

The *Confédération paysanne* judgment of the CJEU: a critical legal analysis

On July 25th, the Court of Justice of the European Union (CJEU) rendered its long awaited judgment on the scope of Directive 2001/18 on the deliberate release into the environment of genetically modified organisms (GMO Directive). In its judgment, the CJEU determined in essence whether organisms obtained by mutagenesis are genetically modified organisms (GMOs) and when such organisms are subject to the obligations laid down by the GMO Directive. The CJEU also ruled on the option for Member States to define their own GMO regime.

In particular, the CJEU notes that organisms obtained by means of mutagenesis must be considered to be GMOs as defined in article 2(2) of the GMO Directive and that the mutagenesis exemption should be interpreted restrictively. The CJEU hereby notes that the mutagenesis exemption only applies to organisms obtained by mutagenesis techniques/methods which have conventionally been used in a number of applications and have a long safety record. With such restrictive (teleological?) approach, the CJEU has raised more questions than it has answered. For example: do all mutagenesis techniques which existed in 2001 fall under the mutagenesis exemption? What do the terms “conventionally, number, long, safety” mean? And can plants resulting from targeted mutagenesis even comply with the GMO Directive?