

## PFP Statement on Recent Court Ruling on mutagenesis Clarity is much needed

The Primary Food Processors (PFP) take note of the ruling of the European Court of Justice (ECJ) on case C-528/16, issued in July 2018<sup>1</sup>. In that ruling, the ECJ established that organisms developed through “new” mutagenesis techniques are to be considered as genetically modified organisms (GMOs) as defined by Directive 2001/18 and are thus subject to its regulatory provisions<sup>2</sup>. Organisms obtained through conventional mutagenesis in a number of applications and have a “long safety record” are exempted, although Member States may establish specific rules.

Surprisingly, the ECJ ruling contradicts the conclusions, in January 2018, of the Advocate General, who suggested that crops obtained by plant breeding technique ‘mutagenesis’ should not fall under laws restricting the use of genetically modified organisms (GMOs)<sup>3</sup>.

One first problematic aspect is the very same fact that the ruling does not seem to address some key aspects such as the definition of ‘conventionally used mutagenesis techniques’ and of ‘newer’ mutagenesis techniques, as well as the powers effectively given to Member States. PFP sectors fear that such unspecified powers given to Member States may go as far as deciding that conventional mutagenesis is also to be subject to Directive 2001/18. This would mean that crop varieties lawfully being on the market since many years would potentially fall under the provisions of Directive 2001/18/EC. The lack of clarity also creates uncertainty on whether imported products are compliant and place on PFP members a responsibility that cannot be managed for the volumes needed to meet the EU demand.

Overall, the regime suggested by the ruling is diametrically opposed to the one followed by many jurisdictions around the globe which do not intend to regulate (new) mutagenesis methods as GMOs. This may result in a shift of raw materials production outside the EU and jeopardise availability of needed imports for the food and feed supply to Europe.

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<sup>1</sup> (Reference for a preliminary ruling — Deliberate release of genetically modified organisms into the environment — Mutagenesis — Directive 2001/18/EC — Articles 2 and 3 — Annexes I A and I B — Concept of ‘genetically modified organism’ — Techniques/methods of genetic modification conventionally used and deemed to be safe — New techniques/methods of mutagenesis — Risks for human health and the environment — Discretion of the Member States when transposing the directive — Directive 2002/53/EC — Common catalogue of varieties of agricultural plant species — Herbicide-tolerant plant varieties — Article 4 — Acceptability of genetically modified varieties obtained by mutagenesis for inclusion in the common catalogue — Human health and environmental protection requirement — Exemption)

<sup>2</sup> Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC - Commission Declaration, OJ L 106, 17.4.2001, p. 1–39

<sup>3</sup> Opinion of Advocate General Bobek, delivered on 18 January 2018(1) - Case C-528/16





## The Vital Link in the Food Chain

### The potential of PBI

Mutagenesis, as well as other so-called Plant Breeding Innovation (PBI) methods, provides a promising potential for the PFP member companies as it may:

- a) *Enhance plants disease resistance, thus reducing the need for pesticides;*
- b) *Enhance plants tolerance to drought, and effectively adapt to climate change;*
- c) *Assist in reducing plants allergenicity (the potential to cause an allergic reaction);*
- d) *Improve food quality and properties.*

Given the above, PFP believes that the ruling potentially puts the competitiveness of the sectors it represents at risk, and, most regrettably, fails to provide the much needed clarity on products obtained through new mutagenesis techniques (especially when those could also have been obtained with earlier breeding techniques or naturally). Clarity on the legal status of other recent PBI methods would also be desirable.

The **Primary Food Processors of the EU (PFP)** is composed by:

**European Committee of Sugar Manufacturers (CEFS)**  
**European Cocoa Association (ECA)**  
**European Flour Milling Association (European Flour Millers)**  
**European Vegetable Protein Federation (EUVEPRO)**  
**European Vegetable Oil and Proteinmeal Industry (FEDIOL)**  
**European Starch Industry Association (Starch Europe)**

PFP members process approximately 220 Million tons of raw materials (cereals, sugar beet, rapeseeds, soybeans, sunflower seeds, crude vegetable oil, cocoa products, starch potatoes...) employing over 120 000 people in the European Union.

