To: Mr Frans Timmermans, Executive Vice-President
Mr Valdis Dombrovskis, Executive Vice-President
Ms Stella Kyriakides, Commissioner for Health and Food Safety
Mr Janusz Wojciechowski, Commissioner for Agriculture
Ms Mariya Gabriel, Commissioner for Innovation, Research, Culture, Education and Youth
Mr Thierry Breton, Commissioner for the Internal market

Brussels, 26th April 2023

Subject: legislation for plants produced by certain new genomic techniques (nature-like mutagenesis techniques)

Dear Vice-President,
Dear Commissioner,

European farmers need rapidly better plant varieties for being able to adapt to changed production conditions as has been revealed in the IPCC report about warming in Europe that will continue to rise faster than the global mean. Losses of agricultural production are projected. European agriculture needs a toolbox to cope with climate change, continue producing in a sustainable way and ensuring output remains at least stable. The IPCC has underscored the need to breed new plant features, such as resistance to water and heat stress, as a way to adapt to climate change. As example, we would like to mention some examples of varieties that have applied to be tested in field trials in Denmark and Belgium: the potatoes with an improved resistance to potato blight (Phytophtora infestans), the potatoes with altered starch properties for starch production and the shorter maize that requires less water, less fertilizer and less pesticides and allow treatment at more appropriate stages of development.

Guaranteeing legal certainty in the European single market for improved plant varieties, that serves as a basis for investments in the development of new seed varieties by European breeders for all sectors and regions in the EU, are of paramount importance for the future of European agriculture, and for European food security.

Nature-like mutagenesis techniques are already being used in non-EU countries, but the products obtained using these techniques are not considered as genetically modified organisms (GMOs) and are thus not labelled as such in these countries. Besides the issue of import controls, importing agricultural products currently involves a real risk as it is impossible to guarantee their compliance with European rules. The EU may also have to do without the use of genetic material from third countries in order to improve plant varieties, including material for conventional cross-breeding techniques.

A clear solution for nature-like mutagenesis needs rapidly to be developed at EU level to keep up with the global playing field where these techniques are already allowed. This is essential to
avoid jeopardising the results achieved so far in the current agricultural model, which is increasingly oriented towards efficiency and sustainability.

European breeders have always worked with nature-like mutagenesis techniques in the legal framework, which consists in the EU seed marketing directives and the plant variety rights system of CPVO. The basic features of those legislation must not be jeopardized.

However, the ECJ ruling C-528/16 creates a deadlock when breeders use mutagenesis developed after 2001 while according to the Advocate General Bobek, mutagenesis techniques are exempt from the obligations of the GMO Directive provided that they do not involve the use of recombinant nucleic acid molecules or GMOs other than those produced by one or more of the methods listed in Annex 1B of the 2001/18 Directive.

Therefore, given that the European Commission has postponed a proposal several times, Copa and Cogeca call on you to accelerate the process to clarify the legal status of nature-like mutagenesis techniques, which is a prime example and a first step of why this process needs to be speeded up. You will find in the annex the Copa and Cogeca remarks on the information leaked by the European agricultural media.

We remain at your disposal for further exchange on this matter.

Yours faithfully,

Christiane Lambert      Ramon Armengol
Copa President     Cogeca President

Copy to: Ms Claire Bury, Director General for health and food safety, Mr Klaus Berend, Acting Director and Irene Sacristán Sánchez, Head of Unit Biotechnology
Annex

Notification

A notification procedure for nature-like mutagenesis techniques creates administrative burden that may risk the exit of small breeders from the market. We remind you that 40 % of the respondents to the public consultation consider that plant obtained by mutagenesis do not need to be risk assessed when they can have been produced through conventional breeding or classical mutagenesis. If the requirements for the authorisation of plant obtained through nature-like mutagenesis techniques in the EU involve high costs, they prevent the European agricultural sector from benefiting from the scientific progress linked to the use of nature-like mutagenesis techniques for breeding plant varieties. This leads to a competitive disadvantage in the EU compared with other regions which have a more innovation-friendly legal framework.

Adapted risk-assessment evaluation

A case-by-case approach based on an adapted risk-assessment procedure based on the molecular characteristics of the plant/products may lead to more GMOs on the European market while nineteen out of the 27 Member states have voted to either partially or fully ban Genetically Modified Organisms (GMOs).

Free access to entire gene pool

Free access to the entire gene pool and to all breeding processes for every breeder and every farmer is of the utmost importance for both innovation in breeding and for overcoming future challenges. Patenting essentially biological processes in plants must be urgently resolved before modernizing the EU legislation regarding cisgenesis.

Coexistence

Different types of farming must coexist under a policy that enhances the availability of new bred varieties used in European agriculture. Organic farming also uses a large number of plant varieties that are the result of genetic mutation through radiation or modern breeding techniques, such as hybridisation. Restrictions that apply to breeding techniques for seeds that will be used in organic farming actually run counter to the further development of markets for organic produce, as there are more and more restrictions placed on these production methods. The use of GMOs is outlawed in organic farming and in no way does the development of NBTs cast doubt on this ban. Today, the Member States have flexibility with regard to their national, regional and local needs for GMO cultivation to achieve the lowest possible level of GMOs in organic and other crops. The current coexistence approach should not be revised in the context of the upcoming legislation on NGTs for plant sector if the proposal would be restricted to nature-like mutagenesis techniques.

Freedom of choice and transparency

It is proven that good agricultural practices achieve EU GMO labelling thresholds. To ensure transparency, information on the use of NGTs (other than nature-like mutagenesis) should be easily accessible to farmers and consumers at the level of the official EU Catalogue and national variety lists.

All farmers and consumers should be able to choose using or not certain kind of varieties whether obtained through the organic, conventional or NGTs. Certification systems are the tool to segregate supply chain free of NGTs (other than nature-like mutagenesis) within the organic sector that wish to do so. The organic sector should decide which breeding techniques should
be compatible with organic production. This could preferably be discussed and specified in the organic regulation (EU) No 2018/848.

It is only appropriate to label products if they are distinguishable from those obtained through conventional breeding. Otherwise, such labels would be misleading to the consumer and therefore violate the Food Information to Consumers Regulation. In addition, if there is no difference in the labelled product, it would not be possible to enforce the labelling. Any record keeping carries a financial and human resource cost and any costs will be passed down the chain to the primary producer. Costs must always be proportionate to the benefits and value they bring.

Sustainability

Plant breeding contributes to sustainability-related requirements irrespective of the breeding methods used. It does not make sense to assess plants in terms of sustainability goals simply because they have been developed using mutagenesis after 2001. It would render it impossible to make any real technological advances. Plant varieties obtained by mutagenesis techniques before or after 2001 must be evaluated in the same manner as the existing principles of the EU seed marketing directives e.g. through Value for Cultivation and Use testing (VCU).