

Document 151 - Contribution to the briefing for the meeting of Com Andriukaitis with the US UnderSecretary of Agriculture for Trade and Foreign Agricultural Affairs (Ted McKinney) on 27 August 2018.

“New plant breeding techniques, the ECJ judgement and its implications”

Background

The Court of Justice was requested to give a preliminary ruling¹ regarding, inter alia, (i) whether organisms produced by new mutagenesis techniques are excluded from the GMO-legislation and; (ii) whether Member States can regulate exempted organisms. The final ruling was delivered on 25 July 2018.

The CJEU reached the following conclusions:

- Organisms obtained by mutagenesis techniques/methods which have been conventionally used in a number of applications and that have a long safety record are exempted from the obligations of the GMO legislation. Therefore, the **GMO legislation is applicable to organisms obtained by mutagenesis techniques that have emerged since its adoption.**
- Member States are free to regulate exempted organisms and can subject them to the obligations laid down by the GMO Directive or to other obligations, provided that the measures adopted comply with EU law and in particular the rules on the free movement of goods.

The CJEU ruling does not follow the opinion of the advocate general, published on 18 January 2018.

Stakeholders have reacted very differently to the CJEU ruling:

- To date the only official reaction from a Member State has come from France, which welcomed the clarification given by the Court as an important step allowing competent authorities to ensure the protection of consumers and the environment in a harmonised manner and on the basis of the application of the precautionary principle.
- From the European Parliament, Greens/EFA welcomed the ruling as a victory of the precautionary principle, and against a corporate attempt to bypass EU GMO laws. They called the Commission to ensure the technical tools necessary to implement the ruling. Concerning safety of new techniques, Greens/EFA also raised the need for an evaluation by EFSA, the Science Advisory Mechanisms or by an ad-hoc expert committee. Statements from other Groups are not available yet.
- Some NGOs² have expressed satisfaction with the ruling, which is in line with their claims regarding the need to regulate all new techniques under the GMO legislation in order to ensure appropriate risk assessment and freedom of choice to consumers. They have called on the Commission to ensure appropriate implementation of the judgment and emphasised the need to develop methodologies for tracing the products.
- Industry³ has emphasised the negative effects of the ruling on EU agricultural research, innovation and competitiveness and claimed that many SMEs will not be able to withstand the competition of foreign enterprises with negative implication on jobs, R&D and economic growth. Industry also encouraged public dialogue on new techniques in order to develop

¹ Case C-528/16 Confédération paysanne and others

² Open letter to President Juncker from 16 organisations (Ares(2018)4185040)

³ Europabio, ESA, NBT Platform

risk-proportionate policy approaches and to ensure that innovation in the EU keeps paces with that in other parts of the world.

- Most reactions from academic and research institutions⁴ expressed disappointment with the ruling, emphasising the negative impact on innovation, scientific development and competitiveness in the EU. They highlighted that most research institutions and smaller companies will not be able to access the market and called for a new regulatory framework to ensure legal certainty and innovation.

⁴ <http://www.sciencemediacentre.org/expert-reaction-to-court-of-justice-of-the-european-union-ruling-that-gmo-rules-should-cover-plant-genome-editing-techniques/>