




**Friends of  
the Earth  
Europe**

 HEINRICH  
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FOUNDATION

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## EU's food safety authority under suspicion of bias

### **FoE's critical report will be discussed by EFSA's Management Board**

#### Introduction

The European Food Safety Authority (EFSA) is a central piece of the procedure for the evaluation of new GMO approvals in Europe. Since it was set up, it has issued twelve scientific opinions on GM related issues which surprisingly were virtually all in favour of the biotech industry. On 29th November, Friends of the Earth Europe released a very critical review of the EFSA's work entitled "*Throwing caution to the wind - a review of the European Food Safety Authority and its work on genetically modified foods and crops*".<sup>i</sup> On the same day, the European Commission, based on advice from EFSA, asked EU Member States to vote on the import of a new genetically modified maize called MON 863 (see page 10 of this Mailout), and also on whether countries should lift national bans on some GM crops (see page 6 of this Mailout).

EFSA reacted immediately to Friends of the Earth Europe's letter to the Chair of its Management Board, which attached a copy of the report. In EFSA's press release of 29th November,<sup>ii</sup> it claimed to be acting in line with EU Regulation 178/2002, although FOE's report shows that EFSA could not fulfil some essential articles of this Regulation, such as Article 30 related to different opinions between EFSA and the Member States. FOE's report will be discussed publicly at a Board meeting "*at the earliest possible opportunity*" according to the EFSA press release.

The key points of FOE's report are:

- 1) Concern about lack of independence of some members of EFSA's GMO Panel.
- 2) EFSA and antibiotic marker genes.
- 3) EFSA and Bt 176.
- 4) Disregard of concerns of other scientists working for national governments.
- 5) EU requirements to identify levels of uncertainty were ignored.
- 6) The GMO Panel fails to heed legal requirements that attention is paid to the long-term effects of eating or growing GM foods.

### **Lack of independence of some members of the GMO Panel**

The report highlights that eight out of twenty-one members of EFSA's GMO Panel are involved in national assessments of GM food as well. According to EFSA's minutes, those panellists *"can contribute to the scientific discussions but will not take part in the final adoption of the opinion"*.<sup>iii</sup> However, the fact that more than one-third of the panellists were already involved in assessment at national level - and, therefore, had previously reached their conclusion about safety at national level - raises a serious question about the role of the GMO Panel, which is supposed to resolve the scientific and technical problems on which Member States cannot reach agreement.

Furthermore, five members of the Panel, including the Chair, were involved with industry on the project entitled ENTRASFOOD, which was funded by EU. The purpose of the project was to agree safety assessment, risk management and risk communication procedures that would *"facilitate market introduction of GMOs in Europe"*.<sup>iv</sup> FoE is concerned that so many members of EFSA's GMO Panel were involved in a project which had the stated aim of facilitating market acceptance of

GM crops, and which involved working closely with the biotech industry. The significance of the ENTRASFOOD project can be seen from the way it has apparently influenced opinions of the GMO Panel. Indeed, Friends of the Earth has revealed that, for example, assessments of antibiotic-resistant marker genes made by ENTRASFOOD and the GMO Panel were virtually identical, even down to the wording used.

FOE's report also reveals that one member of the Panel has a direct financial interest in the biotech industry, and that four panellists have helped with promotional activities for the industry.

Finally, the research shows that one of the ad hoc experts of the GMO Panel has worked for the biotech industry and, on several occasions, has made no secret of his views in favour of GMOs.

### **EFSA and antibiotic-resistant marker genes**

The use of antibiotic-resistant marker genes (ARMs) in GM foods and crops remains highly controversial. Biotech companies continue to use ARMs to identify whether the insertion of novel genes was successful or not, despite the fact that many concerns have been raised concerning their safety. The EU's deliberate release Directive 2001/18 states that there should be identification and phase-out of ARMs which *"may have adverse effects on human health and the environment"*, but EFSA's opinion went beyond EU law in its evaluation on ARMs, taking *"into account the limited availability of alternatives"*. Friends of the Earth believes, however, that the interests of the biotechnology companies should not interfere with the evaluation of the negative impacts on human health and the environment.

## EFSA and Bt 176

Syngenta's Bt 176 GM maize contains a gene for ampicillin resistance (*ampR*) that has raised serious concerns. Research has shown the inconsistency of EFSA when it gave a negative opinion on the Austrian government's ban of Syngenta's Bt 176 maize. On one hand, the GMO Panel classified the *ampR* as being in a group for which use "should be restricted to field trial purposes and should not be present in GM plants to be placed on the market". On the other hand, when it was later asked to consider the Austrian Bt 176 ban, it stated that it was "of the opinion that the use of these genes should be avoided in **future** GM plants to be placed on the market" and that, therefore, the Austrian Government did not have a good case for a ban. In FoE's view, it is illogical for EFSA to argue that a GMO is safe if it believes that, in the future, similar crops should not be allowed on safety grounds.

