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European Commission proposal on new GMOs:

Towards the appropriation of all seeds by the patents of a few multinationals

On 5 July, the European Commission presented its proposal for a new legislative framework for new techniques of genetic modification, which aims to impose a new definition of GMOs¹, in contradiction with international law², in order to exclude most of them³ from risk assessment, labelling, traceability and control obligations. It also proposes to prohibit Member States from restricting their marketing and cultivation, whereas 17 European countries currently ban the cultivation of GMOs partially or completely⁴. **This proposal would not only breach the precautionary principle, remove all health and environmental assessments and mislead consumers who do not want GMOs, but would above all allow all seeds grown in the European Union to be claimed by the patents of a few multinational seed companies.**

The European Coordination Via Campesina (ECVC), which represents small and medium-scale European farmers, has analysed the impact of this deregulation proposal on the application of European patent law, and denounces its disastrous consequences: biopiracy, privatisation of all seeds, monopolistic concentration of the seed market, violation of farmers' rights on seeds, destruction of the guaranteed GM-free and organic farming sector. This document responds to the shortcomings of the impact assessment carried out by DG SANTE, which explicitly excluded the patent issue, whereas the Commission is now proposing, in response to the criticism it received, to carry out a study on patents in... 2026.

ECVC calls on MEPs and Member States to reject this unacceptable proposal, which amounts to authorising the dissemination of these new patented GMOs without any traceability, without any guarantees for farmers, and without any visibility regarding patent-related impacts. See our detailed analysis below.

In its deregulation plan, the European Commission is proposing to separate new GMOs into two categories, a "category 1" covering genetically modified plants that would not be considered as GMOs anymore because they "*may occur naturally or be produced by conventional breeding*", and a category 2 covering other plants obtained through new genetic

¹ Article 3.3) of the European Commission proposal.

² I.e. the Cartagena Protocol.

³ I.e., GMOs obtained through directed mutagenesis and cisgenesis. Let's keep in mind that the Commission is only proposing this new regulatory framework for plants derived from these new genetic techniques to circumvent the ruling of the Court of Justice of the European Union on 25 July 2018 (C-528/16) which confirmed that they are indeed GMOs.

⁴ France, Germany, Austria, Greece, Hungary, the Netherlands, Latvia, Lithuania, Luxembourg, Bulgaria, Poland, Denmark, Malta, Slovenia, Italy and Croatia have opted for a total ban, as has Wallonia, the French-speaking region of Belgium.

modification techniques. Category 1 plants would be exempt from risk assessment, food labelling and traceability obligations. **In short, this means that the Commission is proposing rules that it will not be able to enforce, since in the absence of traceability and regulatory detection and distinction standards for category 1 plants, no controls will be possible and companies will be able to declare whatever they want.** It is therefore proposing to place full trust in the seed industry's declarations.

Since the Commission is also trying to sow doubt by claiming that certain GMOs could "be produced by conventional breeding", let's keep in mind that all GMOs, including those produced by new genetic modification techniques, are patented⁵. This means that the companies holding these patents have a monopoly on the use and sale of these GMOs. Farmers can therefore no longer freely use and re-use their own seeds, either to grow new crops or to select new seeds better suited to their own growing conditions. If their fields are contaminated by patented GMOs, farmers can also be sued for infringement by the companies holding these patents. Like North American farmers, they will be forced to buy GM-seeds to avoid being sued for infringement. Current GMO legislation guarantees farmers, through labelling and traceability obligations, that the seeds they buy are not GMO and therefore not patented, and offers them protection in many European countries in the event of accidental contamination.

This traceability makes it possible to avoid patent abuse, i.e. the extension of the scope of patents to conventional or farmers' seeds that are not the result of the patented invention. As European patent law currently stands, the scope of a patent on genetic information extends to any organism that contains this genetic information and expresses its function (Article 9 of Directive 98/44/EC). This means that the scope of such a patent can extend to conventional seeds that naturally contain genetic information described as similar to the patented genetic information⁶. Traceability, as provided for in current GMO legislation, obliges companies to publish information on the process used to distinguish their GMOs from any other product, which limits the scope of patents covering these GMOs to plants derived from the patented invention.

If this traceability obligation disappears for new GMOs, farmers and breeders will lose the only means at their disposal to oppose the appropriation of their seeds and their harvest by these pirate patents. Claiming that the traceability of these new GMOs is impossible, as done by the industry and the European Commission, is an insult to the long-established multiple traceability practices in various agricultural sectors.

⁵ As a reminder, under EU law, it is forbidden to patent what nature or traditional breeding does. Only biotechnological inventions, i.e. genetically modified plants, can be covered by a patent.

