

# Biotech Mailout

Information from the Biotechnology Programme of Friends of the Earth Europe

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**Friends of  
the Earth  
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## New EU moratorium on GM cultivation

The EU Environment Commissioner has blocked all new applications for growing GM crops in Europe. According to newspaper reports, Stavros Dimas has ordered all applications to be halted until the issues of co-existence and the contamination of seeds are addressed at a European level. The new moratorium is likely to be a big set back for the biotech companies; they were hoping this year would see the first approval to grow GM crops for seven years.

The moratorium has the potential to last a long time. The Agriculture Commissioner, Mariann Fischer Boel, has still not made any clear commitment to bring in EU laws for coexistence, and the seed contamination issue is a long-running dilemma for the Commission with no solution in sight. Neither issue looks likely to be solved this year. However, while solutions to these problems are key to protecting GM-free farming and consumer choice, another area of debate is rising up the agenda. A clash of opinions looks likely about how to assess the impact of approving GM crops for cultivation on EU biodiversity.

### **GM maize**

There are currently two applications to grow GM maize nearing completion in the EU. The front-runner is called 'I507' and is made jointly by Pioneer Hi-Bred International (a subsidiary of DuPont) and Dow AgroSciences. Not far behind is Syngenta's Bt11 maize. Both GMOs are insect-resistant Bt maize; they have been engineered to resist insect pests by producing an insecticidal 'Bt' toxin which can also be harmful to other insects, including butterflies and moths. Both GMOs recently received positive opinions from the European Food Safety Authority.

The two applications followed a seven year pause in approvals. This pause resulted from Member States' concerns that the previous

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approval procedure did not require a sufficiently rigorous environmental risk assessment; GMOs could be approved that might turn out to be harmful to the environment. New procedures were laid down in Directive 2001/18, and these require the company, Member States and the Commission to assess a wider range of environmental issues than before, including consideration of indirect effects on wildlife and the environment.

In line with this new approach, Member States across the EU assessed the application for '1507' maize, and the consequences for wildlife of growing it. In their comments<sup>1</sup>, made last year, fifteen out of seventeen national authorities raised concerns about the effects of the GM maize on 'non-target' organisms such as European butterflies and moths, predatory insects, soil organisms and parasitoids. Some countries mentioned that the application gave almost no consideration to the climatic and ecological differences across the 25 countries of the EU. Moreover, because the toxin produced by the GMO is specifically toxic to butterflies and moths, it was pointed out that the biotech companies had failed to provide any information about the risks for European species. As a result of these concerns, the majority of Member States made objections to the approval of the GMO for cultivation in Europe.

### **EFSA gets involved**

The Commission then asked the European Food Safety Authority (EFSA) to provide an opinion on the safety of the GM maize. In January 2005, the GMO Panel of EFSA published its findings about the environmental safety of the GM maize, and concluded that: "*the information available for 1507 maize addresses the outstanding questions raised by the Member States*". Not only this, but the Panel stated that it: "*agrees with the assessment of the applicant*", effectively dismissing all the concerns of the Member States. The conclusion of the GMO

Panel was in sharp contrast to that of the national level authorities from whom there was broad agreement in entirely the opposite direction.

Against the background of Directive 2001/18, the GMO Panel's Opinion makes surprising reading. It is possible to see clear areas where the requirements of the Directive do not appear to have been taken into account. For example, the Directive requires consideration of harmful effects on organisms other than the targeted pest species. Bt maize targets the European corn borer - a moth pest - so there must be an assessment of the risk to other moths and butterflies. The Directive also requires risk assessments to be based on scientific evidence and to outline areas of uncertainty. Yet the EFSA consideration of risks to European butterflies and moths is astonishingly brief; the GMO Panel simply comments that maize "*is not a significant food source for endemic Lepidoptera*". This is a sweeping generalisation, covering thousands of species in 25 countries. It is apparently not supported by scientific evidence, and only raises a series of questions that cannot be answered from the Opinion (see box).

Similar examples can be found throughout the Opinion. Such an assessment of the risks for moths and butterflies, in places the same almost word for word, has also been included in the GMO Panel's Opinion on Syngenta's Bt11 maize. And this is not some dry, academic issue; biodiversity across the EU has suffered a catastrophic decline over the last thirty years, in large part due to agricultural intensification. The provisions in Directive 2001/18 are there to protect EU biodiversity from further harm.

### **Missing expertise**

So why is the GMO panel apparently so unaware of the Directive's requirements? Why has it reached such a different conclusion to Member States? The answer may lie in a mismatch

between what the panel was set up to do, and what it is now being asked to do.

