



**Friends of  
the Earth  
Europe**

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## The contamination of Rice

The discovery of unlicensed GMOs in European rice imports raises new concerns about the ability of the industry to contain experimental crops, and highlights different safety and testing standards between the US and Europe. The first GMO rice to be discovered, called LL601, was developed by Bayer and grown outdoors in the US in test sites between 1998 and 2001. In the past few months it has been found in US exports throughout the world, although it was never commercialised. Greenpeace and Friends of the Earth have also discovered a different illegal rice strain in Chinese foods (see later article) and the French authorities have now discovered LL62, another unapproved GMO rice from Bayer. The contamination of rice is widespread and its implications demand new measures to protect consumers.

### **LL601**

The US Government announced on 18th August that Bayer had informed them that the unapproved GMO rice LL601, was possibly in the food and feed chain. The announcement had a dramatic effect on the US rice trade, with Japan immediately banning imports and the EU introducing soon after its first emergency measure to restrict imports.<sup>1</sup>

The rice was an experimental line developed by the German-based Bayer and reportedly grown in test sites at the Louisiana State University. It is currently not approved for consumption anywhere in the world. How it has now turned up in the food chain, 5 years after last being officially grown in test sites, is still unclear.

On 6 November the European Union tightened its controls further on the imports of US rice, introducing obligatory testing at all ports of entry into the EU to ensure shipments are free of Bayer's LL601 rice.<sup>2</sup>

This goes further than the previous emergency measure which required all incoming shipments to be certified as free of LL601 rice. However, after finding positive samples in rice that was certified LL601 free, the European Commission proposed a tougher testing regime. Markos Kyprianou, European Commissioner for Health and Consumer Protection, stated "*There is no flexibility for unauthorized GMOs - these cannot enter the EU food and feed chain under any circumstances*".<sup>3</sup> The Commission initially gave the US 15 days to reach agreement on testing protocols but with no resulting agreement, EU member states voted in support of the new measures. The decision also ensures that all costs for testing are borne by the food business operator responsible for the consignment.

### **Food safety: EU versus the US**

The dispute does not only highlight the differences between the US and the EU on testing for the presence of GMOs, it also highlights clearly the different approaches to food safety. On 15th September the European Food Safety Authority (EFSA) issued a guarded statement that concluded, "*The available data are not sufficient to allow the safety of LLRICE601 to be assessed in accordance with the EFSA guidance for risk assessment. However, on the basis of the available molecular and compositional data and on the toxicological profile of PAT proteins, EFSA considers that the consumption of imported long grain rice containing trace levels of LLRICE601 is not likely to pose an imminent safety concern to humans or animals.*"<sup>4</sup> The qualified statement by EFSA, which emphasizes the lack of data available to make a full safety assessment, contrasts sharply with statements made by the US Food and Drug Administration (FDA) which made blanket assurances of its safety, despite the lack of information. The table below, compiled by the Centre for Food Safety

([www.centerforfoodsafety.org](http://www.centerforfoodsafety.org)) in the US highlights the two approaches to food safety.

In an apparent effort to limit its liability in the US, Bayer has now been given a commercial licence for LL601 in the US. However the damage is likely to have been done already. All exports to the EU have now ceased and an increasing number of US rice farmers have started taking legal action against Bayer.

### **New EU tests urgently needed**

The rice contaminations are of course not the first cases of illegal GMOs being imported into the EU. Last year, it was discovered that from 2001 to 2004, Syngenta had mistakenly supplied large quantities of an experimental maize seed, known as Bt10, to American farmers who thought they were planting an approved variety, with the result that massive quantities of Bt10-laced corn entered the food and feed chain. In most cases, the contaminated foods have not been discovered by Governments, but either by the food industry or Non-Government Organisations. This raises concerns that the current testing in the EU is inadequate to protect consumers. This has to be seen in light of the amount of testing carried out mainly in the US, not only of experimental food crops, but also pharmaceutical and industrial crops. Since these are not commercialised, the reference materials needed to detect them in other foods is confidential business information.

Friends of the Earth Europe believes that a new, proactive system of identifying at-risk imports and countries is urgently needed. Routine monitoring at EU ports of entry for unapproved or mislabelled GMOs from these at-risk countries should be introduced. All countries that export food, feed or seeds to the EU should deliver a

complete list of all GMO releases for commercial and experimental use in their country. Such a list must include a validated testing protocol, accompanied with the relevant reference material, in order for member states to take steps to prevent unauthorised foods and feeds from coming onto the EU market.