⁶ The European Patent Office recently introduced a disclaimer requirement, which is supposed to protect seeds obtained through conventional breeding. Nevertheless, this disclaimer is not effective because it only applies to seeds which already have been identified beforehand as not resulting from the patented invention. However, the genetic diversity selected and cultivated by farmers is far from being fully identified. No farmer publishes a complete sequencing of their seeds, nor deposits in official collections a sample of each batch of seeds they use. Hence, in the event of legal action and seizure of the harvest for infringement, farmers will not be able to prove that their crops do not result from the use of the patented invention.

What would be the consequences of losing traceability?

- **Nothing will prevent the scope of such patents from extending to conventional seeds that were contaminated with one of these GMOs or that present a trait similar to the patented trait.** We should bear in mind that biotech companies are claiming patents on genetic characteristics identified in peasant and traditional seeds, without asking for farmers' consent. **In the current state of patent law, the loss of traceability therefore amounts to legalising biopiracy and authorising patent-holding multinationals to privatise all seeds, including peasant and traditional seeds⁷.**
- **Furthermore, farmers and breeders will have no protection in the event of accidental contamination of their crops by patented seeds. It will be their sole private responsibility to ensure that their crops are not contaminated,** which will be impossible in the absence of GMO crop traceability. Organic farming will be particularly hard hit as GMOs are banned in organic farming. However, the entire GMO-free agricultural sector will be adversely impacted, since it relies on the trust of European consumers, the vast majority of whom do not want to buy GMOs and are demanding transparent information on the breeding techniques used. **Authorising the marketing of these new GMOs without traceability therefore means sacrificing the entire guaranteed GMO-free agricultural sector, including organic farming and protected designations of origin, which must be guaranteed GMO-free.**
- **In case of infringement proceedings, it will be up to farmers and breeders to prove that they have not used a patented invention,** which will be impossible in the absence of an obligation to publish the process used to distinguish a patented GMO from any other product.

This deregulation project represents a clear violation of farmers' rights to use, re-use, select and exchange their seeds. These rights are guaranteed by Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), a binding treaty to which the European Union is a party, as well as by Article 19 of the United Nations Declaration on the Rights of Peasants and Other Rural Workers (UNDROP).

Considering the current climate and biodiversity crises, this proposal would have a disastrous impact on the agricultural models that are most respectful of the biodiversity of ecosystems, best adapted to local climates and most capable of storing carbon in the soil, i.e. small-scale farming, organic farming and peasant agro-ecology. The European Commission keeps repeating, following the lead of the seed industry, that these new genetic techniques would be "sustainable", could reduce the use of chemical pesticides and help farmers by providing them drought-resistant varieties. These claims are not backed by scientific evidences, and are based on promises of miraculous varieties that have not been

⁷ For more information on this subject, see the ECVI report (2022), [Impacts of the Commission's Initiative to Modify the Regulation of Certain Plant GMOs on the Application of European Patent Law.](#)

developed yet, even in countries that do not regulate them and where it is no GMO regulation holding them back. Furthermore, the proposed deregulation of herbicide-tolerant varieties casts serious doubt on the "sustainability" of these new GMOs.

Varieties that are resilient to climatic stresses, adapted to local territories and requiring little or no chemical inputs do exist, and they are not covered by patents: these are varieties developed by farmers, through on-farm selection of the plants best adapted to local growing conditions, as well as varieties developed by traditional breeders. These farmers' and traditional varieties are a proven solution for more sustainable farming systems, yet today the European Commission is proposing to wipe them out by authorising biopiracy by the few companies holding patents on new GMOs.

Six companies control 60% of the global seed market with their patents: Bayer, Corteva, ChemChina/Syngenta, BASF, Limagrain and KWS⁸. If new GMOs were deregulated, this concentration would increase because of the patent business model. Corteva for example, holds the exclusive patent for any use of the CRISPR/cas9 technique on plants. The European seed market, which is still fairly diversified with many small and medium-sized seed companies, would gradually be absorbed by these seed giants, resulting in a drastic reduction in cultivated biodiversity and control of all seeds by a few multinationals.

Considering the catastrophic and irreversible impacts that this deregulation proposal would have on European farmers, consumers, the diversity of the seed sector and biodiversity, ECVC calls on MEPs and Member States to reject this unacceptable proposal, and to demand that current GMO legislation be maintained and effectively implemented.

ECVC also calls on the European Parliament to continue the work begun not only on the non-patentability of essentially biological processes, but also on the non-patentability of life in general, which is a clear violation of the rights of farmers and all citizens.

⁸ Food Barons (2002). Agrochemicals and seeds: https://www.etcgroup.org/files/files/01_agrochemicals.pdf