



Is the proposal to modify EU GMO regulation aiming to allow all native and traditional seeds to be controlled by the patents of a few multinationals?

DG SANTE¹ has announced its intention to publish a legislative proposal in the course of 2023 to modify the current European GMO regulation to exclude certain "new genomic techniques", i.e. certain genetic modification techniques (directed mutagenesis and cisgenesis). DG SANTE has clearly stated its objective to exempt, completely or partially, plants that were genetically modified by these techniques from the obligations of risk assessment, labelling and traceability. **While all GMOs, old or new, are covered by patents, what would be the impact of such a deregulation on the scope of these patents in the EU, and thus on the rights of peasants² and breeders on seeds?**

The European Coordination Via Campesina (ECVC), which represents small and medium-sized European farmers and peasants, answers these questions in [a new report](#) detailing the impacts of a potential deregulation of new GMOs on the application of European patent law, which has been submitted to the European Commission. Below is an overview of the main points of the analysis and the solutions proposed by ECVC.

In the first part of this report, ECVC indicates **that any proposal from the European Commission concerning the legal status of new genomic techniques that is not accompanied by a study of its impact on the concrete application of patent law would be incomplete and contrary to the Council's request**, and asks the Commission to take up this issue as a matter of urgency. The same applies to the impact on seed marketing regulations or the CAP, which are not developed in this report.

ECVC recalls that the European Council asked the Commission in 2019 to carry out a study on the status of 'new genomic techniques' in EU law³. **This decision, which is addressed to the European Commission as a whole, and aims at a study covering the entirety of European law,**

¹ Directorate-General for Health and Food Safety of the European Commission.

² ECVC's demands for the implementation of peasants' rights on seeds in Europe can be found in our 2021 publication: <https://www.eurovia.org/publications/publication-incorporating-peasants-rights-to-seeds-in-european-law/>

³ European Council Decision 2019/1904.

has not been respected to date. Indeed, only DG SANTE has taken up the subject by limiting its initial proposals, its inception impact study and its various consultations to GMO regulation alone, explicitly excluding the impact of its proposals on intellectual property rights and implicitly on other branches of European law.

ECVC then explains how the removal of the traceability requirement for new GMOs would have a considerable impact on the application of European patent law: while breeders claim that new genetic modification techniques allow them to do the same thing as traditional breeding, the obligation imposed by the current GMO regulation to publish the process allowing to distinguish each GMO from any other organism or product is the only possibility available to all to distinguish a plant derived from traditional peasant or industrial breeding and carrying a similar trait to that claimed by the patent covering a "new GMO". However, European legislation on patents for biotechnological inventions (Directive 98/44/EC) specifies that the scope of a patent on genetic information (the GMO trait) extends to any plant exhibiting a similar trait to the patented trait, even if these plants are derived from traditional breeding.

If the traceability requirement for GMOs disappears, there will be a proliferation of abusive extensions of the scope of patents to 'native' traits present in traditional seeds, with very concrete consequences for peasants' and breeders' rights, as well as for the freedom of research. Such patent abuses have been observed in many parts of the world where GMOs are deregulated, resulting in the control of 60% of the global seed market by six multinational companies that hold most of the patents on these techniques⁴.

As explained in several examples, if new GMOs were to be deregulated in the EU, farmers will be the first victims of these abusive extensions of patent scope. If their seeds are contaminated, or if they present "native" traits which happen to be similar to a patented trait, the multinationals holding the patents will be able to sue them for infringement and seize their crops until the proceedings are completed. It will then be up to the farmers to prove that their seeds are not an infringement of the patented invention, which is impossible if there is no traceability requirement. In this case, farmers will have no choice but to pay royalties on these patented seeds, and many will not even dare to use their own seeds for fear of being sued for infringement. Small and medium-sized plant breeders are also under threat.

What is at stake with the disappearance of the traceability of new GMOs is nothing less than the control of all seeds by the patents of a few multinationals, at the expense of farmers' rights on seeds, the right of farmers and citizens to grow GMO-free crops and eat GMO-free food, as well as the freedom of research.

The concentration of patent portfolios in the hands of a few multinationals leads, firstly, to an increasing control of the food chain by these companies, which reduce most of the cultivated biodiversity to the very limited gene pool that they exploit, to the detriment of food security.

⁴ According to a recent ETC Group report (2022), six multinational companies share nearly 60% of the global seed market (including biotechnology), and two multinationals (Bayer and Corteva) alone control 40% of this market: <https://www.etcgroup.org/food-barons-2022-agrochemicals-seeds>

Secondly, **this quasi-monopoly phenomenon is increasingly moving patents away from their initial interest of stimulating innovation and transforming them into objects of financial speculation.** This speculation that is now the main driving force behind the development of new genomic techniques for agriculture, and not the false agronomic solutions promised by the industry.

What solutions ?

- The first requirement is to maintain the current EU GMO regulation, including traceability obligations and publication of techniques to identify and distinguish any GMOs released into the environment, and a ban on the release of GMOs that could harm traditional crops and non-GMO sectors.
- Furthermore, concerning the numerous risks of abuse linked to the patentability of seeds pointed out in this report, ECVC considers that the only sustainable solution to this effect is the prohibition of patents on life. However, certain measures can and must be taken immediately to stop this drift:
 - Prohibition of the extension of the scope of patents to "native traits" and to plants and animals containing them;
 - Cancellation of patent protection in case of contamination.