### EU field trials

The LL601 rice incident also raises serious questions about growing experimental crops outdoors. Friends of the Earth Europe believes that in light of this experience, there should be a review of outdoor field testing in the EU to ensure that strict controls and monitoring are in place

which prevent any unintentional contamination of the food chain with unapproved GMOs. Similar to the US system, companies are currently not required to supply testing reagents or protocols for their experimental GM crops, so it is virtually impossible to detect contamination in neighbouring crops. Therefore, applications to test GM crops outdoors in the EU should in the future be accompanied by validated testing reagents and protocols to enable authorities and food companies to test for possible contamination. The EU can hardly call for better controls in other countries if they haven't already got their own house in order.

On exposure to LL601	FDA <sup>5</sup>	European Food Safety Authority <sup>6</sup>
	Relies on Bayer's report alleging "trace amounts," despite independent reports suggesting widespread contamination of commodities and presence in foundation seed	"Exposure levels to LLRICE601 in the EU Member States cannot be estimated accurately from the data provided and little is known with respect to the extent of LLRICE601 in the rice supply."
On adequacy of available data	FDA merely relies on data submitted by Bayer, assuming without evaluation or qualification that it is fully adequate to support FDA's "assessment"	"The available data are not sufficient to allow the safety of LLRICE601 to be assessed in accordance with the EFSA guidance for risk assessment."
On potentially hazardous, unintended effects of the genetic engineering process used to create LL601 (i.e. unrelated to the PAT protein)	FDA completely dismisses potentially hazardous, unintended effects of genetic engineering in those cases where illegal GM crops enter the food supply through the negligence of the biotech company and USDA.	"The company stated that there were no indications of unintended changes due to the genetic modification. The data package does not include the required raw data to verify this assumption."
On potential human health impacts	Despite no independent information on the amount of LL601 in the food supply, no evaluation of the adequacy of Bayer's data, no acknowledgment that LL601's protein differs from that in two approved LibertyLink rice events, and no assessment of unintended effects from the genetic engineering of LL601, FDA says without qualification that LL601 "poses no food or feed safety concerns."	After repeatedly emphasizing the inadequacy of the data supplied to it by Bayer and USDA re: exposure level and unintended effects, EFSA issues a carefully qualified statement that LLRICE601 is " <b>not likely</b> to pose an <b>imminent</b> safety concern to humans or animals." [emphasis added] This carefully qualified statement leaves open the possibilities of an altered assessment upon submission of full data, and potential impacts from longer-term exposure.

Centre for Food Safety ([www.centreforfoodsafety.org](http://www.centreforfoodsafety.org))

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## Coexistence

An interesting but important issue that the contamination in the US raises, concerns the coexistence between conventional and GMO crops. Rice was regarded as a crop with a low risk of outcrossing to neighbouring crops as it is, to a large extent, self-pollinating. Whilst we don't know the full picture of how the contamination occurred in the US, it is clear that our assumptions of outcrossing should be reviewed. If a low-risk crop can cause so much economic damage then what is happening to medium or high risk crops such as oilseed rape and maize? This could be a particular problem for areas where seeds are produced. With coexistence measures derogated to member states, more caution should be introduced to take into account the current rice incident.

## References:

- 1 Commission Decision 2006/578/EC
- 2 Commission Decision 2006/754/EC
- 3 Commission press release, Commission requires certification of US rice exports to stop unauthorised GMO entering the EU, IP/06/1120, Brussels, 23 August 2006
- 4 [http://www.efsa.europa.eu/en/science/gmo/statements0/efsa\\_statement\\_gmo\\_LLrice601.html](http://www.efsa.europa.eu/en/science/gmo/statements0/efsa_statement_gmo_LLrice601.html)
- 5 See <http://www.cfsan.fda.gov/%7Elrd/biorice.html>.
- 6 EFSA op cit

## Lost markets for farmers

The LL601 incident has had a big impact on US rice farmers. It may be many years before they can regain the markets lost over the past months. In the meantime, other rice-producing countries look set to benefit from the GMO-free status and supply regions such as Europe with long grain rice. What is clear is that Bayer's inability or unwillingness to contain their experiments will have a major impact on their plans to grow GMO rice commercially. If trace amounts of contamination arising from test sites can cause so much economic damage, then the chances that farmers will embrace GMO rice commercially look remote. This would be good news for consumers, and even better news for rice farmers.

# BAYER'S LLRICE601 - Farmers count the cost

For many EU citizens, the most they probably know about Arkansas is that it is former US President Bill Clinton's home state. But Arkansas holds another distinction - it is America's leading rice-growing state, accounting for nearly half of all US production. So it makes sense that the recent GM contamination scandal, in which an

unapproved variety of Bayer's GM herbicide-tolerant LLRICE601 was found to have widely polluted U.S. rice stocks, would be major news in Arkansas. After all, according to experts there, the dramatic decline in the price of rice since the contamination was announced will cost the state's farmers upwards of \$100 million this year.

