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COMMISSION IMPLEMENTING DECISION

of **XXX**

amending Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC as regards the tolerance period for traces of Ms1xRf1 (ACS-BN004-7xACS-BN001-4) hybrid oilseed rape, Ms1xRf2 (ACS-BN004-7xACS-BN002-5) hybrid oilseed rape and Topas 19/2 (ACS-BN007-1) oilseed rape, as well as their derived products

(Text with EEA relevance)

(Only the German text is authentic)

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amending Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC as regards the tolerance period for traces of Ms1xRf1 (ACS-BNØØ4-7xACS-BNØØ1-4) hybrid oilseed rape, Ms1xRf2 (ACS-BNØØ4-7xACS-BNØØ2-5) hybrid oilseed rape and Topas 19/2 (ACS-BNØØ7-1) oilseed rape, as well as their derived products

(Text with EEA relevance)

(Only the German text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1829/2003 of the European Parliament and the Council of 22 September 2003 on genetically modified food and feed¹, and in particular Article 8(6) and Article 20(6) thereof,

Whereas:

- (1) Commission Decisions 2007/305/EC², 2007/306/EC³ and 2007/307/EC⁴ lay down the rules for the withdrawal from the market of Ms1xRf1 (ACS-BNØØ4-7xACS-BNØØ1-4) hybrid oilseed rape, Ms1xRf2 (ACS-BNØØ4-7xACS-BNØØ2-5) hybrid oilseed rape and Topas 19/2 (ACS-BNØØ7-1) oilseed rape respectively, as well as their derived products ('GM material'). Those decisions were adopted after the authorisation holder, the company Bayer CropScience AG, had indicated to the Commission that it had no intention of submitting an application for the renewal of the authorisation of the GM material in accordance with Article 8(4), first subparagraph, Article 11, Article 20(4) and Article 23 of Regulation (EC) No 1829/2003.
- (2) All three decisions provided for an initial transitional period of five years during which food and feed containing, consisting of or produced from the GM material were allowed to be placed on the market in a proportion no higher than 0,9% and provided that that presence was adventitious or technically unavoidable. The purpose of the transitional period was to take into account the fact that minute traces of that GM material could sometimes be present in the food and feed chains, even after Bayer CropScience AG stopped selling seeds derived from the genetically modified organisms and even if all measures were taken to avoid the presence of the GM material.

¹ OJ L 268, 18.10.2003, p. 1.

² Commission Decision 2007/305/EC of 25 April 2007 on the withdrawal from the market of Ms1xRf1 (ACS-BNØØ4-7xACS-BNØØ1-4) hybrid oilseed rape and its derived products (OJ L 117, 5.5.2007, p. 17).

³ Commission Decision 2007/306/EC of 25 April 2007 on the withdrawal from the market of Ms1xRf2 (ACS-BNØØ4-7xACS-BNØØ2-5) hybrid oilseed rape and its derived products (OJ L 117, 5.5.2007, p. 20).

⁴ Commission Decision 2007/307/EC of 25 April 2007 on the withdrawal from the market of Topas 19/2 (ACS-BNØØ7-1) oilseed rape and its derived products (OJ L 117, 5.5.2007, p. 23).

- (3) Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC also set out a series of measures that Bayer CropScience AG had to take in order to ensure the effective withdrawal from the market of the GM material and laid down reporting obligations on the addressee.
- (4) Despite the measures taken by Bayer CropScience AG to prevent the presence of the genetically modified organisms in accordance with Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC, minute traces were detected in oilseed rape commodities. Commission Implementing Decision 2012/69/EU⁵ amended all three decisions in order to extend the transition period until 31 December 2016, and reduced the tolerated presence of the GM material in food and feed to 0,1 % mass fraction. The three decisions were further amended by Commission Implementing Decision (EU) 2016/2268⁶ in order to extend the transition period until 31 December 2019 and then by Commission Implementing Decision (EU) 2019/1562⁷ in order to extend the transition period until 31 December 2022.
- (5) Furthermore, Commission Implementing Decision (EU) 2019/1117⁸ amended Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC as regards the addressee, from Bayer CropScience AG to BASF SE.
- (6) In October 2021, BASF Belgian Coordination Center CommV, a branch of BASF SE, reported that despite the measures taken, minute traces had still been detected, in a further decreasing trend, in oilseed rape commodities in recent years. Such persisting presence of traces could be explained by the biology of oilseed rapes, since seeds can remain dormant for long periods, as well as by farm practices which have been employed to harvest the seeds and which may have resulted in accidental spillage, the level of which was difficult to estimate at the time of adoption of Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC, and Implementing Decisions 2012/69/EU, (EU) 2016/2268 and (EU) 2019/1562.
- (7) Against this background, it is appropriate to extend the transitional period until 31 December 2025 to allow for further decrease of the remaining traces of Ms1xRf1, Ms1xRf2 and Topas 19/2 oilseed rapes in the food and feed chain.
- (8) In order to further contribute to the removal of the GM material, it is also appropriate that BASF SE continues to implement the in-house programme required in accordance with Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC and to gather data on the

⁵ Commission Implementing Decision 2012/69/EU of 3 February 2012 amending Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC as regards the tolerance period for traces of Ms1xRf1 (ACS-BNØØ4-7xACS-BNØØ1-4) hybrid oilseed rape, Ms1xRf2 (ACS-BNØØ4-7xACS-BNØØ2-5) hybrid oilseed rape and Topas 19/2 (ACS-BNØØ7-1) oilseed rape, as well as of their derived products (OJ L 34, 7.2.2012, p. 12).

