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Patents on GMOs/NGTs raise issues that the EU may refuse to address

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In July 2023, alongside its proposal to deregulate new genetic modification techniques (NGTs), the European Commission promised an assessment of the impact of patents on plant breeding. The report, produced by Technopolis and published in December 2025, highlights several problems related to patents. These problems will not be resolved by the non-binding measures adopted by the Council of the European Union in April 2026. Do the European authorities really only listen to the voice of industry, even if it means ignoring the reports they commission?



GeorgeTan#5 signs off

In a communication[1] dated 5 July 2023, the European Commission undertook, by 2026, to assess "*the impact that the patenting of plants and related licensing and transparency practices may have on innovation in plant breeding, on breeders' access to genetic material and techniques and on availability of seeds to farmers as well as the overall competitiveness of the EU biotech industry*". The report[2], commissioned for this purpose by the Commission from the consultancy firm Technopolis, was published in early December 2025, just as the trilogue[3] on the draft NGT Regulation between the Council, the Parliament and the European Commission concluded on 11 December. The Council has just adopted, on 21 April, its favourable position at first reading on the provisional compromise resulting from the trilogue[4], whilst ignoring certain major issues highlighted

by the aforementioned report.

A report for form’s sake

Technopolis is a consultancy firm regularly commissioned by the European Commission, as it is very supportive of the "*new economy"*. Its report, entitled "*Supporting innovation in the EU bioeconomy through intellectual property protection*", can be described as "*pro-patent*" with regard to agricultural biotechnology. However, it presents a nuanced yet worrying assessment of the impact of such patents on certain stakeholders, particularly small and medium-sized seed companies and farmers.

Technopolis highlights several difficulties posed by the patent system for these players in the plant sector, notably market concentration, patent stacking, the cost of freedom-to-operate studies (to verify whether a product or process can be used without infringing a patent), and tensions surrounding the concept of the breeder’s exemption[5]. These issues are indeed major challenges in the debate on patents relating to NGTs.

Even though the Council had the Technopolis report at its disposal, its position at first reading, adopted in April, does not appear to have taken its lessons on board. The institution does acknowledge the difficulties highlighted by this document, but has not proposed any amendments to the text to offer effective solutions. In any case, the Council has not included any major measures clearly holding patent holders – predominantly multinationals in the case of Crispr-edited plants – accountable[6]. Worse still, it has ignored other problems highlighted by the report for which no response, or even the semblance of a response, is proposed by the Council of the European Union.

Acknowledgement of the difficulties without any willingness to resolve them

Was it this report that led the Council of the EU to acknowledge that patents restrict access to plant material and thus contribute to the concentration of the seed sector? Be that as it may, the text it adopted at first reading still refers to these risks. In practical terms, it encourages the use of so-called "*fair and reasonable*" licences and provides for the development of a "*code of conduct*". This non-binding code aims to enhance the transparency of information relating to patents on plant biological material, to facilitate breeders’ access to such material and to increase legal certainty for both breeders and farmers (hereinafter the *"code of conduct*")[7].

The adopted text also retains the creation of a database of information voluntarily provided by patent holders relating to "*NGT plant biological material*", including their potential willingness to grant licences (Article 9). The Technopolis report highlights, in fact, the lack of clarity regarding intellectual property rights and the difficulties faced by breeders in identifying such genetic material or traits that may be covered by a patent and in "*facilitating their decision-making*" in their breeding activities.

Solutions to these initial problems therefore exist, and are even set out in the adopted text. However, the Council of the EU did not amend the wording to make these solutions binding, particularly on the main holders of patents on GMOs/NGTs. The Council, following the Commission’s lead, has thus chosen to reassure multinational seed companies rather than small and medium-sized seed producers and farmers, who are nevertheless the most vulnerable in the face of the "*minefield*" that such patents constitute.

Deeper-rooted problems still being ignored…

The Technopolis report highlights other equally significant problems that have nevertheless been ignored by the Council of the EU. The consultancy firm draws particular attention to certain imbalances between small and medium-sized breeders and multinationals. The latter, for example, have far greater financial and legal resources, enabling them to build up vast patent portfolios and defend them in disputes with such breeders.

The report specifically mentions the situation of accidental infringement, which the Council of the EU does not address. This situation creates "*legal uncertainty and threat of litigation [which] may also have a negative effect on the innovation of conventional breeders*", the report states. Conversely, small and medium-sized breeders and other relevant SMEs "*have fears about litigation, a limited knowledge about access to, costs, and benefits of the existing licensing platforms as well as the overall limited knowledge about the patent system and its potential*", adds Technopolis.

Furthermore, the Council of the EU fails to take into account the development of patent tangles cited in the report. These layers of rights covering genetic traits, processes or sequences make the legal environment particularly difficult to navigate and lead to a build-up of royalties. The Technopolis report notes that "*the related complexity will likely render it impracticable for breeders to obtain all necessary licences to ensure freedom-to-operate. Options to mitigate this are (i) a more stringent interpretation of the scope of process claims, (ii) voluntary licencing platforms, as well as (iii) mandatory transparency*". While the Council of the EU has adopted the principle of these solutions – even those that are not strictly solutions, such as licensing platforms – it has not, however, made them mandatory.

…or entrusted to others

The report also highlights the growing tensions between patents and the plant breeders' rights (PBR) system linked to the principle of the "*breeder's exemption*". This exemption traditionally allows a variety covered by PBR to be used to create new ones. However, patents may limit this access to biological material and alter the current foundations of European plant breeding. The Council has retained a simple reference to Article 27(c) of the Agreement on a Unified Patent Court, as this provision is often cited as the legal basis for this exemption.

Recital 62 of the text adopted by the Council of the EU leaves it to the Member States to implement this exemption: "*Stakeholders raised concerns that patents relating to NGT plants might limit the access of breeders to those plants for the purpose of developing other plant varieties*". The adopted text continues: "*It is important that all Member States address those concerns and ensure legal certainty for plant breeders by taking appropriate steps to implement a corresponding limitation to patent rights in their national patent laws, to ensure its consistent application across the Union*". Leaving this provision as it stands allows the Council of the EU to "*pass the buck*" to the Member States, so to speak.

A procedural response in the absence of reform

The compromise text adopted by the Council of the EU does not alter the patent system. It does not call into question either the patentability of GMO/NGT plants or the European Directive 98/44 on biotechnological inventions. Furthermore, the mechanisms in this text concerning patents remain voluntary, providing incentives but being neither binding nor mandatory…

The "*code of conduct*" (Article 30) is based on a general principle of voluntary commitment, without any obligation. For example, the calls for patent holders to grant licences on "*fair and reasonable*"

terms do not create a legal obligation. As for the information provided in the database without any obligation or official verification (Article 9), it improves the visibility of patents but does not guarantee effective access to genetic material and therefore leaves its potential users in a state of legal and economic uncertainty.

The EU Council's reasoning is therefore incomplete if it wished to ensure that the patent issue did not arise. Its text acknowledges the difficulties created by patents, but does not address the far more contentious issue of extending the scope of patents to native traits "*similar*" to patented traits through the use of untraceable GMOs/NGTs. The institution confines itself to proposing measures to manage certain problems within the patent system rather than addressing their root causes. Failing to reject the proposal to deregulate GMOs/NGTs – even though such deregulation opens the door wide to patent-related problems – the text favours non-binding measures (transparency, licensing platforms, databases, etc.), which do not alter the existing legal framework, despite its inadequacy.

The Council of the EU has therefore left several issues raised by the Technopolis report unresolved, in particular the concentration of the seed market, access for small and medium-sized breeders and other SMEs to certain "*innovations*", and their ability to operate in an increasingly complex intellectual property environment. This decision is all the more baffling given that a great many stakeholders have alerted – and continue to alert – MEPs to these issues. As for the French government, which voted in favour of the compromise text in April 2026, it is even more baffling given that it had in its possession a note from its embassy in the United States clearly stating that all these problems are very real in that country. Only MEPs meeting in plenary session on 17 June 2026 can still take action on this matter.

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