The US exports about half of its rice crop, with Europe buying nearly \$90 million worth annually. That trade has come to a halt since the contamination was revealed in August. Other US export buyers in Asia and the Middle East have also stopped or severely restricted rice imports. Given the widespread and unpredictable nature of the contamination, these actions appear well justified: testing of rice from seven US exporters found a massive 32% of samples were contaminated with the unapproved GM variety.

### **Apathy and inaction from those responsible**

Many unanswered questions still remain concerning this rice contamination episode. Many ask why Arkansas-based Riceland Foods, which first detected the contamination in January 2006, did nothing on learning that an illegal rice variety was being sold to consumers around the world. Others wonder why Bayer, when Riceland told the GM crop developer in May that its illegal rice had "escaped", also took no action. The US Department of Agriculture (USDA) was informed of the contamination in June and finally made the news public in July, but it is puzzling that the agency, to date, seems unconcerned that GM field trials it approved could cause so much trouble for so long without anyone knowing it. After all, the Bayer variety was planted for just a few seasons between 1998 and 2001, yet the contamination remained in the rice supply for five years and apparently spread widely throughout the American rice-growing industry.

### **Another episode in the catalogue of errors**

Perhaps US regulators and Bayer are so blasé about the situation because the biotech industry has been creating these kinds of problems for such a long time already, while letting others face the consequences. A few choice examples spring to mind:

- Just over a year ago biotech giant Syngenta admitted that it had "inadvertently" been selling an unapproved GM maize for four years, yet it is American farmers rather than Syngenta who are suffering the lost confidence in the integrity of their product.
- Dangers from small field trials were also revealed when the US biotech firm ProdiGene's GM drug-producing maize contaminated crops destined for the food supply. Half a million bushels of soy beans had to be destroyed, at a cost of \$3 million, but ProdiGene was bailed out by an interest-free loan courtesy of the American taxpayer.
- Last but not least, who can forget the StarLink scandal? Aventis (now owned by Bayer) was legally responsible for warning farmers that its StarLink GM maize had to be kept out of the food supply, but when Friends of the Earth found the maize in taco shells that consumers were eating, farmers said they were never told about the planting restrictions.

Four years after StarLink, farmers' lawsuits were settled for what experts called "little more than a drop in the bucket" compared to the actual losses they suffered. Now it appears that American farmers are once again being left to pay the price for the biotech industry's recklessness. More than 200 rice farmers in Arkansas and Missouri are suing Bayer for the rice contamination, as are farmers in at least four other US states. Meanwhile, in an attempt to evade any responsibility for the damage, Bayer filed an application with the USDA to grant retroactive approval of the illegal GM rice. The USDA often takes several months to review applications for new GM varieties but, as reported by the Washington Post, the agency acted with "extraordinary rapidity" to Bayer's application, issuing a "preliminary" decision on 8th September granting their request.

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## Stop Press

On 24th November, the USDA announced its decision to "deregulate" LLRICE601, thereby neatly letting Bayer off the hook. Unsurprisingly, Bayer CropScience welcomed the decision, adding in its press statement that it did: "not intend to commercialise LLRICE601". Back in Arkansas, rice growers facing the collapse of their market will no doubt be scratching their heads trying to understand why they face financial losses for contamination of their crops by a transgenic variety not intended for commercialisation but deregulated "post haste" by the USDA!

StarLink settlement criticised by farmers at:

**<http://www.organicconsumers.org/Corn/starlink.cfm>**

<<http://www.organicconsumers.org/Corn/starlink.cfm>> and

**[http://www.newfarm.org/columns/final\\_word/2003/0303/030703\\_print.shtml](http://www.newfarm.org/columns/final_word/2003/0303/030703_print.shtml)**

<[http://www.newfarm.org/columns/final\\_word/2003/0303/030703\\_print.shtml](http://www.newfarm.org/columns/final_word/2003/0303/030703_print.shtml)>

Centre for Food Safety  
([www.centreforfoodsafety.org](http://www.centreforfoodsafety.org))

# UK Food Standards Agency faces legal challenge over GM rice

The High Court of Justice has given Friends of the Earth permission to take the UK Food Standards Agency (FSA) to court for failing to take what the environment group believes is necessary action to ensure consumers aren't exposed to illegal genetically modified rice in the food chain.

The Judicial Review relates to the latest contamination incident where GM long grain rice grown experimentally in the US has contaminated commercial rice supplies and been exported around the world. The rice, Bayer's LL RICE 601, was not approved for human consumption or cultivation anywhere in the world. At the request of Bayer, the US government has now approved the GM rice, although it remains illegal in the EU and the rest of the world.

