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An Open Letter to Representatives of the European Parliament, the Council of the European Union, and the European Commission on why Intellectual Property is a catalyst for bringing in agricultural innovation in the EU

In an era marked by pressing global challenges - climate change, population growth, and food insecurity - Europe must seize every opportunity to foster innovation and resilience in agriculture. New Genomic Techniques (NGTs) stand out as a transformative set of tools with the potential to develop crops with improved pest resistance, climate adaptability, and enhanced nutritional profiles.

As the EU shapes the regulatory framework for NGTs, questions concerning the Intellectual Property (IP) system for crops and traits have come to the fore. While some concerns may be legitimate, they overlook the vital role IP plays in driving innovation, fostering collaboration and securing Europe's global competitiveness, as well as all the guardrails already in place in European patent laws.

A robust intellectual property system needs to remain available for NGT plants, in the same way as it does for other fields of technological innovation, to encourage investment and research in the quest for new traits.

Driving research with a robust IP framework

Innovations in seeds and plant breeding are a significant undertaking. Developing the right trait that will achieve the desired outcome is costly in time, money and expertise. All companies, small and large, as well as universities, need to test hundreds or thousands of technical concepts to find the most suitable solution for a given issue. Seeds with patented innovations, whether they result from the use of NGTs or other techniques, will only be successful if they are able to deliver significant economic benefits that are usually reinvested in further R&D activities and innovations. For most start-up companies, patents are a crucial tool to leverage funds from venture capital investors.

As with any research-intensive activity, traits derived from the latest breeding techniques will mostly be developed in countries benefitting from an adequate IP framework. Without patents, Europe may miss out on the most advanced solutions to develop plant varieties to support EU farmers. While NGTs can indeed accelerate the development of simple, known traits, their true potential lies in creating breakthrough traits. However, realising this potential will require significant investment.

An appropriate IP system should include both plant variety rights and patents – both are important and here is why: while plant variety rights are essential for protecting plant varieties, they are not suitable for protecting NGT plant innovations such as traits which can only be eligible for patent protection. In the EU, the scope of patent protection for plants is limited. Plant varieties, as well as essential biological processes to produce plants, are expressly excluded from patent protection according to EU law. Even though not all traits developed through NGTs will qualify to be patentable, this option will be important to support the most innovative products that will address complex challenges like drought. That is why an enabling environment for NGT plants in the EU requires both an adequate regulatory and IP framework, whose objectives will fall short should one be missing. Any proposal to either eliminate the possibility of patenting NGT traits or render patents ineffective through a "full breeder's exemption" will reduce investments in the potential of NGTs to the detriment of EU agriculture.

Levelling the playing field for all

Patents do not grant unlimited rights. They disclose innovations that can be used to foster improvements, which in turn can inspire new inventions and create a virtuous cycle. In return, patents protect against unauthorised commercial use for a limited period, after which all breeders can freely use the invention. An effective patent system levels the playing field by encouraging knowledge sharing and technology transfer of innovation, which enables anyone to build upon the ideas of others.

The EU plant breeding sector is characterised by an open innovation approach whereby breeders can access material for the purpose of developing new varieties. A 'breeder's exemption' already exists in several patent laws in Europe as well as in the recently implemented Unified Patent Court system. This allows free access to commercial varieties containing patented traits for breeding and developing new varieties. It is currently in force in 18 Member States; a first step in improving access would be requiring its implementation in all remaining Member States via their national patent laws.

On top of this, provisions for voluntary licensing and transparency on patented NGT material can ensure that this open innovation model is preserved and that patents serve the common good without stifling competition. Over recent years, several voluntary initiatives have been launched to improve access and facilitate transparency for patented traits. This approach to patents, which is unique to the seed sector, is not about exclusivity. Instead, it allows other breeders to benefit from the R&D efforts of those with the capacity to invest, ensuring that NGT traits stay accessible to all EU seed companies. This enables Europe's farmers to access the widest possible diversity of plant varieties.

If we "want Europe to make the most of the biotech revolution"[1], and to give NGTs a chance to support innovation and the competitiveness of EU agriculture, then we need a robust intellectual property system.

[1] Political Guidelines for the next European Commission 2024-2029

List of 32 signatories of the open letter on the importance of patents in the context of the regulation on plants produced by certain new genomic techniques