

AFBV STATEMENT ON NGT DISCUSSIONS AT THE EU COUNCIL OF MINISTERS

AFBV is aware of the significant efforts deployed by the Belgian presidency to persuade EU member states to agree on a compromise proposal amending the Commission's NGT proposal dated 5 July 2023 which will be discussed in coming days. In this respect the EU Council of Ministers is following a route similar to the EU Parliament, attempting to make amendments in order to achieve a qualified majority of member states. It appears the principal obstacle to achieving a qualified majority in the EU Council remains the issue of patents.

In this respect we wish to remind the Council of the observations AFBV made with respect to the EU Parliament's amendments:

1. Through several amendments, on February 7 and again on April 24, 2024, the Parliament voted to ban the patentability of NGT-1 plants and products (a ban also extended to plants and products currently exempted from the scope of GMO legislation).
2. In addition, Parliament called on the Commission, by June 2025 at the latest, to present a report on "the role and impact of patents on breeders' and farmers' access to varied plant reproductive material, as well as on innovation and, in particular, on opportunities for SMEs".
3. While AFBV recognizes that industrial property (IP) can lead to difficulties, it is necessary to provide essential innovation protection for inventors while providing access to plant genetic resources for breeders and farmers. We believe that a decision on the patentability, or not, of NGT plants and products at EU level should follow the modalities in force in the EU under the Interinstitutional Agreement on Better Law-Making of 12 May 2016. Under Better Law-Making, **any proposed legislation requires an impact assessment, stakeholder and public consultation, feedback, and an ex-post evaluation of existing legislation under Section III.**
4. It seems to us that the request for a report on the role and impact of these patents is justified and that this report and any proposals it may make as a consequence should be awaited before any legislative proposals are adopted. The deadline of June 2025 proposed by the European Parliament or "no later than 31 December 2025" by the Spanish Presidency, could be compatible with the entry into force of the regulation that could take place after June 2026.

We urge the Council to refrain from introducing into the NGT regulatory proposal provisions that relate to patents that have not undergone impact assessment nor been discussed with affected stakeholders. On 5 July 2023 in the Q&A following publication of the NGT proposal the Commission had acknowledged that

“ it is important to calibrate a balanced framework which supports farmers' and breeders' access to patented techniques and material, promotes seed diversity at affordable prices, and safeguards breeding and cultivation of unpatented conventional and organic crops, while also strongly encouraging innovation in plant breeding by preserving investment incentives, such as patents.”

The calibration sought by the Commission can be achieved by voluntary actions that can be encouraged and through an interpretative notice (similar to the Notice of 8 November 2016¹), without requiring amendments to existing legislation or, if unavoidable, through modest clarifying modifications. In this regard, at AFBV we recently published short and long versions of a document entitled “Intellectual Property and New Genomic Technologies: Proposals to Facilitate Identification, Access, and Use of Intellectual Property”. Our list of 11 proposals were as follows:

- No. 1: Create specific NGT codes (or a new “plant trait” code) in EPO/PCT databases
- No. 2: Reduce the examination time of an NGT plant patent in the EPO system
- No. 3: Encourage and facilitate comments from SMEs to the EPO during the examination phase of a patent
- No. 4: Create a new European platform to enable access to NGT tools
- No. 5: Require mandatory listing of the status of patents that may cover a variety in the official catalogue or the CPVO database (for species not listed in the catalogue)
- No. 6: Ensure that the breeder’s exemption is included in the legislation of all member states
- No. 7: Confirm that the breeder exemption covers all stages from research (including use of NGT tools) up to and including variety registration and seed production which precedes marketing.
- No. 8: Encourage companies developing NGT plants to become members of current licensing platforms (ILP-Vegetable and ACLP).
- No. 9: Remove (or interpret) the criterion of considerable economic interest for compulsory licenses
- No. 10: Confirm that the “disclaimer” covers not only the plant containing a native gene or trait, but also the corresponding gene and trait.
- No. 11: Extend the scope of the farmer's privilege to new species (vegetable crops) and clarify that the farmer must only remunerate the PBR holder when the variety is covered by one or more patents.

¹ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC1108\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC1108(01))

We strongly believe that it is in the EU's interest that the PBR and Patent systems peacefully coexist in the interest of fostering European innovation in crop improvement. The AFBV proposals or variants of these proposals can achieve results that should satisfy the reasonable concerns of all stakeholders in the short and medium term. A more in-depth study could also be conducted to consolidate the conciliation of the two modes of intellectual property protection. For the above-stated reasons, AFBV urges that the Commission' NGT proposal be adopted by the EU Council with modest clarifying changes and without referencing intellectual property-related measures which can best be achieved by other means available to the Commission.

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