Under the European Commission's Emergency Decision, put in place in August, member states are supposed to take action to "verify the absence" of the illegal rice from products already on the market. This requirement is in addition to ensuring that imports of US long grain rice do not enter the EU unless they are tested and verified at ports of entry as free of LL RICE 601, as required by an amendment to the Emergency Decision agreed in November.

But the FSA has failed to carry out any testing of rice already on sale in the UK. Instead they have chosen to focus solely on trying to prevent further contaminated rice entering the UK market. This has consisted of coordinating sampling and testing of US rice held at rice mills. This means

that contaminated rice that has already made it onto the market is likely to remain undetected. And since the contamination was first detected in January, illegal rice is likely to have been coming into Europe for over six months, possibly longer.

The FSA has also failed to instruct local authorities to carry out sampling for contaminated rice or take enforcement action in their areas. Whilst it is the local authorities that are responsible for enforcing GM legislation, their food authority functions are overseen and monitored by the FSA. It is clear from information obtained from local authorities that because the FSA has not instructed them to take action over this incident, or issued any food alerts, they have not prioritised it for enforcement action.

It is the FSA's belief that this rice does not pose a safety threat that has underpinned its response. In fact, very early on and before the full set of data was made available by Bayer, the FSA categorically announced that it was not a safety concern. It had to backtrack somewhat on this bold statement when the European Food Safety Authority put out a much more reserved statement that it was "not likely" to pose an imminent safety concern and that the data were "not sufficient to allow the safety of LLRICE601 to be assessed in accordance with the EFSA guidance for risk assessment."

Perhaps most surprising is the advice initially issued by the FSA to the food industry. A leaked memo from a meeting held on 5 September shows that the FSA privately told the British Retail Consortium and Food and Drink Federation that it did not expect them to test for contamination, or to remove any contaminated rice from their shelves. This is despite the fact that it is illegal for companies to sell food containing unau-

thorised GM ingredients. Since Friends of the Earth filed for Judicial Review, the FSA has been forced to change its advice to retailers, now saying that "any rice known to be contaminated with GM material is illegal and should be removed from sale".

Since the contamination incident was revealed, a number of rice products on sale in the UK have been found positive for the illegal GM rice; of four US long grain rice samples Friends of the Earth sent for testing, three own brand samples from Morrisons and Somerfield supermarkets tested positive. At least three other supermarkets have detected and withdrawn contaminated products. And the UK has notified a total of nine incidents of illegal GM rice contamination from the US to the European Commission's Rapid Alert system. However, the FSA has failed to issue any Food Alerts in the UK or publicise any product withdrawals.

Friends of the Earth wants to see member states test rice products already on the market for contamination. This is especially important since it has become clear that testing methods for LLRICE 601 are far from reliable. There have been at least three incidents where long grain rice which had been certified as free of GM contamination (in the US) subsequently tested as positive for the illegal rice (in EU member states). The latest is revealed in the report of the survey coordinated by the FSA of rice in mills in the UK. Westmill Foods, one of the mills surveyed, stated that the batch of rice sampled and found positive for LLRICE 601 contamination had previously been tested and certified as GM free. Incidents such as these show that despite Emergency measures being put in place to prevent illegal GM rice entering the EU.

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It is likely that significant amounts of GM rice have entered the market in the UK and the rest of Europe, first because not enough is being done to identify and withdraw contaminated rice already on the market, and secondly, the discrepancies between the testing methods mean that even rice that has entered the EU market with a GM free certificate could in fact be contaminated. This means it is all the more important for member states to step up their testing for illegal GM rice products on the market - from shops to restaurants, wholesalers and caterers.

Friends of the Earth has applied for the Judicial Review to be heard urgently, because the more time passes, the more potentially contaminated rice will be sold and eaten instead of detected and removed. A high court judge has agreed and the hearing is scheduled for 20th and 21st February 2007.

Follow up - FSA on GM rice:

<http://www.food.gov.uk/news/newsarchive/2006/nov/gmricesurvey>

## Illegal GM rice found in Europe - this time from China

In what is the second GM contamination scandal in the last few months, Friends of the Earth and Greenpeace have discovered unapproved GM ingredients in rice noodle products imported from China. Noodles bought in speciality Asian stores in the UK, France and Germany and tested by an independent laboratory, were found to be contaminated with illegal insect resistant rice, known as Xianyou Bt63.

Like the LL RICE601 incident in the US, this contamination has also stemmed from outdoor testing of GM rice. And both were unapproved for human consumption or cultivation anywhere in the world. But unlike the US case, the European Commission has been slow to act and as yet has failed to put in place Emergency Measures to ensure that products contaminated with Bt63 are detected and removed from sale, and to prevent further contaminated foods entering Europe.