In this regard, the Spanish food safety authority decided earlier this year that Bt 176 would not be permitted for cultivation from January 2005 (see Biotech Mailout July 2004). In other words, EU national authorities are more cautious about GM crops than EFSA.

## Disregard of concerns of other scientists working for national governments

According to EU Regulation 178/2002 (Article 30), when different scientific opinions emerge, EFSA and the Member State(s) "are obliged to co-operate with a view to either resolving the divergence or preparing a joint document clarifying the contentious scientific issues and identifying the relevant uncertainties in the data. This document should be made public". To date, however, there has been no evidence of serious attempts to resolve the numerous differences of

opinion between Member States' experts and the Authority. Certainly no joint document has been made public which shows attempts to resolve differences of opinion. Examples of differing opinions between EFSA and national experts include:

Monsanto's MON 863 maize - In this case (see Biotech Mailout October 2004, page 8, and this Biotech Mailout, 10), Member States raised a large number of concerns about the quality of the assessment carried out on MON 863. The GMO Panel, nevertheless, delivered a positive opinion, and dismissed every single one of the concerns and questions listed in its opinion as having been raised by scientific committees of the Member States. Later, when Germany asked EFSA for additional testing, it reaffirmed its opinion on the safety of MON 863 and said that there were no "indications of the occurrence of unintended effects". This seems astonishing, as it is hard to credit that so many scientists across Europe could be wrong in their concerns. It appears, therefore, that EFSA takes a far less precautionary approach to food safety than many of the Member States' own scientific bodies.

Monsanto's GM oilseed rape GT 73 - Several Member States raised concerns that one of the rat feeding studies showed higher liver weights for rats fed on GT 73 oilseed rape. The GMO Panel concluded only that this is an "incidental finding". It also seemed unconcerned with the quality of evidence provided by the applicant, despite the fact that EFSA itself had to discard the results of three feeding studies submitted by Monsanto because the animals had been fed a mixture of GT 73 and another GM oilseed rape. In contrast, the UK's statutory scientific committee on animal feed safety stated that "it could reach

Continued on Page 4

*a conclusion only on receipt of satisfactory data*". Here again, Member States appear to be adopting a more precautionary position than EFSA.

Two Member States also raised concerns about the impact of glyphosate residues in the GM oilseed rape and the fact that no information on this issue had been provided by Monsanto. Pesticide residues in food have the potential to cause health implications for consumers and it is, therefore, important to know what the likely level of these residues might be. However, the GMO Panel could not examine this issue because Monsanto simply refused to provide the data, saying that it had already been provided under the EU's 91/414 procedures for assessing pesticides.

### **EU requirements to identify levels of uncertainty were ignored**

The Commission Decision 2002/623/EC sets out guidance for applicants wishing to market a GMO on how to conduct the environmental risk assessment (ERA), which includes a specific requirement to identify the level of uncertainty relating to assessments of risk and decisions made. The requirement to consider uncertainty is also placed firmly upon EFSA by the Commission's Communication in 2000 on the use of the Precautionary Principle in policy and decision-making.<sup>v</sup>

However, EFSA's GMO Panel has not addressed uncertainty as outlined above in its opinions, even in the case of unexpected results. For example, in the case of Monsanto's NK 603 maize which the Commission recently authorised for commercialisation, EFSA noted that "2 or more" new and unintended messenger RNA species

could be produced as a result of transcription starting within the inserted DNA sequence and continuing into the native maize genetic material.<sup>i vi</sup> Such a transcription event indicates that there could be an unintended effect on the genetic functioning of the GMO. However, the GMO Panel simply asserted that this is not a concern because the unpredicted transcription "**is not expected to have a regulatory function**" (emphasis added). However, the situation is not that simple because the GMO Panel failed to mention that there is still scientific uncertainty relating to the expression of such unknown RNA and the role of non-coding RNAs and RNA in genetic function.<sup>vii viii ix</sup> The importance of such an omission is shown by the fact that the GMO Panel's conclusion about the unintended RNA supports its overall conclusion that no unintended effects have occurred as a result of the modification.

### **GMO Panel fails to heed legal requirements that attention is paid to the long-term effects of eating or growing GM foods**

Article 14 of EU legislation on food safety (Regulation 178/2002) calls for the assessment of the long-term effects of GMOs and effects of subsequent generations. To date, EFSA's GMO Panel has not required the investigation of any long-term tests of any GM crop. The long-term effects of eating or growing GM foods seem to be completely ignored.