The purpose of the European Food Safety Authority is spelled out in its name, a purpose in which the environment is not the main objective. As a result, the GMO Panel seems to have been structured with food safety issues in mind: a majority of the panel have backgrounds in biochemistry and molecular biology; only one of the

21 panel members is listed as having a background in ecology. In other words, this is not the mix of expertise that would be expected on an environmental panel. However, the legislation on GM crops requires the Commission to seek scientific advice and, in the absence of any other body, it has been turning to the GMO Panel. The panel's lack of environmental expertise may well explain the differences between the Panel and the Member States.

### Unanswered questions

- 1) Which European Lepidoptera species use maize as a larval food source? What is their distribution and conservation status?
- 2) Which European Lepidoptera species use non-crop plants found in/adjacent to maize fields in Europe as larval food sources? What is their distribution and conservation status?
- 3) What is the susceptibility of these Lepidoptera species to the Cry1F toxin expressed by 1507 maize? Are they more, less or equivalently susceptible than the North American monarch butterfly?
- 4) What are the likely exposure rates of identified susceptible species, either through direct consumption of the GM maize, or consumption of pollen?
- 5) What importance do the target and non-target species of this GM crop have for the diet of higher organisms, such as breeding birds?
- 6) What is the conservation status of higher organisms (such as many bird species) for which Lepidoptera and their larvae are important dietary components? Will the introduction of the GM maize have any consequences in terms of food abundance for these higher organisms?

This is, of course, not the first time the opinions of EFSA have been criticised (see Mailout 2004). Yet the deliberations of these 21 scientists could have repercussions across 25 countries, so it is astonishing that this expertise gap has arisen at the heart of the EU process. The EFSA Opinions serve to highlight the enormous gaps in knowledge about the effects on European biodiversity of these GM maize crops. They also raise ques-

tions as to whether the current EFSA panel is really qualified to pass judgement on applications for GM cultivation. At the very least, the Commission should send these two applications back to EFSA and the GMO companies involved. Europe has fought hard over the past years to improve its GMO legislative framework. In order to protect our biodiversity, it is now important that this framework is used properly.

### References:

1 Comments from Member States were obtained by Friends of the Earth Europe as the result of a freedom of information request.

# Final results of UK trials are a blow to biotech crops

In March, the final results were published from the UK government's farm scale evaluations (FSEs) of genetically modified herbicide tolerant (GMHT) crops. They came as a blow to the biotech company Bayer, whose GMHT winter oilseed rape was the subject of the last set of findings.

The study, which ran for four years, examined the effects on biodiversity of growing Bayer's GMHT oilseed rape, in comparison with the non-GM counterpart. The results showed that, in comparison with conventional winter oilseed rape, growing GM winter oilseed rape led to:

- Fewer important food plants for insects and birds.
- An increase in grass weeds, which farmers might have to tackle with more herbicides.

Previous results for spring oilseed rape also showed reductions in food sources in the GMHT crop (see Mailout December 2003).

In a twist to the tale, EU documents reveal that, even before the final FSE results were published, 23 out of 25 EU countries had objected to Bayer's application for growing the crop because of concerns about the impacts on the environment and human health. In 2004, the Belgian government proposed that the crop should not be approved for cultivation after its advisers concluded that measures to prevent contamination of non-GM crops were "impracticable, hardly workable and hard to control". In response, Bayer requested to be allowed to change its EU marketing application to import only. The Commission appears to have ignored this request and has sent the whole application (including for cultivation) to the European Food Safety Authority (EFSA) for their opinion. With research showing clear problems for wildlife and most Member States opposing it, the EFSA should, for once, be able to rule against the GMO industry. For Bayer this should be the end of this controversial product.

# Legal advice on Coexistence - Commission's recommendations "FLAWED"

Avoiding GM contamination of non-GM crops and the environment is a key concern for communities and farmers across Europe. European legislation gives Member States the power to introduce coexistence measures (Article 26a of Directive 2001/18). The article allows Member

States *"to take appropriate measures to avoid the unintended presence of GMOs in other products"*.

In July 2003, the previous European Commission issued a "Recommendation" which gave the Commission's views on how Member States

should use that power. The Recommendation is not legally binding, and in reality only represents the Commission's thinking on coexistence. Nevertheless, it is important because some Member States are using these guidelines to draft up their national coexistence strategies.

The Recommendation tries significantly to narrow the powers given to Member States. In particular, the Commission states that:

1. Member States are not allowed to take into account environmental and human health matters in preparing their coexistence measures. Only "economic issues" are relevant. This is because the Commission believes that environmental and health matters are already fully addressed during the approvals process for each crop.
2. Member States are not allowed to make their coexistence measures stricter than is necessary to keep GMO contamination below 0.9%. This is because 0.9% is the level of contamination allowed before products must be labelled as containing GMOs.

There is concern that the European Commission's guidance on coexistence will fail to protect food, farming and the environment and instead lead to Member States putting in place weak measures resulting in widespread GMO contamination.

A coalition of organisations in the UK requested a legal opinion from Paul Lasok QC, a leading European lawyer, to clarify the legality of the Commission's position. Lasok's opinion, published in March 2005, concluded that the Commission position is "fundamentally flawed" and "wrong in law".

In particular the legal opinion found that:

**a) The objectives of coexistence must not be restricted to 'economic issues' only. Member**

**States must have regard to the aims of protecting human health and the environment in adopting any coexistence measures.**

Article 26a, which allows Member States to develop coexistence measures, was introduced into Directive 2001/18 by Regulation 1829/2003 on GMO Food and Feed. Although there is an environmental risk assessment undertaken during the authorisation process, the Directive and Regulation themselves recognise a continuing need to protect health and the environment. The Directive requires continuing monitoring and contains a safeguard clause which allows GMOs to be suspended and withdrawn. Furthermore, the recitals of Regulation 1830/2003 state that the principal aim of the labelling requirements, apart from informing consumer choice, is to enable the proper monitoring of GMOs and to take appropriate safeguard measures.

**b) The labelling thresholds (0.9%) are 'legally irrelevant' to deciding how to implement coexistence measures**

There is no legislative provision which requires the Member State to limit its coexistence measures to go no further than is necessary in order to ensure that GM content stays below the Community's labelling threshold.

Lasok argues that the structure of the legislation would indicate that a limitation on the scope of "appropriate" coexistence measures by reference to labelling thresholds would be illogical since coexistence measures precede the fulfilment of the labelling requirements.

**c) Any coexistence measures that were based on the labelling threshold of 0.9% would make it extremely difficult for operators to avoid labelling their products as containing GMOs even where their products contained GMOs at less than 0.9%.**

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Coexistence measures should aim to prevent the avoidable contamination of non-GM produce and not to merely minimise such contamination to (acceptable) tolerance levels.

The labelling threshold of 0.9% only applies to GM content that is "adventitious" or "technically unavoidable". Operators have to prove that they have taken appropriate steps to avoid the presence of such material. It is argued that GM presence which is "built-in" or inherent by virtue of a generally applicable base-line norm or tolerance (i.e. 0.9%) can not be defined as adventitious presence.

From the policy perspective, coexistence means the ability of farmers to make a practical choice between conventional, organic and GM crop production. Measures that permitted a certain level of GM content could not be said to be directed at enabling farmers to make such a choice.

**d) The Organic Regulation provides that, in order to be labelled or referred to as organic, a product must not contain GMOs in any quantity. If coexistence measures were to operate to a "baseline norm" (such as the 0.9% labelling thresholds) there is a very real risk that the "organic" label could become defunct"**

The Organic regulation states that "*genetically modified organisms and/or any product derived from such organisms must not be used*" and in relation to processed products that "*the organic label may be applied if the product has been produced without the use of genetically modified organisms and/or any products derived from such organisms*".

**References:**

1 Advice - In the matter of Coexistence, traceability and labelling of GMOs. K.P.E. Lasok QC and Rebecca Haynes, Monkton Chambers, 21 January 2005.  
Available at [http://www.foeurope.org/GMOs/gmofree/Coexistence\\_Lasok\\_Advice.pdf](http://www.foeurope.org/GMOs/gmofree/Coexistence_Lasok_Advice.pdf)  
A summary is also available at [http://www.foeurope.org/GMOs/gmofree/Summary\\_Lasok\\_Advice.pdf](http://www.foeurope.org/GMOs/gmofree/Summary_Lasok_Advice.pdf)

Lasok argues that the wording "*must not be used*" and "*without the use of*" refers to both active and passive (or unconscious or unintentional) use: use in this context extends therefore to *de facto* use. Thus, in order to be labelled or referred to as organic, a product must not contain GMOs or GM derivatives in whatever quantity. No threshold content is permitted, irrespective of whether or not such content is adventitious or technically unavoidable.

**Conclusion**

Finally, the legal opinion is damning of the position adopted by the previous Commission: "*...we believe that the Recommendation is based on a fundamental misunderstanding of the relevant legal provisions and risks advising Member States to adopt coexistence measures that are incompatible with the aims of the legislation or which would result in preventing, in practice, the use of the "organic" label and the reliance on the GM labelling exemption*".

If Member States were to follow the Recommendation and introduce coexistence regimes that allow up to 0.9% contamination of non-GM and organic crops, the right to make any meaningful choice would rapidly disappear. Organic labelling would become meaningless in terms of GM content, and this would seriously undermine EU policy to expand this sector of agriculture. This would also be contrary to the intentions of the European Parliament when passing GMO and Organic legislation, and to the views of the majority of the EU population who wish to choose non-GM products.

# German biotech law under threat

The German Chancellor, Gerhard Schröder, shocked many people by announcing a general election for September - one year before the official date of the next election. His move was an attempt to lift the political blockade that has existed because of his small majority in government. Because of the opposition's majority in the Bundesrat - the second chamber besides the parliament (the Bundestag) - each proposed law can either be watered down or completely blocked by the Conservatives and the Liberals.

This has implications for the German biotech law (see Mailout December 2004). Even without the new elections, the new law was coming under increasing attack from the opposition parties. Officially, the German biotech law - the implementation of the EU's Deliberate Release Directive 2001/18 - entered into force in February. But the opposition wants to abolish all measures protecting GMO-free agriculture and food production. In the case that there is a change in government, the Conservatives and Liberals have declared a general revision of the law. Their aim is becoming clear - no more hurdles for GMO growers.

## Key points of planned amendments:

- **Access to the public register shall be limited**

Everybody who intends to grow GMOs commercially has the obligation to report this only three weeks in advance (instead of the three months notice period now). Only general data (postal code, community etc) will be provided via the internet (instead of the exact location now). Only people who have a "justified interest" like farmers,

beekeepers and estate owners (instead of the public in general now) will be able to get exact information about the field locations and can ask the responsible authorities where the fields are. The implications of this are that when conventional and organic farmers finally have the information they need, the GMOs are likely to already be in the ground. They will have no chance to convince their neighbours not to grow GMOs or to discuss cultivation management measures such as separation distances, etc.

- **Joint and specific liability shall be deleted**

The current compensation scheme for economic damage means that all neighbouring farmers who might have caused cross-contamination are responsible for polluted harvests. If there are several GMO growers in a specific area and it cannot be determined exactly who caused the damage, the non-GMO grower will be free to decide which neighbour to claim compensation from. This legal construction will be replaced by a compensation fund, but it is unclear who shall pay for it. The seed industry refuses to do so and cannot be forced to, the mighty mainstream farmers' association (Deutscher Bauernverband) supports the idea of a compensation fund and recently praised the Danish model (where tax payers have to pay for economic damages - see Mailout July 2004). Another idea suggested by the Conservatives is to copy the Dutch model where all farmers have to pay - organic farmers included (see Mailout December 2004).

- **No more protection of ecologically sensitive areas**

The paragraph shall be deleted.

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- **The possibility to withdraw authorisations for specific GMOs if coexistence is not possible**

The paragraph shall be deleted.

In another development, the current German government has postponed the listing of Monsanto's maize MON810 in the German national seed catalogue. Originally, three varieties of MON810 should have been listed in the German national seed catalogue by the end of May, but the Federal Ministry of Consumer Protection, Food and Agriculture (the Greens) has

postponed its decision. The reason they give is that there are still unanswered legal questions - the Ministry wants to clarify whether the notification procedure was correct or not. Monsanto has apparently threatened to take proceedings against the Ministry. If, however, if there is a change in government this autumn, as all the polls predict, Monsanto will only have to wait until this autumn for the listing.

**By Heike Moldenhauer**

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## Industry hijacks the biosafety protocol

There were acrimonious scenes in Montreal at the end of the second Meeting of the Parties (MOP) of the Cartagena Protocol on Biosafety. Despite over 100 countries agreeing to clear labelling and identification specifications, the MOP failed to reach consensus when two countries, New Zealand and Brazil, sided with industry and objected.

The main challenge of the MOP was to come to an agreement on the detailed identification requirements for shipments of Living Modified Organisms (LMOs) that are intended for direct use as food, feed or processing. This was an obligation under Article 18.2a in the original Protocol. This itself was a compromise in January 2000, when the Protocol was adopted only after developing countries agreed to a weak "may contain" labelling requirement for shipments of LMOs. The Parties of the Protocol were given two years to take a decision on the information requirements to accompany shipments, "including specification of their identity and any unique identification". With no more meetings sched-

uled between the second MOP and the two-year deadline in September, at this stage the legal obligation looks set to fail.

The MOP was seeped in controversy from start to finish. Many participants from developing countries had difficulties obtaining visas, with some faces eventually absent and others, such as Africa's chief negotiator, Tewolde Egziabher, receiving a visa at the last minute and missing the first part of the talks on liability. Although Canada promised that this wouldn't happen again, the damage was already done. There were even some calls to move the Biosafety Protocol secretariat away from Montreal.

The main controversy, however, surrounded the identification requirements under Article 18. It was clear from the start that both New Zealand and Brazil were there to block any agreement. At every stage they delayed and rejected compromises. Their arguments at some times were contradictory and they often refused to give any explanation of why they were objecting. It is no

coincidence that this is also what industry wanted. With negotiations carrying on until 3 am in an attempt to break the deadlock, it was clear that the two countries were not going to shift. As one delegate said: "negotiations need two parties to talk, you cannot negotiate on your own which is what we have here".

