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Copa-Cogeca’s ambiguities on the issue of plant patents

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For a year and a half, the Council of the European Union has been unable to reach an agreement on the deregulation of GMOs, mainly because of the problems posed by patents on those GMOs or on the techniques used to obtain them. According to Copa-Cogeca, those two issues should be dealt with separately. Its proposal is to adopt the deregulation of GMOs as quickly as possible and postpone the study of the problem posed by patents. Even if it means forgetting that farmers are indeed affected by patents.

On 9 December 2024, the member of the European Parliament Martin Haüsling organised an online conference on the issue of patents and new techniques of genetic modification. During this conference[i], Thor G. Kofoed, from Copa-Cogeca, the organisation representing professional agricultural organisations and agri-food cooperatives, presented his organisation's position. His voice is of importance for two reasons. Thor G. Kofoed is the Chairman of Copa-Cogeca's working group on seeds and he is Danish. Yet, Denmark will hold the presidency of the European Union from 1 July to 31 December 2025, and will therefore lead the debates on the European Commission's 2023 proposal for deregulation, debates that have been stalled for the last year and a half over the issue of... patents!

NGTs, necessary techniques for Copa-Cogeca

Thor G. Kofoed was direct. The representative of the agricultural organisation explained that “*better plant breeding and more plant breeding than we have seen in the last fifty years*” are needed. He put this position in the context of climate change, with “*more water and more rain more humidity in some time of the year at certain times and longer dry period at some other times*”. For Copa-Cogeca, a huge plant breeding programme is therefore essential, a programme that must include the new techniques of genetic modification (so-called new genomic techniques - NGT - at the instigation of the European Commission, which no longer wants to use the acronym GMO).

But, he points out, these “*new techniques […] have nothing to do with patents*”. This is not to say that patents are not an issue, but Copa-Cogeca believes that they are also an issue for conventional and organic varieties. In this sense, it is not specific to new techniques of genetic modification. This line of argument leads Thor G. Kofoed to affirm Copa-Cogeca's fundamental position, namely that the two debates should be separated and that “*we need to adopt the NGT proposal as soon as possible*”.

What intellectual property regime for NTGs?

While the issue of new techniques is not linked to that of patents for Copa-Cogeca, the question of fair remuneration for breeders nevertheless arises according to Thor G. Kofoed. Remuneration, he believes, is already guaranteed, in Europe, by "*a very good plant breeding innovation system*", namely the Community Plant Variety Certificate (PVC). According to Thor G. Kofoed, this system means that, while Europe does have a few internationl breeding companies, it also has the largest number of plant breeders in the world. This situation is all the more important given that Copa-Cogeca considers it impossible for just a few breeders to supply all the needed new seeds for the various crops produced. An "*open plant breeding sustem*" is therefore imperative for Copa-Cogeca. All the more so since, according to Thor G. Kofoed, the current European system ensures that farmers "*fields will not battlefields for lawyers because of patents*".

On patents more specifically, Copa-Cogeca's position is both simple and vague. From the outset, Thor G. Kofoed explains that Copa-Cogeca "*does not find that patents are needed and we do not want patents in plants*". As to whether this rejection of patents in plants only concerns patents on plants (known as 'product patents') or also patents on processes (which extend to products), Thor G. Kofoed did not go into detail. The fact remains that, faced with the questions raised by numerous organisations and certain Member States about patents and the risk of appropriating living matter, Copa-Cogeca is relying on the impact study[ii] that the European Commission has yet to publish "*by the end of 2025 or beginning of 2026*", as it has announced and as the European Parliament has already requested. The study will have to be taken "*very seriously to see what is needed from a patent system, what can we just use in the european community plant variety rights system and make it better, or put the patent system under the legislation of the Community plant variety rights system so that we don't have the negative issues from a patent in Europe*". Thor G. Kofoed considers that this approach is all the more justified given that patents on plants exist in the rest of the world. Copa-Cogeca's objective is therefore "*to find an intelligent way how to mix these two plant variety rigths systems*", so as to have intellectual property for breeders and the "*tech industries*" entering the seed business, and "*a huge diversity of breeding systems*" for farmers.

Listenning carefully to Thor G. Kofoed, Copa-Cogeca's position is to ensure that breeders are able to work without coming up against patents. But farmers were quite absent from the Copa-Cogeca speech delivered by Thor G. Kofoed on 9 December 2024. Yet the problem of patents affects everyone, from farmers to plant breeders. Above all, the proposal to separate the two debates reveals a risky strategy. Copa-Cogeca wants new techniques to be deregulated as proposed by the European Commission (no risk assessment, no traceability methods, no labelling, etc.) and the problems linked to patents to be studied at a later date. This is risky because once deregulation is in place, it will surely be too late to deal with the related patent issues.

i Martin Häusling, « Freier Zugang zu Saatgut- Für ein krisensicheres Ernährungssystem », from 1h20 to 1h26, 9 December 2024.

ii For the European Parliament, this study to come « *should address in particular the role and impact of patents on breeders' and farmers' access to plant reproductive material, seed diversity and affordable prices, as well as on innovation and in particular on opportunities for SMEs* ». European Parliament, « Plants obtained by certain new genomic techniques and their food and feed », see point 45bis, 24 April 2024.

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