developing countries in the Agreement on Trade-Related Aspects of Intellectual Property Rights (Trips Agreement) of the World Trade Organisation; it asks the World Trade Organisation to comply with the Convention on Biological Diversity.
8. The Assembly has taken note that [Directive 98/44/EEC](#) on the legal protection of biotechnological inventions of 6 July 1998 (Bio-Patenting Directive of the European Community) was challenged at the Court of Justice of the European Communities by the governments of the Netherlands and Italy, and that Norway is considering not implementing it.
9. The Assembly considers that monopolies granted by patent authorities may undermine the value of regional and worldwide genetic resources and of traditional knowledge in those countries that provide access to these resources.
10. It considers that the aim of sharing the benefits from the utilisation of genetic resources within this broader view does not necessarily require patent-holding but requires a balanced system for protecting both intellectual property and the "common heritage of mankind".

1. Assembly debate on 20 September 1999 (25th Sitting) (see [Doc. 8459](#), report of the Committee on Agriculture and Rural Development, rapporteur: Mr Wodarg; and [Doc. 8532](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Vishnyakov). Text adopted by the Assembly on 23 September 1999 (30th Sitting).



11. It also considers that the many outstanding questions regarding the patentability and the scope of protection of patents on living organisms in the agro-food sector must be solved swiftly taking into account all interests concerned, not least those of farmers and developing countries.
12. The Assembly therefore believes that neither plant-, animal- nor human-derived genes, cells, tissues or organs can be considered as inventions, nor be subject to monopolies granted by patents.
13. For these reasons the Assembly recommends that the Committee of Ministers, in co-operation with the European Union, the World Intellectual Property Organisation, the Food and Agriculture Organisation, the World Trade Organisation, Unesco and in accordance with the Convention on Biological Diversity:
 - 13.1. study in detail all aspects linked to the protection of intellectual property in biotechnological innovations with a view to further improving international legislation in this field;
 - 13.2. assess and review the effects of granting patents with a broad scope as regards the progress of research and development and the free market;
 - 13.3. develop a code of conduct for scientists and scientific units working in the field of biotechnology which guarantees both free scientific access to worldwide genetic resources and benefit-sharing with developing countries;
 - 13.4. discuss a suitable alternative system of protecting intellectual property in the field of biotechnology which would fit the purposes of the Convention on Biological Diversity and meet the needs of worldwide interests both private and public;
 - 13.5. encourage the ratification by those member states that have not yet done so of the Council of Europe's 1963 Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, and envisage updating the convention in the light of the conclusions of the report;
 - 13.6. consider the ethical aspects of the patentability of inventions involving biological and, in particular, human material.