



*Confédération paysanne*

Syndicats pour une agriculture paysanne et la défense de ses travailleurs

# **NEW GMO REGULATIONS DECEIVING FARMERS AND CONSUMERS TO PATENT ALL SEEDS**

On July 5th, the European Commission published a proposal for the deregulation of most GMO plants, which will now be debated by the European Council and Parliament. In his novel «1984», George Orwell warned us of a world in which the lie of the «telescreen» is the truth and reality is the lie. Two publications that would have had nothing to do with each other had the seed industry not chosen Orwell's recipe to provide the Commission with the language it needed to methodically unravel the 2001 GMO legislation. This article presents only the most salient aspects of this proposal, without addressing all its links with the new seeds legislation and the sanitary rules that reinforce them.

## GROSSLY MANIPULATED OPINION

A lie repeated ten times remains a lie, repeated hundreds of times over many years, it becomes a truth. Transgenic plants are disappearing to make way for the NTG for «new genomic techniques»<sup>1</sup>. The industry claims that the genetic modifications obtained by these NTGs are identical to those that can be obtained by traditional breeding. The Commission concludes that there is no reason to regulate them differently.

The manipulation consists of reducing the entire organism currently regulated to the single modification claimed in the patent. If a quick genetic analysis is carried out, the modification appears to be similar to a gene in plants derived from traditional breeding. However, more detailed genetic, epigenetic and biochemical analyses can reveal significant differences. The two whole plants are never alike: many other genetic and epigenetic modifications<sup>2</sup> are always the result of NTGs as much as transgenesis, and it is technically impossible to remove them all. It is not isolated genes that are cultivated in the fields, but entire plants. Each plant contains several tens of thousands of genes organised very precisely in space and in an order in which the

slightest change can have serious unforeseen health and/or environmental consequences.

Next comes the lie of omission. Only the naive can believe that not all GMOs/NTGs are patented and that the immense financial profits that these patents guarantee are not the primary motivation for these investments. However, any patent holder necessarily holds the processes enabling him to identify his invention so that he can pursue any infringement. But these processes, protected by industrial secrecy, are not published, which allows the Commission to announce that it will accept applications for authorisation that do not provide them on the pretext that identification would be impossible. Systematic rejection of such applications and sufficiently dissuasive penalties in the event of fraud would be enough to convince industry to share its secrets. The alleged difficulties of traceability of GMOs/NTGs that justify their deregulation are therefore the result of a deliberate political choice rather than a technical deadlocks.

## EXPERTS IN SCIENTIFIC MYSTIFICATION

To disguise these lies, the European expert committees have pulled out the trick of the magician who makes the rabbit under his hat disappear. In the middle of a long report, ENGL<sup>3</sup> states that «protocols for the detection and identification of genetic modifications resulting from NTGs can be put in place if knowledge and databases are published»<sup>4</sup>. But the summary of the report quoted by the Commission states that «it may be difficult to distinguish between them». It will indeed be more difficult to distinguish them if the Commission removes the current obligation to publish the data essential to their detection and identification.

Similarly, EFSA<sup>5</sup> stated in an opinion published in November 2021 that «mutations obtained by in vitro techniques should be identical to mutations obtained by traditional techniques», while stressing that «no experimental results have ever confirmed this hypothesis». But in the summary of the report quoted by the Commission, it states that «they are identical».

## PATENTING ALL EXISTING SEEDS

All GMOs/NTGs are patented. The scope of a patent relating to genetic information contained in a GMO/NTG plant extends to any plant containing the same genetic information and expressing its function<sup>6</sup>.

**Without publication of the procedures for distinguishing GMOs/NTGs from any other plant, farmers and small seed growers will have no way of proving that their traditional seeds are not counterfeits of patented GMOs/NTGs. They do not use genetic sequencing tools and will therefore not be able to prove that their seeds naturally contain genetic information similar to that described in the patent. They will therefore lose the right to continue using them. The same will apply in the event of contamination of their seeds or crops.**

1 The Commission cites site-directed mutagenesis, cisgenesis and intragenesis - three techniques which may involve a transgenesis step! - and reserves the right to extend this list as and when technical developments occur.

2 Referred to as «unintentional» in specialist language

3 European Network of GMO Reference Laboratories

4 Detection of food and feed plant products obtained by new mutagenesis techniques, 26 March 2019

5 European Food Safety Agency

6 Article 9 of the European Patent Directive 98/44/EC

## RULES DESIGNED TO BE CIRCUMVENTED

The new regulation develops a number of pseudo-scientific acrobatics to propose various categories of GMO/NTG containing more or less durable or non-durable genetic modifications, the definition of which the Commission will be able to modify on its own initiative, and each covered by different regulations, all accompanied by numerous exemptions.

