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NO PATENTS ON SEEDS!

November 16, 2023

## Patents and New GMOs: Don't risk the future of our seeds!

Dear Agriculture Ministers,

We are deeply concerned by the **increasing number of patent applications** being filed and granted in Europe on so-called **new genomic techniques (NGT)** and on seeds and plants obtained with these techniques and related food products, and how this impacts breeders, farmers, food production and agrobiodiversity.

A problem already faced now is that the current interpretation of patent law is insufficient to stop patents on conventional breeding. Additionally, industry efforts have succeeded in extending the scope of patents on genetically modified plants to conventionally bred plants. "The current obligation to publish detection and identification processes of these GM-plants (Directive 2001/18/CE Annex III A) protects farmers and breeders against these abusive extensions of the scope of patents". The suppression of this obligation, proposed in the draft regulation on new genomic techniques<sup>1</sup>, would lead to a generalised misuse of the European patent law and a flood of patented seeds in the EU, covering both genetically modified and conventional seeds. We witness an increasing number of patents not being granted on technical procedures only, but also comprise the biological resources needed by all breeders. To exploit the current loopholes in the interpretation of patent law, NGTs are often used to just dress up the patent claims as technical inventions, and then claim the patent on all - including conventional - plants with characteristics similar to those described in the patent, whatever the process used to obtain them. To escape the legal prohibitions, companies are filing patents which are extremely broad in the scope of their claims, and which, without a mandatory publication of distinction and identification processes, also concern plants obtained by conventional or peasant breeding<sup>2</sup>. This development increases costs, legal uncertainties and new dependencies especially for farmers and traditional breeders. The restricted access to biological diversity is endangering the ability to develop climate resilient, locally-adapted crops. It damages the viability of Europe's plant breeding industry, which is largely made up of small and medium sized companies and farmers reusing seeds from their harvests and practising dynamic management of seeds at the farm. By granting patents whose scope extends to conventionally bred plants, the European Patent

<sup>1</sup> For NGT category 1, article 6 : no obligation to publish detection and identification processes. For NGT category 2, see articles 14.1.1; 19.2.

<sup>2</sup> The recent disclaimer obligations proposed by the European Patent Office are largely insufficient to prevent this abusive extension of the scope of patents to conventional and peasant seeds, as they only concern notoriously well-known technical features.

Office (EPO) is violating the prohibitions in European patent law<sup>3</sup>. This development threatens all traditional plant breeding, farmers' rights on seeds<sup>4</sup>, and food security in Europe.

We are particularly concerned that the strategy of **blurring the differences between plants obtained by conventional breeding and those obtained by genetic engineering** are used by industry in two contexts: In filing patents as well as in their efforts to push to deregulate NGT organisms. They are furthermore pushing to end mandatory approval processes including risk assessment as well as to end traceability and labelling of genetically engineered seeds and foods. If this strategy prevails, we will end up with patented seeds in conventional and peasant breeding, but without mandatory approval processes for genetically engineered plants. Furthermore, without traceability, seed companies and farmers prosecuted for patent infringement will not have access to technical means allowing them to prove that their seeds and products are not derived from the patented invention. This deregulation of NGTs, would have severe consequences, for breeders, farmers, food producers and the freedom of choice for consumers.

1) **In regard to European patent law, a clear interpretation of "essentially biological processes" and a limitation of the scope of patents on technical processes** has to be established in order to enforce the ban of patents on conventional seeds and plants. The scope of patents on genetically engineered plants has to be limited to such plants, and must not impact conventional seeds and plants as it is the case today. **We call on you** to ask the European Commission to send a legal notice to the EPO, demanding these **clarifications**.

2) **In regard to the regulation of New Genomic Techniques, we ask you not to push** the legislative process towards a **new regulation of New Genomic Techniques any further**, as long as its impact on the scope of patents on seeds is not fully evaluated and corrected by political decision making. The proposal on NGTs itself and the following process ignores big controversial topics such as patents. The proposed report on the impact of the patenting of plants as part of broader market analysis by 2026 is not sufficient to tackle the issue. This would be too little, too late.

In conclusion, your efforts to address these challenges related to patents and new genomic techniques are essential for the well-being of European agriculture, food security, and the protection of our traditional breeding practices. We look forward to working together to find solutions that will benefit farmers, breeders, and consumers alike.

With kind regards,

Arche Noah  
European Coordination Vía Campesina  
Friends of the Earth Europe  
Greenpeace  
Corporate Europe Observatory  
GLOBAL 2000  
FIAN International  
European Non-GMO Industry Association  
No Patents on Seeds!

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<sup>3</sup> The European Patent Office (EPO), which is independent of the EU, grants patents in Europe after examining applications for the intellectual protection of inventions. The EPO already stated that patent applications for NGTs will in practice be examined according to the same criteria that previously applied to genetically modified organisms (GMOs) and that NGTs are therefore patentable. The relevant framework for assessing a patent application is the 1998 Directive 98/44 on the legal protection of biotechnological inventions (EU patent directive). This directive only allows for patents on technical inventions (genetic engineering) in the context of plants and animals. However, Article 53 (b) of the European Patent Convention (EPC), which is the overarching legislation, prohibits all other patents on plant and animal varieties as well as on processes for conventional breeding.

<sup>4</sup> As defined in article 9 of the International Treaty on plant genetic resources for food and agriculture.