

## 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,

We thank you for your reply (Ref. Ares(2024)4387183 - 18/06/2024) to CropLife Europe's letter on the intellectual property protection in the context of the legislative proposal for a regulation for plants obtained by certain new genomic techniques (Ares(2024)3630195), and we apologise for the delay in responding.

We welcome your interest in receiving further information regarding the potential to expand the existing initiatives to enhance the transparency and access to patented plant-related inventions, such as the PINTO database, the ILP Vegetables and the Agricultural Crop Licensing Platform (ACLP), and acknowledge that these could be implemented within the current legal framework. In this regard, we wish to inform you that, given the slightly different membership profile of CropLife Europe and the platforms, the representatives responsible for these platforms have been invited to share the requested information with DG SANTE.

We also take this opportunity to inform you of a report commissioned by CropLife Europe to assess the current intellectual property (IP) landscape in the EU and its impacts on different stakeholders.<sup>1</sup> The key findings are the following:

- **PVP and patents serve different purposes:** Plant Variety Protection (PVP) protects entire plant varieties; patents protect individual traits such as those developed through NGTs, which are not covered by PVPs. They are complementary tools used according to the type of innovation. A European IP framework that encourages innovation in the seed sector needs both PVPs and patents to work together.
- **Patentability criteria are applied strictly by the European Patent Office:** In the EU, only about 30% of patent applications for NGT-related inventions are granted, compared to 60% across all technical fields. Strict requirements for criteria such as novelty, inventiveness and disclosure inevitably mean that patent protection is only granted when significant inventions are made, in a procedure that takes on average 7 to 8 years to be completed.
- **Patent ownership is broad and diverse:** 28% of patent applications relevant to NGT plants in Europe were shown to come from academic and research institutions. Of the 570 applicants identified, 364 are academic and research institutions, showing a competitive and diverse innovation landscape.

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<sup>1</sup> <https://croplifeeurope.eu/resources/report-on-the-intellectual-property-framework-of-plant-related-inventions-obtained-by-ngts/>

- **Breeding and access to innovation are not hampered:** Several EU countries have introduced a breeder's exemption into their national patent law, which allows any breeder to use a commercial variety containing a patented trait in its own breeding programme for the purpose of creating new varieties. The implementation of such a breeder's exemption by all EU Member States in their patent laws should be supported. Furthermore, industry licensing platforms (ACLP, ILP) facilitate access to patented material. Through their membership in those platforms, the large majority of seed companies in Europe have committed to grant a free breeder's exemption even in European countries not yet having implemented it in their national patent laws, and to license out their patented traits under fair conditions to any breeder asking for it through licensing platforms.
- **An open database supports transparency:** To make informed decisions about which varieties to use under the breeder's exemption, the voluntary database PINTO is available to disclose which commercial varieties contain a patented trait. CLE supports that such information becomes mandatory, e.g. in the Common catalogue of varieties.
- **Farmers seed saving rights are maintained:** In the EU, farmers growing fodder plants, oilseeds, cereals or potatoes retain the right to save and reuse seeds, even when those varieties contain patented traits. Small farmers can do it freely, while other producers must pay a financial compensation to the IP right holder, for which sector-wide negotiated collection mechanisms already exist in some EU member states.

Moreover, we wish to reiterate our members' commitment not to enforce their patents against farmers for unintentional minor presence of a patented trait in their field.

In addition, we would like to draw your attention to an open letter signed by 32 companies, highlighting the importance of IP protection in fostering agricultural innovation. You will find the letter attached.

To conclude, CropLife Europe believes that, with these initiatives and policy suggestions, the whole seed sector will remain in a position to rely on its existing open-innovation model, whereby all breeders can innovate by partially relying on others' innovations. A breeder's exemption in a majority of EU member states national patent laws already enables it, and databases making it transparent to all which commercial varieties contain a patented trait also enable that informed breeding decisions can be made. Then, commercial access to patented traits is ensured through licensing platforms, whereby patent holders commit to grant commercial licenses under the control of a binding mechanism guaranteeing fair royalty rates.

We remain at your disposal for any questions you may have.

Yours sincerely,



Olivier de Lattès