



Call for evidence by the EU Commission, Regulation (EU) 2026/1388¹

Plants obtained by new genomic techniques: information requirements and verification of category 1 status

Feedback provided by *No patents on seeds!*²

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NGT 1 plants and the requirements for the implementation of Regulation (EU) 2026/1388 on plants obtained by certain new genomic techniques and their products, in regard to patents on seeds

On 17 June 2026, the Regulation (EU) 2026/1388 on plants obtained by certain new genomic techniques and their products was adopted. The regulation foresees a number of delegated acts and other steps for their implementation which are supposed to be finalised within two years. To this end, the European Commission published an Implementation Strategy in July 2026.

The Regulation provides several provisions on patents such as information on patents applied or granted in accordance with Article 6 and 7. Furthermore, Article 30 foresees the development of a code of conduct for license agreements, Article 31 establishes a working group of patent experts.

Article 25 of the Regulation empowers the Commission “to adopt delegated acts in accordance with Article 26 supplementing this Regulation concerning:

(...)

(b) the preparation and the presentation of the verification requests, the content of the patent information referred to in Article 6(5) and Article 7(4), the content of the licence declarations referred to in Article 6(6) and Article 7(5), the content of the verification reports and the content of the decisions referred to in Articles 6 and 7.”

The delegated acts are supposed to be finalised within two years, before the Regulation will apply in practice.

No Patents on Seeds! demands that within these delegated acts, the delineation between patents on NGT plants and the non-patentability of naturally occurring biological resources (as used in conventional breeding) is clarified. This issue should become part of the information request under Articles 6 and 7 that can be defined by the Commission (as empowered by Article 25).

As recent research shows³, the European Patent Office (EPO) is granting patents on naturally occurring genes, which also by extension cover the plants that possess these genes in their genome. In many cases, the patents cover both, the NGT plants as well as those obtained from conventional breeding. In this regard, Article 9 of the EU Directive 98/44/EC has to be taken into account which lays down that “The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided in Article

¹https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/18805-Plants-obtained-by-new-genomic-techniques-information-requirements-and-verification-of-category-1-status_en

² www.no-patents-on-seeds.org/en

³ Report *No patents on seeds!* (June 2026): [Patents cause monopolization in conventional plant breeding. Alarming trend in the number of international patent applications filed for native gene variants](#)

Report *No patents on seeds!* (May 2026): [European Patent Office versus the EU. Despite prohibitions: Patents continue to be granted on natural genes and plants selected for breeding](#)

5(1), in which the product is incorporated and in which the genetic information is contained and performs its function.”

This has led to a contradictory situation in which naturally occurring genes are still being patented, with plants obtained from conventional breeding being within the scope of the patents, despite legal prohibitions and exclusions in patent law (such as Rule 28 (2), EPC). Against this background, the wording of Recital 63, the goals of the new Regulation as expressed in Article 1 (“*enhancing innovation, sustainability and competitiveness*”) as well as Article 6 and 7 have to be taken into account which both lay down that “*Together with the verification request, the requester shall submit information, to the best of its knowledge, on patents or published patent applications including one or more claims on the biological material of the NGT plant, or declare the absence of such patents or published patent applications.*”

To this end, also Recital 63 has to be taken into account which reads: “*Under Directive 98/44/EC, as interpreted by Commission Notice on certain articles of Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions (22) and Article 53, point (b), of the European Patent Convention, patents are not to be granted in respect of plants exclusively obtained by means of an essentially biological process. To ensure that patents on plants made by technical methods do not extend to plants that have been produced by essentially biological processes and carry the same characteristics, the European Patent Office requires that a disclaimer be included in the patent. Therefore, for a plant obtained by technical processes, the part of the patent claim defining exactly what is to be protected is required to specify that the patent does not include plants produced by essentially biological processes.*”

Therefore, the European Commission, within the delegated acts (Article 25), should request the applicants to declare that no biological material such as naturally occurring gene variants is claimed and that their patents do not interfere with conventional breeding activities and the marketing of respective conventionally bred plant varieties.

In addition, the Commission should be advised to amend Directive 98/44/EC in a way to reduce the scope of patents and or to definitely exclude patents on biological material used for conventional breeding of plants and animals. Possible solutions are outlined in our recent report⁴.

⁴ Report *No patents on seeds!* (May 2026): [European Patent Office versus the EU. Despite prohibitions: Patents continue to be granted on natural genes and plants selected for breeding](#)