The illegal GM rice is an experimental variety genetically engineered to produce an insecticide. Scientific studies raise concerns about the risk to human health of eating the rice, particularly the potential to cause food allergies.

The Bt rice had been grown in field trials by scientists at the Huazhong Agriculture University in Wuhan in China's Hubei province.. It was subsequently discovered that GM rice seeds that originated from the trials had been illegally sold and commercially grown in Hubei for a number of years. The Chinese Government has since reportedly taken some steps to prevent further contamination, including punishing the seed companies involved and starting to tighten up controls of field trials.

Previous testing by Greenpeace of foods in China from early 2005 onwards had already revealed

contamination of baby food, rice and rice cereal products up to 1500 miles away from the area where rice was grown. As China is one of the largest exporters of rice in the world, contamination of foods around the world was inevitable. It is disappointing that despite the clear risk to rice imports into the EU from China publicised over a year ago, neither the European Commission nor Member State Governments took any action to test for contamination.

Since the publication of the results of the European testing, the governments of France and Germany have notified the European Commission through the official Rapid Alert System for food and feed.<sup>1</sup> Only the UK has failed to follow up the discovery of illegal GM rice noodles by validating the results and issuing a Rapid Alert notification. Furthermore, Austria has carried out its own testing and found a number of products contaminated with Bt63.

It has been nearly three months since the discovery of the first contaminated products was revealed and the Commission has failed to take concrete action to protect consumers from being

exposed to unauthorised and potentially risky GM rice. In contrast, the Commission took just five days to put in place Emergency Measures over the US LLRICE 601 contamination incident.

In the correspondence between the Commission and the Chinese authorities to date there seems to have been some difficulty in obtaining reference material to allow a testing method to be developed and validated by the European Community Reference Laboratory. And the Commission seems reluctant to put its trading relationship with China at risk to insist on this information as a matter of urgency.

This is unlikely to be the last GM contamination incident to affect Europe. It is clear that the EU urgently needs a new system to protect consumers from being exposed to illegal and unauthorised GM ingredients in their food. Instead of reacting in a piecemeal and inconsistent way to each contamination incident as it arises, a system should be set up to more proactively monitor and test for unauthorised GM content in food and feed imports into the EU.

## Import of Ms8xRf3 GM oilseed rape into EU

On September 18th, EU Farm Ministers voted on whether to allow an oilseed rape, genetically modified by Bayer for herbicide resistance, to be imported into the EU<sup>1</sup>. More than half of Member States voted against the European Commission's proposal but under the EU decision making system (that relies on weighted votes), this was not

sufficient for the proposal to be rejected. Consequently, the final decision has now reverted to the European Commission. A decision is expected in January.

Bayer's original request to allow the oilseed rape for cultivation has been put on hold and this

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authorization request concerns only import and processing. Whilst it is positive that the commercial growing of this GM oilseed rape is not being considered, there are nevertheless a number of concerns relating to the risks of accidental seed spillage and outcrossing with wild relatives if it were to be imported into the EU.

Genetically modified oilseed rape has been surrounded by controversy in the past. In Japan, there have been several cases of imported GM oilseed rape growing wild around port areas<sup>2</sup>. It is suspected that seeds were spilled during unloading and transportation and then sprouted. In another incident, conventional oilseed rape in Australia was found to be contaminated with a GM variant.<sup>3</sup>

Oilseed rape is a member of the cabbage family, which includes hundreds of different species commonly found in Europe. EU funded research has found that oilseed rape can potentially cross with a variety of wild relatives.<sup>4</sup> UK government research reported in 2005 on oilseed rape "superweed" - the result of GM oilseed rape cross breeding with a common weed, called charlock.<sup>5</sup>

It now remains to be seen whether the European Commission will take into account the fact that

only 6 member states out of 25 voted in favour of the GM oilseed rape in September. The Commission itself stated in 1999 that it would "act in such a way as to avoid going against any predominant position which might emerge within the Council against the appropriateness of an implementing measure". Up until now however, the pro-biotech Commission has systematically voted in favour of all GMOs.

