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From: General Secretariat of the Council
To: Delegations
Subject: Regulation on new genomic techniques (NGT) – comments on
biotechnology patents in plant breeding from Finland, Hungary and
Lithuania

Delegations will find in annex submissions from delegations on the above subject, concerning questions and comments on biotechnology patents in plant breeding put forward after the meeting of the Working Party on Genetic Resources and Innovation in Agriculture (Innovation in Agriculture) on 5-6 October 2023.

FINLAND

Finland would like to thank the Commission for giving a presentation about biotechnology patents and NGT-plants in the NGT Working Party meeting on October 5, 2023. This topic raises a lot of questions from different perspectives. We welcome the Commission's intention to make a report on this topic. We wish that the report could be drafted and published as soon as possible.

The Commission suggested that the discussions could be continued in the Commission's Working Group of IP Experts. We would like to suggest that the updates and discussions should also be carried out in the Standing Committee on Community plant variety rights or in joint meetings. Plant variety rights (granted by CPVO under Council Regulation (EC) No 2100/94) and patents have a linkage. Community plant variety rights are similar to patents. We think that it would be important to discuss the topic with experts of both legislations. The same applies also to discussions at Council level. We feel that it would be beneficial, if the expertise of the community plant variety office, CPVO as well as EPO, would be included in these discussions.

HUNGARY

One of the main goals of the whole policy action is to put small breeders in a position to play a greater role in the current concentrated market for propagating materials, to encourage the development by small breeders of crop species and traits by means of NGTs, and to ensure the access to genetic material for these developments by small enterprises. However the draft does not contain any concrete element to ensure this and does not provide insurance for the protection of the interests of these players. As it was raised by many Member States in the Working Party meeting on 5 October, the future patents could lead to market concentration, increased prices and could damage the interest of small operators. Taking into account these concerns, Hungary has the following concrete questions:

- What negative impact can patents applied for on NGT crops have on small breeders, farmers and producers, and what assurances can the Commission give to avoid these?
- Does the Commission plan to amend the patent rules in relation to NGTs?
- How can plants with the same trait be distinguished on the market if an NGT plant is protected by a patent, but a plant with the same trait has been produced conventionally? What protects small breeders and farmers from lawsuits by the patent holder in such cases?
- What will be the effect of patents on products other than seeds and propagating material? Could the whole production chain or certain elements of it be patented?

LITHUANIA

The issues and questions raised by the Member States are complex, and since there is still no unanimous opinion and consensus among the Member States regarding the patenting of the NGT's, we would support the possibility of joint work with the Council's Intellectual Property Working Group, including solving the possible issues and matters regarding intellectual property regulation.

Due to the Commission's observation that the patenting of plants created using biological processes is not possible, and the breeder should prove that he did not use NGT's when breeding the varieties, we think that the exemption for plants obtained by essentially biological methods also includes parts of these plants that are obtained by essentially biological methods, if the parts can be used to obtain a whole plant (so-called propagating material).

There are legitimate questions about the availability of genetic material for breeders and farmers, given that NGT technology is patentable. As the study foreseen by the Commission to be carried out in this case should answer very important questions, postponing the timing of its delivery to 2026 is probably not preferable solution for Lithuania.