### **Conclusions**

The European Commission is using EFSA's opinions as justification to give the green light to approval of new GMOs in Europe, despite the fact that the Member States remain split over the long-term safety and desirability of GMOs. In its report, Friends of the Earth Europe, therefore,

makes the following recommendations to the Management Board of EFSA:

- 1) The scientists who are involved in the national assessments of GM foods, have direct financial interests with industry, or have helped with promotional activities for the biotech industry, should be immediately replaced. That includes the Chair.
- 2) Panel members should not work with industry on projects such as ENTRANSFOOD. In order for the Panel to gain public trust, members need to be seen to be completely independent.
- 3) Ad hoc experts should declare their interests as required under Regulation 178/2002. Scientific Panels should also make public the reasons why particular experts are chosen.
- 4) An independent panel should scientifically review all the opinions produced so far by the GMO Panel, and the results of those reviews should be conveyed to Member States and the public.
- 5) EFSA should apply Article 30 of Regulation 178/2002 and work with Member States to resolve the divergence of scientific views. If this cannot be done, then they need to prepare a joint document clarifying the contentious scientific issues and identifying the relevant uncertainties in the data. This is a legal obligation.
- 6) The GMO Panel must follow EU legislation and identify scientific uncertainty, take into account differing scientific opinions, and pay attention to the long-term effects of eating or growing GM foods.
- 7) EFSA should introduce the Precautionary Principle as one of its key policies, and ensure that opinions relating to public and environmental safety are not influenced by the economic concerns of the biotech industry.

## References:

- i Full report at: <http://www.foeurope.org/GMOs/publications/EFSAreport.pdf>
- ii [http://www.efsa.eu.int/press\\_room/press\\_statements/716/pr\\_state01\\_gmo\\_v2\\_en1.pdf](http://www.efsa.eu.int/press_room/press_statements/716/pr_state01_gmo_v2_en1.pdf)
- iii Minutes of the 3rd plenary meeting of the scientific Panel on genetically modified organisms, 2 October 2003 [http://www.efsa.eu.int/science/gmo/gmo\\_meetings/170-en.html](http://www.efsa.eu.int/science/gmo/gmo_meetings/170-en.html)
- iv Entransfood website - <http://www.entransfood.com> - expected achievements.
- v Communication from the Commission on the precautionary principle IP/00/96 Brussels, 2 February 2000.
- vi Opinion of the Scientific Panel on Genetically Modified Organisms on a request from the Commission related to the safety of foods and food ingredients derived from herbicide-tolerant genetically modified maize NK603, for which a request for placing on the market was submitted under Article 4 of the Novel Food Regulation (EC) No 258/97 by Monsanto1 (QUESTION NO EFSA-Q-2003-002) The EFSA Journal (2003) 9, 1-14
- vii Mattick JS, Gagen MJ (2001) The Evolution of Controlled Multitasked Gene Networks: The Role of Introns and Other Noncoding RNAs in the Development of Complex Organisms. *Molecular Biology and Evolution* 18(9): 1611-1630.
- viii Grewal SIS, Moazed D (2003) Heterochromatin and Epigenetic Control of Gene Expression. *Science* 301(5634): 798-802.
- ix Dawe RK (2003) RNA Interference, Transposons, and the Centromere. *The Plant Cell* 15(2): 297-301.

# Member States vote against Commission proposals to end national GMO bans

In the last issue (see Biotech Mailout October 2004, page 5), we reported about the proposals of the European Commission to end the national bans that some Member States introduced against certain GMOs under the safeguard clause of EU Directive 90/220. On 29th November, the Commission's proposals were presented to the Regulatory Committee, on which all EU Member States are represented in accordance with the "comitology" procedure of the EU. This procedure implies that Member States can only reject a proposal from the Commission if they reach a qualified majority against it (i.e. currently 232 out of a total of 321 votes). Each Member State has a defined number of votes under this procedure, based on the size of its population.

The vote on the national bans took place at a recent meeting of the Regulatory Committee on the deliberate release of GMOs into the environment. Despite the fact that a majority of countries voted to keep the various national bans, they failed to get the qualified majority of 232 out of 321 votes against the Commission's proposals. However, in the case of the national bans of Syngenta's maize Bt 176 in Germany, Austria and Luxembourg, the Commission narrowly escaped a qualified majority against its proposal, with 221 votes opposing it. In fact, only the United Kingdom, The Netherlands and Portugal voted in

favour of the Commission's proposal to lift the bans on Bt 176.

## Decision passes to the Council of Ministers

The Commission will now probably send the same proposals to a Council of Environment Ministers meeting, possibly in March 2005, at which time the Ministers will have the opportunity to halt this initiative by the Commission. However, if the Ministers also fail to reach a qualified majority, the matter then reverts back to the Commission, which would be able to order an end to the eight national bans.