Results of the September 18th  
Agriculture Council Vote on Bayer's  
Oilseed Rape:

For import of GM OSR: Portugal,  
Germany, Finland, UK, Netherlands,  
Belgium

Against import of GM OSR: France,  
Slovenia, Austria, Estonia, Malta, Latvia,  
Italy, Greece, Lithuania, Cyprus,  
Denmark, Hungary, Poland, Luxembourg

Abstention: Spain, Sweden, Czech  
Republic, Slovakia, Ireland

**References:**

- 1 The application concerns oilseed rape lines Ms8, Rf3 and Ms8xRf3. Two out of three of these lines are fertile; therefore contamination by pollen is possible.  
The application concerns import of oilseed rape products including kernels (seeds), for use in animal feed. The same oilseed rape is already authorized for oil (1829/2003). The oil then can be used for human consumption or animal feed material.
- 2 [http://www.saveourseeds.org/downloads/oilseed\\_rape\\_in\\_japanese\\_ports\\_2005.pdf#search=](http://www.saveourseeds.org/downloads/oilseed_rape_in_japanese_ports_2005.pdf#search=)
- 3 [http://www.gmcontaminationregister.org/index.php?content=re\\_detail&gw\\_id=92%AE=0&inc=1&con=1&cof=2&year=0&handle2\\_page](http://www.gmcontaminationregister.org/index.php?content=re_detail&gw_id=92%AE=0&inc=1&con=1&cof=2&year=0&handle2_page)
- 4 <http://www.saskorganic.com/oapf/index.html>
- 5 [http://www.fooeurope.org/GMOs/publications/Biotech\\_November05.pdf](http://www.fooeurope.org/GMOs/publications/Biotech_November05.pdf)

# GM potato: Member States to decide on first GMO for cultivation in 8 years

In November, the European Commission put forward a proposal for the cultivation of a genetically modified (GM) potato<sup>1</sup>, the first cultivation application in 8 years. The GM potato produced by German corporation BASF, has altered starch production and is intended for industrial use although a second application for food and feed is currently underway. The European Commission had previously indicated that no GMOs would be considered for commercial growing until "coexistence" issues had been decided. But despite there being no EU wide measures on contamination and liability the commission appears to be caving in to industry and WTO pressure.

There are a number of weakness in the application, including EU legal requirement not being met.

## **Risk of GM potatoes entering the food chain**

Potatoes are considered low risk plants for "coexistence" since the probability of gene flow between the GM potato and conventional potato is regarded as minimal. However, all potato crops have volunteer growth. These volunteers can produce tubers, which could end up in the human food chain. GM potato regrowth due to overwintering of volunteers is a serious issue and would

contaminate future crops. Furthermore, contamination due to accidental spillage or release of tubers during transport and handling needs cannot be ignored.

There is still no EU wide law on coexistence and many member states still do not have measures in place. If authorisation is granted for this GM potato, it will cover all 25 member states and not just those with "coexistence" measures. The EU has committed itself to freedom of choice for farmers and if this is to be respected, no GMOs should be cultivated whilst there are legal loopholes that put farmers at risk of contamination.

## **EU legal requirements**

In the comments and opinions submitted by Member States for the approval of the GM potatoes for food and feed uses under Regulation 1829/2003, competent authorities from several member states have pointed out that the information given in the application concerning compositional analysis, allergenicity and toxicity of the GM potato are insufficient. However, the EFSA GMO Panel downplayed Member States' concerns and stated in its opinion from December 2005 that "the data considered indicated that there were no outstanding safety issues and therefore no further studies are

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required". Furthermore, the EFSA GMO Panel stated that " the weight of evidence from these studies, taken together, indicates that potato EH92-527-1 and derived products are no more likely to cause adverse effects on human and animal health than conventional potato, in the context of the proposed uses".

While several Member States have demanded a monitoring plan regarding food and feed, the EFSA GMO Panel has stated that "the opinion of the applicant that a post-market monitoring of the GM food/feed is not necessary (...) is shared by the GMO panel".

Effects on biodiversity have not been considered in the risk assessment. Several member states raised concerns that there are no studies about the safety of the GM potato for plant-associated organisms and biochemical processes, nor is there data available from the whole of Europe. The EFSA GMO Panel simply stated that " from the information supplied by the applicant, and from studies of relevant literature, there are no indications that this potato will cause adverse environmental impacts in the EU. " EFSA refers to the company´s field studies, mainly performed in Sweden, on research on the agronomic performance of the GM potato which is completely irrelevant for the environmental risk assessment of the GM potato on insects, wildlife and soil. Therefore, the ecological implications of cultivation of this GM potato remain unknown.

It is important to recall that at the March 2006 Environment Council, a vast majority of Ministers criticised the European Food Safety Authority for failing to conduct a proper risk assessment of GMOs and for not taking Member States´ concerns into account. The Commission itself acknowledged that the risk assessment of GMOs had to be improved to ensure that the EFSA

takes into account member states scientific objections and conducts a more rigorous evaluation of the risks of GMOs for health and the environment (including long-term effects).

