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European Commission
DG GROW
Unit B.2 "Regulatory Barriers"
By e-mail: GROW-B2@ec.europa.eu

Brussels, 1st July 2020

Re: France's TRIS notifications on in vitro random mutagenesis (genetically modified organisms) references 2020/280/F, 2020/281/F, 2020/282/F.

Copa and Cogeca represent 22 million farmers and their family members as well as 20,000 agricultural cooperatives that are dedicated to providing 446 million citizens across the EU with safe, nutritious, high-quality and affordable food every day. They wish to submit their comments on the three technical regulations that France notified to the Commission on 6th May regarding in vitro random mutagenesis (genetically modified organisms, GMOs).

Copa and Cogeca have understood the following elements from the French legislative proposals:

- The draft French decree alters the exemptions to the GMO definition and thus subjects products obtained from in vitro mutagenesis to the GMO Directive requirements and the regulations that derive thereof.
- The first ruling concerns the seven herbicide-tolerant (HT) varieties of rapeseed that are listed in the French catalogue. These will be removed from both the French and thus the Union catalogue, unless they have also been listed in a Member State other than France. As a result, it will no longer be possible to cultivate these seven varieties after August 2020 neither in France nor elsewhere in Europe, if the French catalogue remains the only one justifying their being listed in the Union catalogue.
- The second ruling also lists HT rapeseed varieties registered in the Union catalogue via a catalogue other than the French catalogue. These varieties will no longer be able to be cultivated in France, but will not be withdrawn from the Union catalogue. EU Member States, with the exception of France, will be able to continue to cultivate these varieties.

Copa and Cogeca are extremely concerned about the impact of these draft French rulings on the integrity of the EU's single market and the free movement of HT rapeseed varieties, seeds from these rapeseed varieties as well as other products such as meal and vegetable oil derived from these varieties. The draft rulings create additional technical obstacles to trade, notably of meal derived from these varieties, keeping in mind that the EU is hugely dependent on imports of high-protein content materials to feed livestock. We are equally concerned about the consequences of these draft rulings for farm management.

In the context of the *Green Deal* and notably the objectives to reduce the use of plant protection products, Copa and Cogeca does not wish to see the use of varieties made tolerant to herbicides through in vitro random mutagenesis subjected to the requirements laid out in Directive 2001/18/EC and as a result banned from cultivation in a large majority of EU Member States given their prior opt-out decisions.

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If the rapeseed varieties made tolerant to herbicides by in vitro random mutagenesis were classed as GMOs in the scope of Directive 2001/18/EC, this would raise the question of contaminated plots within agricultural holdings. Farmers would have to bear the incurred costs of destroying harvests contaminated with these HT rapeseed varieties, classed as GMOs, as well as the restrictions due to the monitoring of these contaminated plots. This would also generate additional costs downstream from farms due to the management of batches containing these non-authorised GMOs and due to control and traceability difficulties stemming from the inability to detect by analysis the in vivo or in vitro type of breeding behind the mutation of HT varieties, including varieties that have been freely available for further breeding of new varieties.

The European Commission and Member States have never drawn a distinction between in vivo and in vitro mutagenesis, neither when implementing the legislation on plant reproductive material seeds, nor in the GMO legislation. The European Court of Justice ruling in case C-528/16 on mutagenesis did not make this distinction either. In light of this, Copa and Cogeca question whether these draft rulings are compliant with European law and call on the European Commission to settle this matter and to require France to take the subsequent decisions.