The national authorities of the country chosen by the seed company, the applicant (who will thus be able to choose the country with the least scrutiny) or the European Food Safety Authority (EFSA) will assess the files solely on the basis of the information provided by the applicant, and will have no obligation to make public the reasons

for their decisions. They will even be authorised to explain to applicants how they should complete their application for authorisation. It doesn't say «how to get round the regulation» without being noticed. But it is clear that, in the absence of any obligation to publish a detection and identification procedure, no authority will be able to verify the applicant's statements to the effect that his product belongs to the category of genetic modifications «identical to those resulting from traditional breeding» requiring no assessment and no traceability other than an indication on the seed bags.

## MOST GMOS ARE NO LONGER GMOS

And while everyone is trying to decipher this jungle of categories, a discreet sub-paragraph of the regulation indicates, in coded language reserved for lawyers only, that most GMOs/NTGs<sup>7</sup> will no longer be GMOs<sup>8</sup>. This semantic sleight of hand, which aims to overturn the European Court of Justice ruling won in 2018 by the Confédération

Paysanne and a few French NGOs, is contrary to the European regulation implementing the Cartagena Protocol<sup>9</sup>. But the Commission is no stranger to legal contradiction. It is even forgetting its obligation to apply the precautionary principle, a principle that is nowhere mentioned in its draft regulation, which blithely violates it!

## MORE HOLES IN THE RACKET

Most GMOs/NTGs will no longer be assessed, labelled or traced, even though there is no proof that the health, environmental and economic risks of their release will be any different from those of transgenic GMOs. Consumers who don't want them will buy them without knowing it.

Only seeds will have to be labelled in all cases, on the pretext of «protecting organic farming». But the Commission is shirking responsibility for organising coexistence by delegating it to the Member States. It then prohibits national or local bans on the cultivation of GMOs/NTGs that could contaminate organic and non-GMO crops and sectors. And by authorising seed companies not to publish neither the detection and identification process for their GMOs/NTGs, nor the modified DNA

sequence, it removes all the tools that could enable the same States to organise this coexistence.

Finally, with its legend of the impossibility of identifying certain GMOs/NTGs, the Commission is telling seed companies that they will not risk any legal action if they «forget» to declare them, and that they will be able to register them directly in the catalogue of varieties, which does not require any information on how they were obtained. Organic and GM-free farming, thus deprived of any means of rejecting GMOs/NTGs and protecting themselves from contamination, will lose all credibility and be condemned to disappear.

## SUSTAINABLE PROPAGANDA

The Commission also wants to encourage companies to claim sustainability characteristics on the labels of GM/NTG seeds, and even promises them some financial benefits for doing so, even though it is not the varieties that are or are not sustainable, but the industrial or agro-ecological farming and food systems for which they are in-

tended. Perhaps the commission is hoping to see new adverts for a new rice enriched with vitamin A, which will be grown no more than the transgenic rice enriched with carrot pigment, which has never found the slightest market?

<sup>7</sup> According to Directive 2001/18 currently in force, all plants derived from mutagenesis are GMOs. Plants derived from traditional techniques are exempt from the requirements of this directive, but not those derived from new mutagenesis techniques. Under the Commission's proposal, plants derived from mutagenesis will no longer be GMOs, including those derived from NTGs, which will thus escape the requirements of the directive.

<sup>8</sup> Article 3.3

<sup>9</sup> Regulation (EC) No 1946/2003. For the CJEU, all NTGs produce GMOs subject to European GMO regulations. Similarly, the International Agreement on Biosafety (Cartagena Protocol) defines living modified organisms as obtained by «any application of in vitro techniques to nucleic acids», which is the case for all NTGs.

## **FARMERS BECOME SOLELY RESPONSIBLE FOR THE ENVIRONMENTAL AND HEALTH DAMAGE CAUSED BY GMOS/NTGS**

Initially, the Commission wanted to ban all claims for the sustainability of herbicide-tolerant GMOs/NTGs (VrTHs). It then changed its mind and referred the issue back to the proposal for a new regulation on the marketing of seeds, which calls on Member States to publish in the catalogue of varieties conditions for growing certain varieties, including VrTHs, designed to make them «non-detrimental to the environment». Since the large-scale use of herbicides is necessarily har-

mful, and there is a risk of this becoming all too apparent, the industry will thus be exempt from any responsibility. Responsibility will fall solely on farmers who are accused of not complying with regulatory growing conditions. As for the widely documented health risks, pesticide regulations have already ruled that there are none, which allows the Commission to avoid mentioning them.

## **SUCH A SCANDALOUS TEXT MUST BE REJECTED**

This draft regulation is the result of some fifteen years of lobbying by the industry, which wants to see these so-called New Genomic Technologies (NGTs) deregulated by not describing them as what they have been for as long as they have existed, i.e. as other tools for ma-

king Genetically Modified Organisms (GMOs). By ignoring the 2018 CJEU ruling, the precautionary principle and the general interest, this project is completely out of step with what the people of Europe want.

**Our elected representatives must reject it! We still need to rise up massively to shake up those who are letting themselves be lulled into sleep by the industry's and the Commission's misleading rhetoric, and to remind them that, whatever they do, farmers will continue to develop their own seeds.**