At this stage, it remains to be seen if the new European Commission will take a less pro-GM approach than the previous one. The outgoing Commission had been gaining unpopularity with its push for GMOs in Europe since this is perceived by the public as a direct result of the dispute in the World Trade Organisation (WTO) started by US, Argentina and Canada last year.

Following a call by Friends of the Earth in advance of the 29th November meeting, almost 10,000 people sent e-mails to their governments protesting against the Commission's proposals to lift the national bans.

### How the Member States voted on the Commission's proposals to end national GMO bans (Regulatory Committee - 29th November 2004)

Country bans	AT	AT	AT, LU, DE	GR, FR	FR
GMO ban	Maize T25	Maize MON 810	MaizeBt 176	Oilseed rape T19/2	Oilseed rape MS1Bn
BE	no	no	no	no	no
CZ	-	yes	no	-	-
DK	-	-	-	-	-
DE	no	no	no	no	no
EE	-	-	-	-	-
GR	no	no	no	no	no
ES	-	-	no	-	-
FR	no	no	no	no	no
IE	-	-	-	-	-
IT	no	no	no	no	no
CY	no	no	no	no	no
LV	-	-	-	-	-
LT	no	no	no	no	no
LU	no	no	no	no	no
HU	no	no	no	no	no
MT	no	no	no	no	no
NL	yes	yes	yes	yes	yes
AT	no	no	no	no	no
PO	no	no	no	no	no
PT	yes	yes	yes	yes	yes
SI	-	-	no	-	-
SK	-	yes	-	-	-
FI	-	-	-	-	-
SE	-	-	-	-	-
UK	yes	yes	yes	yes	yes
Results					
Votes in favour	54	73	54	54	54
Votes against	<b>178</b>	<b>178</b>	<b>221</b>	<b>178</b>	<b>178</b>
Abstentions	89	70	46	89	89

Qualified majority : 232/321

Blocking minority : 90/321

# Member States say "no" to MON 810 seeds

The move by the European Commission to list 17 genetically modified (GM) maize varieties derived from Monsanto's MON 810 in the European Union's Common Catalogue of Seeds was seen as premature by the majority of the EU Member States. In fact, 15 out of 25 EU Member States believe that as long as there is no legislation on coexistence, the listing of GM seeds in the European Common Catalogue should not have happened.

At the 18th October meeting of the EU's Council of Agriculture Ministers, Denmark and Italy suggested that the listing of 17 varieties "*should not have been done until publication of the Commission's report on experience with the Member States' implementation of rules governing coexistence*". The statement was also supported by Austria, Belgium, the Czech Republic, Germany, Greece, Hungary, Latvia, Luxembourg, Poland, Slovenia, Spain and The Netherlands.<sup>i,ii</sup>

In the European Commission's Recommendation on coexistence published in mid-2003,<sup>iii</sup> it was stated that the Commission would report on the coexistence experience two years after the Recommendation. Before July 2005, therefore, the Commission will have to evaluate the work that EU Member States have done to set up

coexistence measures. So far, only Denmark, Germany and Italy have finished their homework, which shows how premature it is to allow cultivation of GMOs in Europe while Member States are still working on the creation of coexistence laws.

Such concerns have been echoed in Poland. The Ministries of Agriculture and of Environment released a joint statement regarding the decision to allow cultivation of in EU. In the statement, they stressed their concerns about the fact that Polish farmers could grow the GM maize in 2005, since the Polish government is still drafting a law on coexistence to minimise the risk of GMO contamination. They also highlight that the varieties of MON 810 maize "*have not been investigated yet*" in Poland and that due to "*their specific climatic requirements they may not be suitable for cultivation in Poland*".<sup>iv</sup> Monsanto's maize MON 810 was originally approved in 1998 and, therefore, Poland was never been involved in the decision-making process for evaluation and approval of this GMO. For those reasons, the Polish government is considering "*the possibility of applying to the European Commission to ban growing of maize MON 810 in Poland*". As yet unconfirmed reports indicate that Hungary might also introduce a ban on MON 810, for similar reasons.

## References:

- i Cordis News, European Communities.
- ii The statement of Poland, Denmark and Greece are available at: [http://www.zsl.de/saveourseeds/news/international/2004\\_10\\_27\\_archiv.html#109888650540080430](http://www.zsl.de/saveourseeds/news/international/2004_10_27_archiv.html#109888650540080430)
- iii "Commission Recommendation of 23 July 2003 on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming (2003/556/EC)"
- iv A Free translation into English of the Polish statement "Statement on growing of genetically modified maize. Ministry of Agriculture and Rural Development and Ministry of Environment." are available at: [http://www.foeeurope.org/GMOs/Polish\\_Env\\_Min\\_MON810\\_statement.pdf](http://www.foeeurope.org/GMOs/Polish_Env_Min_MON810_statement.pdf)

# Tough GMO law adopted in Germany

On 26th November, the German Parliament (Bundestag) adopted a new GMO law that implements EU Directive 2001/18 and that protects consumers and farmers against the risks of genetically modified (GM) foods and crops (see Biotech Mailouts April 2004 and July 2004). The law introduces the principle that GM farmers and GM operators are financially liable for economic damage caused if their crops contaminate non-GM products.