⁶ Commission Implementing Decision (EU) 2016/2268 of 14 December 2016 amending Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC as regards the tolerance period for traces of Ms1xRf1 (ACS-BNØØ4-7xACS-BNØØ1-4) hybrid oilseed rape, Ms1xRf2 (ACS-BNØØ4-7xACS-BNØØ2-5) hybrid oilseed rape and Topas 19/2 (ACS-BNØØ7-1) oilseed rape, as well as their derived products (OJ L 342, 16.12.2016, p. 34).

⁷ Commission Implementing Decision (EU) 2019/1562 of 16 September 2019 amending Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC as regards the tolerance period for traces of Ms1xRf1 (ACS-BNØØ4-7xACS-BNØØ1-4) hybrid oilseed rape, Ms1xRf2 (ACS-BNØØ4-7xACS-BNØØ2-5) hybrid oilseed rape and Topas 19/2 (ACS-BNØØ7-1) oilseed rape, as well as their derived products (OJ L 240, 18.9.2019, p. 13).

⁸ Commission Implementing Decision (EU) 2019/1117 of 24 June 2019 amending Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC as regards a change of the addressee of the Decisions (OJ L 176, 1.7.2019, p. 59).

presence of such material in oilseed rape commodities imported into the Union from Canada, the only country where GM oilseed rape Ms1xRf1, Ms1xRf2 and Topas 19/2 were cultivated for commercial purposes. BASF SE should report to the Commission on both aspects by 1 January 2025.

- (9) BASF SE should continue to ensure the continued availability of certified reference materials to enable control laboratories to perform their analysis during the transitional period.
- (10) Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC should therefore be amended accordingly.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Amendments to Decision 2007/305/EC

Decision 2007/305/EC is amended as follows:

- (1) the second paragraph of Article 1 is replaced by the following:

"By 1 January 2025, the addressee shall report to the Commission on the implementation of that programme and on the presence of those genetically modified organisms in the oilseed rape shipments from Canada to the Union.";
- (2) paragraph 1 of Article 2 is replaced by the following:

"1. The presence of material which contains, consists of or is produced from ACS-BN004-7, ACS-BN001-4 and the hybrid combination ACS-BN004-7xACS-BN001-4 oilseed rape in food or feed products notified under Article 8(1)(a) and Article 20(1), point (a), of Regulation (EC) No 1829/2003 shall be tolerated until 31 December 2025, provided that this presence is:

 - (a) adventitious or technically unavoidable; and
 - (b) in a proportion no higher than 0,1 % mass fraction".

Article 2

Amendments to Decision 2007/306/EC

Decision 2007/306/EC is amended as follows:

- (1) the second paragraph of Article 1 is replaced by the following:

"By 1 January 2025, the addressee shall report to the Commission on the implementation of this program and on the presence of those genetically modified organisms in the oilseed rape shipments from Canada to the Union.";
- (2) paragraph 1 of Article 2 is replaced by the following:

"1. The presence of material which contains, consists of or is produced from ACS-BN004-7, ACS-BN002-5 and the hybrid combination ACS-BN004-7xACS-BN002-5 oilseed rape in food or feed products notified under Article 8(1)(a) and Article 20(1)(a) of Regulation (EC) No 1829/2003 shall be tolerated until 31 December 2025, provided that this presence is:

- (a) adventitious or technically unavoidable; and
- (b) in a proportion no higher than 0,1 % mass fraction."

Article 3

Amendment to Decision 2007/307/EC

Paragraphs 1 and 2 of Article 1 of Decision 2007/307/EC are replaced by the following:

- "1. The addressee shall implement an in-house programme in order to ensure the effective withdrawal from the market of ACS- BNØØ7-1 oilseed rape in breeding and seed production and shall gather data on the presence of that genetically modified organism in the oilseed rape shipments to the Union from Canada.
- By 1 January 2025, the addressee shall report to the Commission on the implementation of that programme and on the presence of those genetically modified organisms in the oilseed rape shipments from Canada to the Union.
2. The presence of material which contains, consists of or is produced from ACS- BNØØ7-1 oilseed rape in food or feed products notified under Article 8(1)(a) and Article 20(1), point (a), of Regulation (EC) No 1829/2003 shall be tolerated until 31 December 2025, provided that this presence is:
- (a) adventitious or technically unavoidable; and
 - (b) in a proportion no higher than 0,1 % mass fraction."

Article 4

Modification of the entries in the Community Register of genetically modified food and feed

The entries in the Community Register of genetically modified food and feed, as provided for in Article 28 of Regulation (EC) No 1829/2003, regarding ACS-BNØØ4-7, ACS-BNØØ1-4 and the hybrid combination ACS-BNØØ4-7xACS-BNØØ1-4 oilseed rape, ACS-BNØØ4-7, ACS-BNØØ2-5 and the hybrid combination ACS-BNØØ4-7xACS-BNØØ2-5 oilseed rape, and ACS-BNØØ7-1 oilseed rape shall be modified by the Commission in order to take account of this Decision.

Article 5

Addressee

This Decision is addressed to BASF SE, Carl-Bosch-Str. 38, D-67063 Ludwigshafen, Germany.

Done at Brussels,

For the Commission
Stella KYRIAKIDES
Member of the Commission