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 Ms1×Rf1 (ACS-BNØØ4-7×ACS-BNØØ1-4) hybrid oilseed rape, Ms1×Rf2 (ACS-BNØØ4-7×ACS-BNØØ2-5) hybrid oilseed rape and Topas 19/2 (ACS-BNØØ7-1) oilseed rape, as well as their derived products (notified under document C(2019) 6524) (Only the German text is authentic)

COMMISSION IMPLEMENTING DECISION (EU) 2019/1562

of 16 September 2019

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(notified under document C(2019) 6524)

(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 feed[(1)], and in particular Article 8(6) and Article 20(6) thereof,

Whereas:

(1) Commission Decisions 2007/305/EC[(2)], 2007/306/EC[(3)] and 2007/307/EC[(4)] lay down the rules for the withdrawal from the market of Ms1×Rf1 (ACS-BNØØ4-7×ACS-BNØØ1-4) hybrid oilseed rape, Ms1×Rf2 (ACS-BNØØ4-7×ACS-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 have been adopted after the authorisation holder, the company Bayer CropScience AG, indicated to the Commission that it had no intention of submitting an application for the renewal of the authorisation of that GM material in accordance with the first subparagraph of Article 8(4), 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 this 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 that 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 had decided to stop selling seeds derived from those genetically modified organisms and even if all measures were taken to avoid the presence of that GM material.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2019/1562. (See end of Document for details)*

(3) Despite the measures taken by Bayer CropScience AG to prevent the presence of those genetically modified organisms in accordance with Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC, minute traces have been still detected in oilseed rape commodities. Commission Implementing Decision 2012/69/EU[(5)] amended all three Decisions in order to extend the transition period until 31 December 2016, and reduced the tolerated presence of that GM material in food and feed to 0,1 % mass fraction. The three Decisions have been further amended by Commission Implementing Decision (EU) 2016/2268[(6)] in order to extend the transition period until 31 December 2019.

(4) 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 this GM material and laid down reporting obligations on the addressee.

(5) Furthermore, Commission Implementing Decision (EU) 2019/1117[(7)] amended the three Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC as regards the addressee, following a request submitted on 1 August 2018 by Bayer CropScience AG to transfer its rights and obligations, pertaining to all its notifications, applications and authorisations for genetically modified products, to BASF Agricultural Solutions Seed US LLC, being represented in the Union by BASF SE (Germany). Therefore, Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC should be addressed to BASF SE.

(6) In October 2018, BASF SE reported that despite the measures taken, minute traces have been still detected, in a further decreasing trend, in oilseed rape commodities in recent years. This persisting presence of traces can be explained by the biology of oilseed rapes which can remain dormant for long periods as well as by farm practices which have been employed to harvest the seeds which may have resulted in accidental spillage, the level of which was difficult to estimate at the dates of adoption of Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC, and Implementing Decisions 2012/69/EU and (EU) 2016/2268.

(7) Against this background, it is appropriate to extend the transitional period for another three years until 31 December 2022 to allow for the complete removal of the remaining traces of Ms1×Rf1, Ms1×Rf2 and Topas 19/2 oilseed rapes in the food and feed chain.

(8) In order to further contribute to the removal of that GM material, it is also appropriate that the addressee 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 presence of such material in oilseed rape commodities imported into the Union from Canada, the only country where those oilseed rapes were cultivated for commercial purposes. BASF SE should report to the Commission on both aspects by 1 January 2022.

(9) BASF SE should ensure the continued availability of certified reference materials to enable control laboratories to perform their analysis during that transitional period.

(10) Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC should therefore be amended accordingly.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2019/1562. (See end of Document for details)*

(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

Decision 2007/305/EC is amended as follows:

(1) Article 1 is replaced by the following:

Article 1

The addressee shall implement an in-house program in order to ensure the effective withdrawal from the market of ACS-BNØØ4-7, ACS-BNØØ1-4 and of the hybrid combination ACS-BNØØ4-7×ACS-BNØØ1-4 oilseed rape in breeding and seed production and shall gather data on the presence of those genetically modified organisms in the oilseed rape shipments to the Union from Canada.

By 1 January 2022, 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) Article 2 is replaced by the following:

Article 2

1 The presence of material which contains, consists of or is produced from ACS-BNØØ4-7, ACS-BNØØ1-4 and the hybrid combination ACS-BNØØ4-7×ACS-BNØØ1-4 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 2022, provided that this presence:

a is adventitious or technically unavoidable; and

b is in a proportion no higher than 0,1 % mass fraction.

2 The addressee shall ensure the availability of certified reference material for ACS-BNØØ4-7×ACS-BNØØ1-4 oilseed rape via the American Oil Chemists Society at https://www.aocs.org/crm.

Article 2

Decision 2007/306/EC is amended as follows:

(1) Article 1 is replaced by the following:

Article 1

The addressee shall implement an in-house program in order to ensure the effective withdrawal from the market of ACS-BNØØ4-7, ACS-BNØØ2-5 and of the hybrid combination ACS-BNØØ4-7×ACS-BNØØ2-5 oilseed rape in breeding and seed production and shall gather data on the presence of those genetically modified organisms in the oilseed rape shipments to the Union from Canada.

By 1 January 2022, 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) Article 2 is replaced by the following: