

## **Decision in case 1285/2016/JAS on the failure by the European Commission to reply to a request for information concerning organisms developed using the new breeding technique CRISPR/Cas9**

Decision

**Case 1285/2016/JAS - Opened on 30/09/2016 - Decision on 02/02/2017 - Institution concerned** European Commission ( Settled by the institution ) |

1. In June 2015, the complainant, a research institute, sent a letter to the European Commission asking whether certain specific organisms it had developed, using the so-called new breeding technique CRISPR/Cas9, constitute “GMOs” under EU GMO legislation [1] . As the complainant did not receive a reply on its subsequent correspondence, it turned to the Ombudsman.
2. The Ombudsman wrote to the Commission, asking it to reply to the complainant’s letter. In October 2016, the Commission replied to the complainant.
3. First, the Commission apologised to the complainant for not having already provided a substantial reply to it. It then provided updated information to the complainant. It stated that because of the rapid progress in biotechnology, it was necessary to improve the scientific understanding of these new techniques. In this context, the Commission had decided to ask the Scientific Advice Mechanism [2] to provide it with an explanatory note on new techniques in plant and animal breeding and in microbial agri-food applications [3] . This advice, which should be available during the first half of 2017, will feed into a broad reflection on how the EU can benefit from innovation in the food and agricultural sector, whilst ensuring a high level protection of human and animal health and environment. A public debate with all stakeholders will also take place in the course of 2017.
4. The Commission then stated that the absence of a legal interpretation by the Commission on new breeding techniques does not have the effect of freezing the plans of the complainant since it can, in the meantime, request the competent national authorities to grant authorisations. In this context, the Commission noted that experimental releases have already taken place in certain Member States. The Commission went on to state that it is under no legal obligation to provide the legal interpretation sought by the complainant. In any case, such an interpretation would represent only the view of the Commission. In accordance with the Treaties, only the Court of Justice of the European Union can provide legally binding interpretations. In this



context, the Commission informed the complainant that the French Council of State ( *Conseil d'Etat* ) has recently requested a preliminary ruling from the Court of Justice regarding the exclusion of organisms produced by mutagenesis from the scope of GMO legislation [4] .

5. The Ombudsman asked the complainant if it had any comments to make on the Commission's reply. The complainant did not make any comment.

6. As the complaint concerned only the fact that the Commission had not responded to the complainant, and the Commission has now provided a response, the Ombudsman considers that the complaint has been resolved. She thus closes the case [5] .

Strasbourg, 02/02/2017

Emily O'Reilly

European Ombudsman

[1] Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms and Directive 2009/41/EC on the contained use of genetically modified micro-organisms, OJ 2001 L 106, p. 1.

[2] <https://ec.europa.eu/research/sam/index.cfm?pg=hlg> [Link]

[3] <https://ec.europa.eu/research/sam/index.cfm?pg=agribiotechnology> [Link]

[4] Case *Confédération paysanne and Others* , C-528/16.

[5] Information on the review procedure can be found on the Ombudsman's [website](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark) [Link]: <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark> [Link]