The most important provisions of the law are:

- In case of economic damage (e.g. when organic or conventional farmers cannot sell their products due to the presence of GM material), the neighbouring farmers growing GM crops are liable.
- If it is not clear which farmer has caused the contamination, the principle of joint liability of all neighbouring GMO farmers will apply. This means that a farmer who has sustained damage will be free to decide which neighbour to claim compensation from.
- A register with precise information about where it is intended to release GM crops will be publicly available.

Friends of the Earth believes that these provisions will give GM farmers and GM operators a strong incentive not to contaminate neighbouring fields, thus helping to ensure freedom of choice for the overwhelming majority of German and EU consumers who do not want to eat GM foods.

## Some loopholes remain

Nevertheless, the German law also contains loopholes and could still be improved. Most importantly, the law hardly covers damage to the environment as a result of GM crops. In effect, the protection that the law offers for ecologically sensitive zones is restricted to 'Natura 2000' areas which only form 2.5% of the surface area of Germany. Field trials, the use and handling of GM crops in such areas are only allowed if GMOs do not cause damage to the environment. The question remains, however, as to how a competent authority can prove that GMOs threaten the environment in a way that would justify a ban in a specific area.

## Under threat from the Commission?

Friends of the Earth is concerned that the European Commission might want to overrule the German law by taking Germany to the European Court of Justice. In a leaked document (in German only, available from Friends of the Earth) from July 2004, the Commission already hinted in this direction. Friends of the Earth firmly believes that the European Commission should not threaten the protective measures and civil rights that the German Parliament has put in place.

For a detailed English summary of the German GMO law, please see the website of the German Federal Ministry of Consumer Protection, Food and Agriculture:

<http://www.verbraucherministerium.de/index-000265812B89107E9DEC6521C0A8D816.html>

# National experts still split over safety of Monsanto GM maize

On 29th November, the European Commission asked the Regulatory Committee on the deliberate release of genetically modified organisms (GMOs) into the environment to vote on the approval of Monsanto's MON 863 maize. This followed the last-minute deferral of the vote by the Commission two months previously, on 20th September, when it was apparent from voting intentions that the Commission's proposal to approve MON 863 would not find favour with the Member States (see Biotech Mailout October 2004, page 8).

## Results of the vote

For the ninth time in succession,<sup>1</sup> and despite a shift in the vote of some countries during the intervening period, the Commission's attempts to gain sufficient backing of Member States failed yet again. Only 8 out of 25 countries voted in

favour of MON 863, whereas 12 countries voted against, and 5 abstained.

## EFSA's puzzling conclusions

Prior to the vote, the European Food Safety Authority (EFSA) had been asked by the Commission to reconsider its opinion on the safety on MON 863 based on a new feeding study, using rats, which had been submitted to the Commission by the German authorities, and which suggested that an additional provision should have been used in the testing protocol.

The additional test would provide additional information on whether any observed adverse effects resulted from unintended alterations in the GM maize, such as the creation of unexpected toxins. EFSA's GMO Panel acknowledged in their response that such an approach "is worth-

### Comparative vote in the 2001/18 Regulatory Committee:

	Intended vote on 20th September	Vote on 29th November
In favour	Estonia, Finland, Netherlands, UK	Estonia, Finland, France, Germany, Netherlands, Portugal, Sweden, UK
Against	Austria, Belgium, Cyprus, Denmark, France, Greece, Hungary, Italy, Malta, Latvia, Lithuania, Luxembourg, Slovenia	Austria, Belgium, Cyprus, Denmark, Greece, Hungary, Italy, Malta, Latvia, Lithuania, Luxembourg, Slovenia
Abstention	Czech Republic, Germany, Ireland, Spain, Poland, Portugal, Slovakia, Sweden	Czech Republic, Ireland, Spain, Poland, Slovakia,

while in case there are indications of the occurrence of unintended effects with the GM food/feed derived product". But it went on to state that: "This is however not the case with MON 863 maize". This is a puzzling conclusion because, in its original opinion, the Panel stated that it was: "reassured by the availability of a 90-day sub chronic toxicity study using MON 863 maize fed to rats... which provides evidence that no harmful novel proteins have been created". In other words, the Panel used the study as support for its conclusion that no unintended effects had occurred in the GM maize, while at the same time stating that it was unnecessary to include in that study measures to detect unintended effects.<sup>ii</sup> Moreover, the GMO Panel has not provided any clear guidance as to what it considers to be "indications of the occurrence of unintended effects". In the case of Mon 863 maize, it would appear that even statistically significant differences in blood values of animals fed GM and non-GM maize were not

believed by the Panel to indicate that no unintended effects had occurred!