Developing countries demanded full identification so that imports were clearly labelled with the LMOs that were present, and that only LMOs approved in the country of import were permitted. Industry obviously objected to this, warning that it would lead to extra food costs, and even stating that processors would move production abroad and developing countries would lose much-needed jobs! The NGOs, on the other hand, responded by showing that segregation of GMOs from non-GMOs would not cause much upheaval of the commodity trade and farmers segregate crops all the time.<sup>1</sup>

On the final day, a "non-paper" compromise was drawn up by Switzerland, incorporating the main points of previous negotiations and with an extra decision to elaborate on the details at the next MOP. The EU accepted the compromise, followed by Africa, the Asia-Pacific states, Iran, Venezuela, Mexico, Malaysia ... Despite the overwhelming support to agree on a text, Brazil asked for more time, suggesting a decision should be taken at the next MOP, and New Zealand objected outright. The decision thereby fell.

What followed was an extraordinary round of condemnation for Brazil and New Zealand. Whilst usually UN negotiations are a polite and diplomatic affair, country after country stood up to criticise the two blocking countries. Ethiopia attacked Brazil for once being a member of the Like Minded Group (mainly developing countries) at previous negotiations, only to now "reincarnate itself in the Miami group" (the GMO producing countries). The EU was "deeply disappointed"

and pointed out that the failure to agree to Article 18 "does not meet the needs of the developing countries requirements for identification". The Netherlands went further calling it a "huge disappointment" and criticised New Zealand for "rejecting proposals out of hand with no explanation". Tewolde Egziabher called for countries to "not give in to those who want to cause global genetic pollution".

NGOs and civil society also made some of the strongest condemnations at the Closing Plenary of the negotiations. IDEC Brazil, on behalf of NGOs and civil society organizations, stressed "the Brazilian delegation does not represent the real interests of the Brazilian people", recalling that the Protocol seeks to ensure biosafety, not promote trade. Friends of the Earth International also expressed disappointment because of the fact that two countries blocked decision-making on documentation for LMO-FFPs, and stressed the Brazilian and New Zealand delegations lacked biosafety expertise and arguments to back their position, and served the interests of non-Parties and the biotech industry.<sup>2</sup>

## What happens next and what can we learn?

Despite missing the two-year deadline, the identification issue will almost certainly go to the next Meeting of Parties in Brazil in March 2006. What the starting text will be and whether there will be an agreement at that time is open to question. Brazil, as host, would unlikely be able to block as much as it did in Montreal, but would possibly find someone else to do the dirty work. Without implementation of Article 18, the Protocol is virtually toothless. It is therefore unlikely that the majority of the countries will be content until the identification details are agreed.

Montreal also highlighted a number of important developments. For a start, Brazil's behaviour showed that the old North-South divide probably

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doesn't exist any more. This will be an interesting development to watch on issues other than GMOs. Secondly, the non-Parties of the Protocol who produce GMOs (eg the US and Canada) were noticeable by their silence. The US, in particular, made no intervention for the whole week, preferring to work behind the scenes and leaving countries such as New Zealand to take the flak. It did this, of course, in conjunction with the GMO industry. There was no doubt that, this time

round, industry was well organised, present in large numbers and in various forms. It has formed new coalitions, such as the International Grain Trade Coalition<sup>3</sup>, and funds front groups such as the Public Research and Regulation Foundation<sup>4</sup> which appears as a group of likeable public-minded scientists but, in reality, is more interested in ensuring weak biosafety regulations. It may have been more effective this time but is certain not to win in the long term.

**References:**

- 1 Tackling GMO contamination: making segregation and identity preservation a reality, FOE International, May 2005. [www.foei.org/publications/pdfs/contamination3.pdf](http://www.foei.org/publications/pdfs/contamination3.pdf)
- 2 See <http://www.iisd.ca/biodiv/bs-copmop2/>
- 3 See GM Watch briefing <http://www.gmwatch.org/archive2.asp?arcid=5314>
- 4 See GM Watch briefing [www.gmwatch.org/profile1.asp?PrId=316](http://www.gmwatch.org/profile1.asp?PrId=316)

# US Government and biotech firm deceive public on GM corn mix-up

The German consumer protection minister described the whole affair as "Unbelievable sloppiness!" after the biotech firm Syngenta revealed that their unapproved genetically engineered corn variety had contaminated the food supply for four years. The European Commissioner for health and consumer affairs said, "We deplore the unauthorized imports of this corn."