### **Decision on antibiotic resistance marker genes overdue**

The GM potato contains an antibiotic resistance marker gene nptII (ARM) which leads to resistance to antibiotics, kanamycin and neomycin. According to EFSA, the use of the nptII gene in transgenic plants represents no safety risk to human health and the environment, as the above mentioned antibiotics have only been used to a minor extent in human and veterinary medicine. However, the World Health Organisation (WHO) stated in 2005 - after the EFSA opinion was issued - that antibiotics kanamycin, neomycin and gentamicin are by no means regarded as insignificant, but rather essential and very important.

According to Art. 4 of Directive 2001/18, ARM in GMOs which may have adverse effects on human health and the environment should have been phased out by the end of 2004. Nothing has been done on this despite the deadline passing 2 years ago. The Commission is working to the EFSA opinion despite more recent contradictory findings by the WHO and disregarding legal requirements under EU law.

### **Commission Proposal for authorisation is inadequate**

The draft Commission decision which EU countries are being asked to vote on and which will form the framework for any authorisation does not provide for clear monitoring provisions regarding environmental and food and feed safety, nor does it set clear and adequate safeguard measures to avoid potential contamination of the food chain.

## **BASF admits that contamination of food "cannot be excluded"**

In their application to the EU, BASF state that "it cannot be excluded that amylopectin potato may be used as or may be present in food". In this case BASF say it will be labeled as "produced from genetically modified potato".

A vote on whether to authorise this GMO is expected by EU Ministers before the end of February. A first vote by experts from Member

States in Regulatory Committee did not reach sufficient majority to give the green light to grow the potato. EU countries now need to decide whether they will approve BASF's potato based on poor quality data, low scientific standards, lack of adequate monitoring and with the risk of food contamination. The fact that this potato is not intended for human consumption, but for industrial use, should in no case be an excuse to compromise on the environmental and health risks assessment.

### **References:**

1 genetically modified (GM) potato EH92-527-1

# EU Biotech Strategy: MEP's pro-biotech proposal blocked

*A resolution on biotechnology and agriculture by Finnish Liberal MEP Kyösti Virrankoski, has been put on hold due to outrage at its one-sided pro-industry slant.*

In November Mr Virrankoski's presented his own initiative resolution "Biotechnology: Prospects and Challenges for Agriculture in Europe" at the European Parliament's Agriculture Committee of which he is a member.

The resolution contains a number of myths and unsubstantiated claims that are often seen in biotech industry marketing brochures. GMOs, according to Mr Virrankoski, will feed the world

and provide healthier food, contribute to increased yields, reduce in the use of pesticides and of fossil fuels, as well as reducing soil erosion<sup>1</sup>.

The resolution finds that progress has been slow on agricultural biotech and concludes that stringent EU GMO authorisation requirements are a hindrance to EU competitiveness. It also states that the precautionary principle "cannot be used as an excuse to delay the process [of authorizing GMOs in the EU]" and that any strict law on liability to protect farmers in cases of contamination would be a "real obstacle" to the development of GMOs.

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On research, public funds should be more closely linked to industry interests.

Whilst a Resolution such as this one is not going to be adopted as a law, it can be taken as an indication of the European Parliament's position on a given issue. This Resolution is of particular importance therefore since the European Union is currently carrying out a mid-term review of its 2002 Biotech Strategy. The European Parliament has no official input into the review process so any initiative may be taken as the EP's position on the review process. The European Commission has indeed confirmed that it is watching this Resolution closely as it prepares to publish its proposals on the review for Member States.

Mr Virrankoski presented his draft to the EP's agriculture committee on November 21st. Many MEP's disagreement and concern with the text was made obvious by the nearly 200 amendments submitted despite the Resolution being only 6 pages long. A few MEPs publicly, and

rather more privately, questioned the sources used for the report and stated that it should simply be withdrawn.

We have now heard that due to the level of opposition, translated into such a high number of amendments, the December vote in Agriculture Committee has been cancelled. It is possible that a second attempt to bring the Resolution to the vote in Committee will be scheduled in January, after which it will still need to be voted on in Plenary.

There is still time therefore for the resolution to be withdrawn or at the very least substantially rewritten. Friends of the Earth Europe, along with other environmental NGOs, farmers' organizations and the organic sector have issued a briefing paper with references to research and studies that contradict the statements made by Mr Virrankoski. It can be downloaded at <http://www.foeeurope.org/GMOs/Index.htm> under "What's new".