## Conclusions

This vote demonstrates that the EU deadlock on GMOs is far from being resolved. The EFSA opinion used by the European Commission to approve this Monsanto maize failed, once again, to convince a majority of countries. In fact, a very significant majority of 17 out of 25 Member States either abstained or voted against this second attempt by the Commission to gain the Regulatory Committee's endorsement of MON 863.

Faced with such an on-going lack of support for its proposals, it remains to be seen for how much longer the Commission will continue to approve GM food and feed without the support of the Member States.

## References:

- i We include the first indicative vote on MON 863 on 20th September to illustrate the number of Member States that did not intend to support the Commission's proposal.
- ii [http://www.efsa.eu.int/science/gmo/statements/666/sr\\_gmo01\\_statement\\_study\\_mon863\\_en1.pdf](http://www.efsa.eu.int/science/gmo/statements/666/sr_gmo01_statement_study_mon863_en1.pdf)

# Dutch agreement on Coexistence:

## Will the Netherlands become the dirty man of Europe?

On 2nd November, four Dutch organisations signed a voluntary agreement concerning the coexistence between genetically modified (GM), conventional and organic crops. The four organisations are: the main stream farmers' organisation LTO, the organisation for the organic sector Biologica, the farmers' organisation ABC, and

Plantum NL, an organisation of plant breeders that also represents some of the Dutch biotech companies. Consumers and environmental organisations were not involved in the deal and were only allowed observer status during the negotiations.

## A "voluntary" agreement

In 2003, a debate already started in The Netherlands about coexistence between GM and non-GM agriculture. Like in other European countries, there was wide recognition of the wish of consumers to eat food that is not genetically modified. Also, most politicians were convinced that additional measures were necessary in order to avoid the unwanted presence of GMOs in other products, and to secure the right of farmers and consumers to choose products without GMOs. However, in a debate in November 2003 in the Dutch Parliament, the Dutch Minister of Agriculture Veerman made it clear that he preferred a voluntary deal between organic farmers, conventional farmers and the biotech industry. He left it unclear, however, what would happen if such an agreement were not achieved. There was, therefore, a clear threat that the Dutch government would not propose any coexistence measures if a "voluntary" deal was not reached. In such case, organic and conventional farmers would be completely unprotected from genetic contamination.

## Only cultivation covered

After almost one year of difficult negotiations, which were facilitated by the Dutch government, the four organisations finally reached an agreement. In the introduction to the agreement, it is stressed that only the "primary sector" is covered. Neither the production of seeds, nor the trade in and processing of finished agricultural products are included. Nevertheless, as the agreement stresses "the phase before cultivation" is "strongly determining" the realisation of coexistence in the primary sector. In other words, the higher the percentage of GMOs that seeds contain, the more difficult it will be to achieve coexistence during cultivation.

The most important provisions of the agreement are the following:

- Admixture of GM products with non-GM products should be "as low as possible". However, no figure is mentioned.
- Anyone who wants to grow GM crops during a certain season has to register at the Dutch Ministry of Environment and Spatial Planning before 1st February of the year in question. The register is not open to the public, but only to those who can show a "justified interest". This seems to be in defiance of article 31.3.c of EU Directive 2001/18, which states the requirement for public registers.
- Growers who want to be recognised as growing for a GM-free market also have to register before 1st February.
- Those who grow GMOs have to respect an agreed separation distance, which differs for each crop (see below). This means that (depending on the crop) a certain distance to the adjacent field has to be kept free of GMOs by the GMO grower.
- Separation distances have only been agreed for three crops (maize, potato and sugar beet).
- Remarkably, the agreement specifically mentions that no coexistence agreement on oilseed rape has been reached.<sup>1</sup>
- There are two different sets of separation distances. One set applies when organic farmers or registered non-GM farmers are involved. In those cases, the separation distances are: 3 meters for sugar beet, 10 meters for potatoes and 250 meters for maize. In all other cases, the separation distances are: 3 meters for potatoes, 1.5 meters for sugar beet and 25 meters for maize. The agreement contains a clause that allows for adjustment of these distances if monitoring shows that they do not lead to the desired objective of coexistence.

