

17 May 2024

Intellectual property protection in the context of the legislative proposal for a regulation for plants obtained by certain New Genomic Techniques

Dear Deputy Director-General Bury, Deputy Director-General Dumitru, and Deputy Director-General Rute,

We are writing to you concerning the ongoing negotiations on the legislative proposal for a regulation for plants derived from certain **new genomic techniques (NGTs)**. Unleashing the full potential of NGTs, which increase the adaptability of modern agriculture, requires an enabling legislative environment which maximises the incentive to innovate while safeguarding the rights of all breeders and farmers.

We want to take this opportunity to address some of the concerns that have been raised regarding access to patented plant material. Our sector takes these concerns very seriously. As a result, over recent years several voluntary initiatives, such as the Agricultural Crop Licensing Platform (ACLP)¹, have been launched to improve access and facilitate the use of any new patented traits for breeding purposes across Europe, and the commercialisation of new varieties containing the patented elements on fair and reasonable conditions.

We believe that the current IP system for protecting innovative plant traits should apply to NGTs in the same way as it does for any other technical innovation. We are committed to facilitating access of breeders to patented material with enhanced transparency and licensing mechanisms.

Already today with the general research and breeders' exemptions implemented by many EU Member States as well as in the new EU unitary patent system², patents, together with fair licenses, stimulate innovation while enabling its dissemination to many breeders, ultimately providing more choice and value-added solutions for farmers. In addition, in the EU Biopatent Directive³, farmers are entitled to save seeds under the exact same conditions as for plant variety protection. Small farmers do not pay anything.

We believe that the concerns can be further addressed with improved transparency on NGT patents and guaranteed access on fair and transparent conditions in licensing platforms (i.e. ACLP, ILP⁴) which should be available for all crops. In this way, NGT plants will be available to European farmers at a fair costs, and those investing in the research will be able to get a return on their research investment while any other breeder will be able to commercialise seeds based on NGT through a license on fair and reasonable terms.

¹ <https://aclp.eu/>

² [The unitary patent system - European Commission \(europa.eu\)](https://ec.europa.eu/commission/presscorner/detail/en/ip_2023_1000)

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31998L0044>

⁴ <https://www.ilp-vegetable.org/>

How could this be done and how does this answer the concerns being raised?

- To ensure **freedom of choice, transparency is key**, and breeders would commit to entering data into an EU wide database (such as the one established by Euroseeds⁵) on whether a commercial variety contains a patented trait and who the patent trait holder is.
- To ensure **knowledge-sharing, access to genetic resources and technology transfer** of patented innovation in plant breeding, uniform free breeding rights corresponding to the limited breeders exemption in the Unified Patent Court Agreement and some national patent laws would be granted all across Europe. Further, commitments to licensing on fair and reasonable terms would guarantee that breeders also get a license to commercialise new varieties containing patented NGT traits.
- To **reduce the administrative burden, costs and complexity**, licenses would be granted in a standardised and uncomplicated way.
- To ensure **fair access to all at the lowest possible cost**, potential royalty disputes would be solved in a fast, fair and efficient manner, and there would be an independent “baseball arbitration” mechanism established. This ensures that a license is granted according to the most reasonable market value for the trait.
- It should be evaluated how **small breeders** (qualifying as small enterprise under EU Recommendation 2003/361) could have access to already established licensing platforms according to ACLP principles in a preferential way and how access for these small breeders could be further facilitated.
- To remove a perceived **litigation risk by farmers** due to unintentional minor presence of a patented trait in their field, companies involved in licensing platforms would commit not to enforce their patents against such farmers.

Companies, both small and large, as well as universities need to test hundreds or thousands of technical options to find the correct solution. They will do so wherever a robust patent framework for NGTs is in place to protect their innovations, be it in Europe or in other parts of the world. For the majority of start-up companies, patents are a crucial tool to leverage funds from capital-risk investors, who would otherwise not take the risk to invest in companies whose research outcome may easily be copied by others. To have the NGT legislation in place without patents, NGTs will arrive slower and innovation on NGTs will be hugely affected in Europe, in particular to the detriment of the European farmers.

As with any research-intensive activity, NGT traits will mostly be developed in countries benefiting from a strong IP framework. Some NGT traits will emerge without patents but the plants which need the most scientific research will not arrive in Europe, for example, gene editions for breakthrough traits that will specifically tackle the problems of European farmers, like standing up to droughts and new pests, such as the spotted-wing fruit fly⁶. This, in turn, will impact European farmers as they become significantly less competitive to farmers from countries which do foster innovative NGTs.

⁵ <https://euroseeds.eu/pinto-patent-information-and-transparency-on-line/>

⁶ Commonly known as spotted-wing drosophila, *Drosophila suzukii* is an Asian fruit fly. It is now ravaging fruits such as cherries and blueberries widely across Europe. Unlike European fruit flies, it is attracted to underripe fruit, so can destroy fruit crops before and during harvest. Source : <https://projects.research-and-innovation.ec.europa.eu/en/projects/success-stories/all/saving-europes-fruit-crops-invasive-pests-and-disease>

We hope that by addressing fair access to patents, especially for small breeders and farmers, a solution can be found that acknowledges the importance of fair and easy access to breakthrough traits whilst respecting the importance of patent protection for trait innovators.

This would, in our view, give the NGT technology a chance to deliver on its promises in Europe for the benefit of all.

Yours sincerely

A handwritten signature in black ink, appearing to read 'O. de Matos', enclosed in a light grey rectangular box.

Olivier de Matos
Director General
CropLife Europe