The controversy is centred on Syngenta's Bt10, an experimental, unapproved corn variety genetically engineered to produce its own pesticide. In mid December 2004, the company informed the US government that it had just learned that the corn had been mislabeled in the 1990s as Bt11,

an approved variety. From 2001 - 2004, about 14,000 bags of Bt10 seed were grown on 37,000 acres in the US and the resultant 165,000 tons of corn was sold as food and feed in the US and abroad.

The US agencies, FDA, EPA, and USDA, along with the White House, decided to keep everything secret-for the time being-while they investigated. They reviewed seven information packets received from Syngenta from Jan. 7 to March 10, 2005. In late March, the story was leaked to the journal Nature. When their reporter called to check the facts, the government was forced to go public.

When the story broke, US agencies assured the public that there was nothing to worry about. They reasoned that the pesticide that Bt10 produces is the exact same protein produced by Bt11. Since Bt11 is approved and considered safe, Bt10 must likewise be harmless to health and the environment. Jeff Stein, head of regulatory affairs at Syngenta said, "What makes this somewhat unique is that Bt10 and Bt11 are physically identical and the proteins are identical."

While these assurances were accepted by the public and repeated in media reports, experts in genetic engineering knew the statements to be misleading. As their concerns were made public, Syngenta backed down from its original position and said Bt10 "differs from approved seeds only where the foreign genetic material is placed in the plant's genome." They further qualified "that the Bt 10 corn was almost biologically identical to Bt 11." The "almost" is significant.

One characteristic of Bt10 that is not shared with Bt11 is its antibiotic resistant marker (ARM) gene that codes for resistance to ampicillin. When this fact surfaced a week after the US government and Syngenta assured the world that the two varieties were identical, it drew anger and outrage. According to Nature, this is "a difference that most experts agree is of some significance." When challenged on this omission by Nature, a Syngenta spokesperson offered, "it wasn't relevant to the health and safety discussion."

It is telling that Syngenta, a Swiss company that was responsible for illegal GM varieties entering the EU, reported the contamination to US authorities but not to the Europeans. Likewise, the US government also withheld the information from their EU counterparts.

On April 15, the EU Commission voted overwhelmingly to enact "emergency measures. . . in order to achieve the high level of health protection chosen in the Community." Since imports of food-grade GM corn has been virtually nil for years, the commission placed restrictions on the corn products from the US that are used for animal feed-corn gluten meal and brewers grain. The US had shipped 3.5 million tons of this to the EU in 2004 for about \$450 million.

The editors of Nature have urged European regulators to "pursue their own investigation," since "their US equivalents show little sign of rising to the challenge." Friends of the Earth, the Third World Network and others, demand that Syngenta pay for the costs of testing their products. And everyone appears to be calling for Syngenta to provide their safety studies, molecular characterization, genetic profile, and complete history of the planting and shipments of Bt10. They have not been forthcoming.

Both a Syngenta representative and a USDA spokesperson claimed that since Syngenta promptly reported the contamination to the government as soon it was discovered, it shows "that the system is working."

This is an edited version of the original that can be found, complete with references, at [www.seedsofdeception.com](http://www.seedsofdeception.com).

**By Jeffrey M. Smith,**

*author of the international bestseller Seeds of Deception and the new DVD, Hidden Dangers in Kids' Meals: Genetically Engineered Food , April 2005*

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# BT10 contamination continues to spread

Syngenta, the producer of the unapproved GMO maize accidentally sold to US farmers for four years, has stated that the total area grown was extremely small. According to them maize containing Bt10 was "only 0.01% of all (maize) planted in the US over four years". They also state that "only around 18% of US corn is exported to other countries. Consequently, although it is possible that some Bt10 corn could have entered the export channel, any such amount would be in extremely small volumes". It is therefore surprising that since a validated testing procedure has been made available (end of April), contaminated shipments have started to appear around the world on a regular basis.

On 25th May, the EU issued a statement saying that corn gluten feed containing Bt10 had been detected in Ireland. The Irish authorities were apparently informed by the importer prior to the arrival of the vessel that: "necessary measures are being taken in order to ensure that the contaminated feed does not enter the feed chain and that it is disposed of". They also stated that, to date, "290 tests on corn gluten feed and brewers grain have been carried out in the United States, and 289 have proved negative". The shipment

contained 2546 tons of contaminated maize, making a mockery of the estimations that only 1000 tons of Bt10 maize had entered the EU over the past 4 years.

On 26th May, the Japanese government also discovered a 390 ton shipment containing Bt10. News reports stated that Japan will now test all shipments coming from the US, and that contaminated shipments may be sent back to the US at Syngenta's expense. Furthermore, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) announced on 3rd June 2005 that Bt10 had been detected in a second shipment of 822 tons of fodder maize from the USA. According to some reports only 5 Japanese locations had received their test results, and in two of those Bt10 has been detected.