- In case the GM farmer respects the agreed separation distance, he or she will not be responsible for damage to (registered) non-GM producers as a result of admixture between GM and non-GM products.
- A fund will be put in place that compensates farmers who have suffered economic damage as a result of the unwanted contamination of their crops with GMOs. This fund will provide compensation for all those cases in which a GM farmer cannot be held responsible for damage caused. Curiously, the fund will be sourced from contributions of all parties involved, including organic farmers. The Dutch state (and hence the taxpayer) will also contribute to the fund. The agreement, however, does not specify which party will pay what percentage to the compensation fund - the amount is supposed to be agreed at a later stage.

### "Details" not agreed

Many people who are not familiar with the situation in The Netherlands wonder how it is possible that a voluntary agreement between four organisations can become legally binding. The reason is that The Netherlands has a unique consensus system ("polder model") which exists nowhere else in the world. This consensus system means that, in certain cases, a legal arrangement can be installed on the basis of an agreement between private parties. In the case of the coexistence agreement between LTO, Biologica, Plantum NL and ABC, the Hoofd Productschap Akkerbouw (a public body dealing with agriculture) will make a regulation implementing the provisions of the agreement. In this regulation, several "details" of the agreement will be developed further. Most importantly, it still has to be decided how much each party, including the government, has to contribute to the compensation fund.

### Responses to the agreement

The response to the Dutch agreement from the biotech industry has been positive. A spokesperson for the NIABA - the Dutch association of the biotech industry - even told the Dutch daily newspaper De Telegraaf that the Dutch agreement could serve as an example for the whole of the EU. However, the probability that the deal is taken up anywhere else in Europe is low, since the consensus model only exists in The Netherlands, and other parliaments in Europe are unlikely to accept that private parties decide how such an important issue as coexistence will be regulated.

Furthermore, it is highly improbable that organic farmers anywhere else in Europe are prepared to co-finance the problems caused by the biotech industry! This has been made very clear by the EU group of the International Federation of Organic Agricultural Movements (IFOAM) reaction. In a statement responding to the Dutch agreement, the organisation said - among other things - the following:

"The IFOAM EU Group criticises the GM industry and the Dutch government for pushing the GM-free sector to sign an agreement which forces organic and GM-free-producing conventional farmers to pay into the proposed collective fund for providing compensation for damages to non-GM farmers from GM contamination, alongside contributions from the GM industry. Consumers as taxpayers also will pay towards this fund as the government plans to pay for the establishment of the fund and for exceptional claims. The GM industry has shown once again that they are only interested in profiting from GM crops and are not prepared to take responsibility for the damage their activities cause to the rest of society. On the question of the financing of the compensation fund, the IFOAM EU group urges the Dutch

Government to immediately withdraw the current proposal and consult the public and farmers before adopting final proposals".

### Friends of the Earth's comments

Friends of the Earth believes that the Dutch coexistence deal will not be acceptable in other EU countries. First of all, the deal is undemocratic, since the Parliament was not involved and important stakeholders such as consumer organisations, retailers and environmental NGOs were kept out of the crucial phase of the negotiations. Furthermore, the separation distances are unrealistically low, especially since the agreement aims to achieve levels of GM contamination that are "as low as possible". Therefore the agreement provides insufficient protection for the environment and offers no guarantees to the vast majority of European and Dutch consumers who want to avoid genetically modified food.

On top of that, for Friends of the Earth it is totally unacceptable that those who suffer GM pollu-

tion, and taxpayers, will have to contribute to costs that are caused by an industry which seeks to profit from genetic engineering. Consequently, Friends of the Earth has criticised the Dutch organic association Biologica and the other signatories for agreeing to the deal.

FoE further points out that The Netherlands, one of the few EU countries that is still fully supporting GMOs (see page 7 of this Mailout) runs the risk that it will be seen as the "dirty man of Europe" if it pushes ahead with this coexistence deal. That could have a major impact on the export of Dutch agriculture products to other countries, such as Germany.

Instead of proceeding with the voluntary agreement, Friends of the Earth has called on the Dutch parliament, which will again debate coexistence in January 2005, to reject this deal and to present a legislative proposal that strikes a better balance between the interests of industry, farmers, consumers and the environment.

### References:

i This is already the second time within the past few months that such a conclusion was reached. In Denmark, researchers recently concluded that coexistence for oilseed rape is not possible. Therefore, oilseed rape is not part of the Danish coexistence law (see Biotech Mailout of April 2004).

# World conservationist union calls for moratorium on GMOs

On 22 November IUCN (the World Conservationist Union) called for a moratorium on the further release of genetically modified organisms.

IUCN (the World Conservationist Union) is a unique Union. Its members from some 140 coun-

tries include 77 States, 114 government agencies, and 800-plus NGOs. More than 10,000 internationally-recognised scientists and experts from more than 180 countries volunteer their services to its six global commissions.

