

EU Ministers of Agriculture
European Commissioner for Agriculture Janusz Wojciechowski
European Commissioner for Internal Market Thierry Breton

cc: Director-General Wolfgang Burtscher (European Commission, DG AGRI)
cc: Director-General Kerstin Jorna (European Commission, DG GROW)

By electronic mail

July 3rd 2023

Re: Prevent patented GM seeds in Europe resulting from reform of EU GMO regulation

Dear Ministers of Agriculture,
Dear Commissioner Janusz Wojciechowski,
Dear Commissioner Thierry Breton,

We are writing to express our concerns about a possible flood of patented seeds entering the EU market as a result of the Commission's far-reaching dismantling of the EU's GMO regulations. With its upcoming proposal on new genomic techniques (NGT), the Commission intends to exempt a vast majority of GM crops from the EU's GMO regulations. The vast majority of plants developed with new genomic techniques – if not all of them – are covered by patents. We are deeply concerned about the impact of these patents on farmers' rights to seeds, small- and medium-sized conventional and organic plant breeders, consumers, our food system, and cultivated plant diversity.

In contrast to conventional plant breeding, both the processes and the products of the new genetic engineering techniques are patentable under the EU law (EU Biotechnology Directive 98/44). Espacenet, the database run by the European Patent Office, lists around 700 patent applications for “Crispr-Cas9 and plants” alone. Over [20,000 patent applications](#) referencing the term “Crispr-Cas9 plant” have been submitted at international level. The patent applications typically cover both the specific technical process (e.g. the use of Crispr-Cas9 to increase starch content in potatoes), as well as the specific trait or traits resulting from the process (e.g. resistance to a certain disease on germination under higher temperatures). The scope of the patent claims is often very wide. **The patents typically claim all plants with the specified trait, regardless of how the plants were bred. In this way, the scope of patents can also apply to conventionally bred plants and peasant, local, and traditional seeds, even though these should not be patentable under EU law – and can extend not only to plants and seeds, but also to the harvest and food products containing the trait.** There are examples of patents with the claims extending to silage and animal feed, beer, salads and sandwiches. Anyone who wishes to commercially use a plant containing a patented trait must ask the patent holder for consent, agree to contractual limitations on the use of the trait, and pay licence fees.

Allowing new GM seeds to be exempted from the EU's GMO laws will result in a flood of patented seeds entering the market, and a "patent thicket" that will be extremely hard to navigate for the majority of plant breeders and farmers. This thicket will in practice put an end to the free access to genetic material for plant breeders, which is essential to the development of new varieties (and is guaranteed in the bespoke legal framework for the protection of new varieties, plant variety protection). Plant patents hinder rather than promote innovation in plant breeding, as they block access to important plant traits, or limit it to those who have paid for a licence, where these are available. Small- and medium-sized plant breeders, who lack the legal or financial resources to navigate the patent landscape or pay licence fees, will be forced from the market, further increasing the power of the global seed giants.

The same applies to farmers, who will have no means of knowing whether their traditional seeds contain or are contaminated by patented genetic sequences. **By reducing the genetic diversity available to develop new crops, patents will restrict opportunities to develop climate-resilient crops and reduce choice for farmers and consumers.** In addition, farmers will be exposed to a greater risk of legal action for patent infringement, concerning the native characteristics of their traditional seeds or as a result of genetic contamination and are likely to face greater restrictions on to their rights to freely dispose of their harvest. Moreover, patents on seeds are a threat to future food security. Not only do they restrict consumer and producer choice, but they could also lead to an increase in food prices.

The problems that patents pose for the European breeding sector, farmers and consumers are known, but in the current debate on a future legislation for new genomic techniques, DG Sante intends to exclude this topic. The German, Dutch, and Austrian plant breeders' associations say they oppose patents on conventionally bred plants, as well as patents on New GMOs, but fail to explain how this would be possible, while various of their members continue to claim new patents. Proposed licensing platforms such as ACLP (Agricultural Crop Licensing Platform) are no solution. The seeds remain patented, and breeders and farmers will still have to pay for their use. GM crop developers will continue to set the terms and conditions for accessing their proprietary technologies and products. There is a threat of patent disputes. Replication and thus also regional adaptation of the varieties will be prohibited.

Many breeders' and farmers' organisations, as well as consumer and environmental organisations, rightly reject patents on seeds. Especially in these times of climate and biodiversity crisis, it is important to have sufficient diversity of genetic resources for use by breeders and farmers.

We urge you to refrain from taking any steps that could facilitate the commercialisation of more patented plant varieties. We ask you to reject any deregulation of new GMOs/NGTs and not to push the legislative process towards a new regulation of NGTs any further, because the impact that a change of legislation would have on patents on seeds has not been evaluated, even though it entails severe threats for both the farming and the breeding sector.

It is no longer enough to say the upcoming GMO proposal will not deal with patents. The truth is that if it promotes the market entry of patented seeds and the extension of the scope of patents to conventional seeds, it does deal with patents – in a way that is unacceptable to many breeders and farmers, and that would counter the EU's Green Deal objectives.

We look forward to hearing from you at your earliest convenience.

Yours sincerely,

Eric Gall
Deputy Director - IFOAM Organics Europe

On behalf of:

At the European or international level:



Friends of the Earth Europe



FIAN INTERNATIONAL



ECOROPA

European Network for Ecological Reflection and Action

At the national level:



ARCHE NOAH



Saatgut aus biologisch-dynamischem und organisch biologischem Anbau



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