These discoveries must surely raise suspicions about the real quantities of Bt10 that have been planted and exported. Syngenta has so far handled this incident appallingly (see earlier article) and pressure should be put on them to tell the world exactly what has unwittingly gone into the world's food supply.

# Aarhus convention: public gains right to participate

After four years of intensive and polarised discussions, the Meeting of the Parties of the Aarhus Convention (AC) finally agreed to grant the public of the Pan-European Region the right to partici-

pate on decisions related to GMOs. The European Union, which initially opposed this right, backed down during tense negotiations in Almaty (Kazakhstan) in May 2005.

## What is the Aarhus Convention?

The AC, properly known as the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation on Decision-Making and Access to Justice in Environmental Matters, entered into force in October 2001. The Convention covers Parties from the Pan-European region, including Europe, Caucasus and Central Asia region (EECCA) and is currently ratified by 34 countries plus the European Community. Environmental organisations have been strongly involved in the Aarhus Convention under the flag of the European Ecoforum.

The Aarhus Convention's comprehensive public participation provisions apply to a broad range of activities which can have an impact on the environment, such as the energy sector, production and processing of metals, the mineral industry, the chemical industry, waste management, etc. However, activities involving GMOs were not included in the list of activities subject to the public participation requirements of the AC, but were simply referred to national legislation. This anomaly was for political reasons. However, immediately after the adoption of the AC in 1998, the Signatories requested the First Meeting of the Parties to further develop the application of the Convention in the field of GMOs.

## Progress in solving the anomaly: the situation before the meeting of the Parties

For four years, Parties to the Convention, NGOs, and industry have met to discuss how to solve this anomaly. Since 2001, the vast majority of countries from Eastern Europe, Caucasus and Central Asia have constantly stated and restated the need for the Aarhus Convention to include a legally binding provision granting the public the right to participate in decisions related to GMO

activities. EECCA countries accordingly put forward a single, precisely worded amendment.

At no time during the GMO discussions did the EU take a progressive approach on this issue. In fact, several EU countries, together with the biotech industry, strongly opposed any further provision in the AC on GMOs. Other countries, such as Norway, expressed clear support for the EECCA proposal

## What happened in Almaty?

On the first day of the meeting in Almaty, a fast-track decision process was adopted to continue negotiations and a drafting group met to develop a compromise. Despite favouring other options, EECCA countries agreed to continue negotiations on the basis of one of the options previously proposed by the EU. By doing so, the EECCA countries hoped to be able to strike a compromise and make the so called "Almaty Amendment" a reality. This entailed a big sacrifice by the EECCA governments and their civil societies since the EU's option excluded the possibility of granting access to justice on the GMO issue. On the first day, and in line with the EU's usual pattern during the Aarhus GMO discussions, the EU constantly pushed for the most minimalistic option possible. For example, the EU introduced a provision stating that the location of field releases could be kept confidential in certain cases. This interpretation was strongly criticised by the Ecoforum.

This attitude is paradoxical and difficult to understand, since the European Union has one of the strictest and comprehensive biosafety frameworks in the world. This behaviour was condemned by more than 30 Civil Society organisations from the EECCA region who issued a statement against the EU attempts to prevent a progressive amendment of the Convention.

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## The outcome: A victory for the public of Eastern Europe, Caucasus, and Central Asia!

After intense negotiations, the EU put forward a compromise which the EECCA region decided to accept. The final compromise is less progressive than it could have been, mainly due to the stance of the EU and the biotech industry. However, it

constitutes a major breakthrough on GMO regulations for all the non-EU, EECCA Parties to the Aarhus Convention. For the first time, there is a pan-European legal obligation to provide the public with effective information and public participation on decisions to authorise a GMO release for experimental and for commercial purposes.

### Background information

Official Site 2nd Meeting of the Parties: <http://www.unece.org/env/pp/mop2.htm>, UNECE Aarhus Convention GMO webpage: <http://www.unece.org/env/pp/gmo.htm>, Ecoforum webpage: <http://www.participate.org/> Guidelines on access to information, public participation and access to justice with respect to Genetically Modified Organisms: <http://www.unece.org/env/pp/documents/gmoguidelinesenglish.pdf>, Position of the Biotechnology Industry Organization on GMOs in Aarhus: <http://www.unece.org/env/pp/gmo/lbbio.pdf>

# GMO trade dispute delayed again

The long-awaited interim result of the transatlantic GMO trade dispute has been delayed yet again. Once expected on 13th May, it has now been promised for sometime this summer with the final ruling in the Autumn.