At the Members Business Assembly, the amended resolution "A moratorium on the further release of genetically modified organisms (GMOs)" was approved with 84 votes of State Members in favour of it, 48 against and 12 not taking a position. Amongst the NGO Members, 219 voted in favour of the resolution, 22 against and 59 abstained. Each State Member has three votes, NGO Members have one.

Here are the most important passages from the resolution:

The World Conservation at its 3rd Session in Bangkok, Thailand, 17-25 November 2004:

NOTING that there has been a promotion of GMO products worldwide, especially in developing countries, with little or no controls on their entry into national or regional markets; and that there is growing concern over their safety for human and animal health;

CALLS for a moratorium on further environmental releases of GMOs until they can be demonstrated to be safe beyond reasonable doubt;

The full motion text can be found here:  
<http://www.iucn.org/congress/members/MotionsEngFin1-for-web.pdf>

## Albania urged to adopt EU-compatible GMO legislation

Albania is only a small country with a population of barely 3 million people. However, more than half of the Albanian population lives and works in rural areas. If GMOs were to be introduced in the country on a big scale, this would therefore have huge implications on many people's lives, both as consumers and producers. Multinational seed and agrochemical corporations, which produce and control GMOs, would start to dominate agriculture. Seeds would be patented and farmers would no longer be free to save seeds for the next season. Local food culture - of considerable importance in any Mediterranean country - could decline or even disappear completely.

Against this background, it is understandable that the GMO issue is among the most hotly debated in the country. Over the last three years the debate has been prominently present in the Albanian press and in Albanian politics. It start-

ed in 2002 when the Ministry of Environment presented a draft law on biodiversity, in which five articles on GMOs were included. The five GMO articles imply that GMOs can enter Albania and that only an approval - without further risk assessment and debate - of the Ministry of Environment is needed.

### Political and public opposition to GMOs

However, the controversial articles have already been waiting for two-and-a half years to be voted on by the Albanian Parliament, due to strong resistance from scientists and civil society. In June 2003, a group of 24 university professors organised a roundtable and issued an appeal to the Albanian Parliament for a moratorium on GMOs, to be imposed until proper legislation to protect consumers and the environment against the risks of GMOs is put in place. In the same

month, a Parliamentary Commission voted in favour of a five year ban on GMOs, a vote that was soon (in July 2003) followed by a decision of the Parliament's plenary to postpone the vote on the proposals of the Ministry of Environment.

## **GMOs imported as food aid**

Meanwhile, the government had already approved the import by USAID of genetically modified maize and soya as food aid, leading to protests by environmentalists in the harbour of Durrës in October 2003. These protests were followed by the publication of tests (conducted by the Organic Agriculture Association of Albania) showing that the GMOs that were entering Albania were not approved in the EU. Following these revelations, the Albanian government decided to put an end to the import of GMOs as food aid.

In April 2004, the debate on GMOs gathered fresh impetus when five communes from the Vlorë region declared themselves a GMO-free zone. This was followed by a decision in the Parliament on 15th July 2004 to postpone, yet again, voting on the proposals of the Ministry of Environment.

## **Commission urges EU-compatible legislation**

In the meantime, the European Commission has also started to intervene in the debate. In its

Stabilisation and Association Report 2004 on Albania, the Commission writes: "*The Government should pay more attention to law enforcement in order to ensure greater progress, particularly in the area of animal health, phyto-sanitary services and food safety so that Albanian products may qualify for export. In this context, it is important that any new legislation on genetically modified organisms (GMOs) takes due account of the EC approach and initiatives in this sensitive area*".

These words have made Albanian environmentalists and other GMO critics optimistic that the GMO debate in Albania will finally move in the right direction. They are hoping that Albania adopts GMO legislation that is similar to the EU. Although not perfect, the adoption of such legislation would be much better than the current situation, where there is no regulation at all.

The EU is Albania's main commercial partner, representing about 75% of Albania's total imports and around 90% of its total exports. Moreover, there is a clear wish among the Albanian political elite to enter the EU. It is hoped and expected, therefore, that the recommendation in the EC's Stabilisation and Association Report will play an important role in the debate on GMOs in the Albanian Parliament, which is scheduled to take place in early 2005.

For more information, see: [www.organic.org.al](http://www.organic.org.al)

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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.

**The Biotech Mailout is printed quarterly and is also available online at [www.foeeurope.org/GMOs/Index.htm](http://www.foeeurope.org/GMOs/Index.htm)**

**If you wish to feedback on the articles in this edition of the Biotech Mailout or if you wish to receive a copy of the Biotech Mailout by email or in print email us at [info@foeeurope.org](mailto:info@foeeurope.org)**

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