**References:**

1 see Biotech Mailout November 2005 for our response to similar claims made by EU Commissioner for Industry, [http://www.foeeurope.org/GMOs/publications/Biotech\\_November05.pdf](http://www.foeeurope.org/GMOs/publications/Biotech_November05.pdf)

# Member States defy WTO ruling on GMOs!

## Countries vote in favour of national bans

On December 18th, EU Environment Ministers voted against a proposal to force Austria to lift its bans on genetically modified (GM) foods and crops. The proposal was tabled by the European

Commission in response to a ruling by the World Trade Organisation (WTO) earlier this year. The Commission, pushed by Trade Commissioner Peter Mandelson, has followed the US line that

the EU has lost, and has been pressuring Member States to do the same. As stated by the Financial Times, this supposed US victory now looks "hollow".

This is the second time that the member states have voted by a qualified majority against a Commission proposal to lift the national bans. Only the UK, Netherlands, Sweden and the Czech Republic supported the Commission. It is not clear what position the Commission will now take.

### **What did the WTO panel rule?**

Firstly, the WTO panel of experts did not question the right for EU member states to ban GMOs.

Secondly, the moratorium in place at the time was found not to be illegal per se. Thirdly, the EU's regulatory and policy regime on GMOs was not put into question, nor was the right of countries to introduce strict regulatory frameworks at the national level.

### **Austrian ban ruling on a technicality**

On the basis of the information available at the time, the WTO Panel judged that the Austrian ban was unjustified as it did not meet all the requirements of the WTO Sanitary and Phytosanitary (SPS) Agreement. A similar case is that of the beef Hormones case where the EU lost, also on the basis of the SPS agreement. However, for this case, the EU decided to stand firm and maintain its ban on beef hormones and therefore US beef.

The Commission justifies this action by bringing new scientific research results to the WTO, insisting, rightly in our opinion, that new evidence on risk must be taken into account. If this is done for

hormone beef, it can, and should, be done for GMOs: when considering a new technology, one can at the very least appreciate that new evidence and scientific uncertainties are part of the process, and argue that these need to be taken into account. Furthermore, the EU's scientific arguments, presented to the Panel in 2005, found that crops - such as one of the ones you will vote on tomorrow - should not be grown commercially whilst gaps exist in our knowledge of the long term impacts<sup>2</sup>. The WTO panel did not find fault with this.

### **Biosafety Protocol**

Austria, together with all EU member states, has ratified the UN's Biosafety Protocol which allows countries to ban genetically modified crops if there is a lack of scientific certainty over their safety. The WTO disregarded the Biosafety Protocol because the complainants in the trade dispute (the US, Canada and Argentina) had not ratified it. This was, in our view, a very narrow interpretation which is not helpful to solving this tricky issue of balancing trade commitments with commitments to protect the environment.

It should also be noted that the Biosafety Protocol requires Parties to deal with non-Parties consistently with the Protocol's objectives. EU countries can therefore insist that US, Canada and Argentina follow the Protocol if they want to trade with Europe.

### **European Food Safety Authority reform needed**

If a GMO has undergone a risk assessment at the EU level, the WTO considers that any argument of insufficient information on the risk of that GMO, is invalid. This position works on an assumption of quality, independent risk assessment.

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The European Food Safety Authority (EFSA) has issued Opinions against the National bans, but as EU Environment Ministers and the European Commission found earlier this year, the European Food Safety Authority's work on GMOs has a number of shortcomings.

These criticisms stem from the fact that they have ignored every single concern raised by member states since its creation in 2002. In addition their risk assessments continually side with the industry's view and hence every single application by the industry has so far received a green light.

The EU can, and does, challenge the WTO to take new scientific evidence on board in relation to rulings. To strengthen the EU's position in this respect, risk assessment and the work of EFSA

must be truly reformed and not reduced to a problem of communication.

Member States have to decide what level of risk is acceptable to their citizens and weigh this against their trade commitments, and the vote on Austrian's bans vote was about whether democratically elected sovereign states are allowed to make that decision or not. A similar vote on Hungary's ban of a GM maize is expected in January or February and Member States are expected yet again to block the Commission.

**Further reading:**

Friends of the Earth International analysis of the WTO ruling, February 2006  
[http://www.foeeurope.org/publications/2006/WTO\\_briefing.pdf](http://www.foeeurope.org/publications/2006/WTO_briefing.pdf)

**References:**

- 1 Financial Times, December 19th 2006
- 2 Comments by the European Communities on the Scientific and Technical Advice to the Panel, Geneva, 28 January 2005; and Further scientific or technical evidence in response to the other parties' comments by the European Communities, Geneva, 10 February 2005

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**Friends of the Earth Europe (FoEE)** campaigns for sustainable and fair societies and for the protection of the environment, unites more than 30 national organisations with thousands of local groups and is part of the world's largest grassroots environmental network, Friends of the Earth International. FoEE gratefully acknowledges EU funding support.

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