The last meeting among parties of the World Trade Organisation (WTO) trade dispute happened in February. The three-man Panel judging the GMO trade complaint met the 6 scientists in charge of issuing a scientific and technical report prior to meeting the parties, namely US, Argentina, Canada and EU. Since then, the Panel has been working to prepare an interim report. Apparently the transcripts of the meetings have been finished and presented to the parties and scientists, and is now awaiting their approval.

Following the interim report, it will take the Panel approximately two and a half months to prepare a final ruling, which will then be issued to the parties. Once translated, it will be sent to all WTO member for adoption in a Dispute Settlement

meeting. It is expected that the final ruling will be approved at the end of 2005 if there are no further delays.

After the final ruling all parties have the right to call for an appeal.

As is usual at the WTO, the dispute settlement procedures are characterised by a lack of transparency and limited public participation, which many believe undermines the legitimacy of the entire process. It has been extremely difficult for observers to closely follow developments in disputes with all meetings behind closed-doors. The submissions by the parties are only made available to the public if the party so decides. For example, the European Commission initially denied access to Friends of the Earth of their second submission to WTO in November 2004, eventually releasing it after the meeting with the parties in Geneva in February. The denial of the access to this document is currently the subject of a complaint to the European Ombudsman.

# Regions demand "power-sharing" over GMO decisions at EU

Europe's diverse regions reiterated their call for a bigger say in any decisions to grow GMO crops at a conference on 17th May 2005 at the European Parliament. The conference, *Safeguarding Sustainable European Agriculture*<sup>1</sup>, was organised by Friends of the Earth and the Assembly of European Regions (AER).

More than 250 people from across Europe attended to hear regional Ministers and MEPs explain how their local specialised agriculture was a precious resource that plays a vital role in the marketing of their region. They made it clear that the prospect of GM crops being grown would damage their reputation and threaten their economies. On this basis, many people demanded a say in whether GM crops were approved Europe-wide. Mr Josef Martinz, Carinthian Minister for Agriculture, speaking on behalf of the Assembly of European Regions said: "I *kindly ask the European Commission to lay the ground so that it is feasible to produce food without GMOs*".

## Legal basis for GM free regions needed

The number of European regions and provinces now declaring themselves "GM-free zones", or publicly wishing to restrict GM crops, has climbed to 164. Over 4500 local governments and smaller areas in Europe are similarly calling for restrictions to commercial growing (see [www.gmofree-europe.org](http://www.gmofree-europe.org) for a full list).

The conference clearly set out that regions want to develop quality food products instead of GM foods. These demands are driven by a combina-

tion of concerns over the environment, food safety, food quality, the local and regional economy, and consumer and farmer choice.

## European coexistence legislation supported

The conference also heard support for the Agriculture Commissioner's notion that there is a need for EU-wide legislation on the coexistence of GM, conventional, traditional and organic farming in order to prevent contamination.

## Conclusion

The pressure to set up EU legislation on coexistence is continuing to grow. At the end of this year, the Commission will take a decision about whether to take further steps and initiate a European law on such issues.

The Belgian newspaper "*Le Soir*"<sup>2</sup> revealed that the European Commission "seems to have decided" to block the approval of GMOs for cultivation until the question of coexistence has been resolved. This position is welcomed by a majority of people, including environmental, farmer and consumer organisations, as well as regions in Europe which would like to have the right to choose GM-free crops and products.

On the other hand, the current dispute at the World Trade Organisation by US, Argentina and Canada (the main producers of GMOs in the world) against Europe threatens the development of better legislation to deal with GMOs.

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**The AER and Friends of the Earth Europe published 10 principles that they believe should be included in any such coexistence legislation:**

1. To protect the environment, agricultural biodiversity and nature protected areas on the basis of the 'Precautionary Principle'.
2. To enable proper risk management (after the initial risk assessment), including emergency recall measures if necessary.
3. To protect human and animal health.
4. To ensure the preservation and further development of non-GMO agriculture, in particular organic and traditional agriculture, and products of designated origin in Europe.
5. To avoid economic damage to farmers, beekeepers and food manufacturers.
6. To establish an EU-wide GMO liability scheme on the basis of 'the Polluter Pays' principle that covers environmental damage, compensation in the event that conventional and organic crops are contaminated, costs of an eventual recall and any other financial damages to farmers, breeders and processors caused by the cultivation of GMO crops.
7. To protect the right to choose of consumers, farmers and regions.
8. To allow regions to determine their own agricultural development strategy, including the preservation and development of regionally adapted genetic resources and the right to prohibit GMO cultivation.
9. To achieve minimum standards and regulations for cross-border areas.
10. To guarantee a GMO-free seed supply and EU wide standards for seed labelling at the practical detection limit.

**References:**

- 1 More info about the conference at: <http://www.gmofree-conference.org/>
- 2 Un nouveau gel au sol des OGM? Le Soir, 6 Juin 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.

**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)**

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