

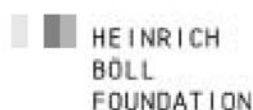
Biotech Mailout

Information from the Biotechnology Programme of Friends of the Earth Europe

December 2003



**Friends of
the Earth
Europe**



HEINRICH
BÖLL
FOUNDATION

CONTENTS

Pag. Issues

- 1** Commission fails to lift the Moratorium
- 3** GMO trade dispute crawls forward
- 6** UK research shows: Genetically modified crops harmful to wildlife
- 8** Croatia adopts strict GMO laws
- 10** Dutch biotech industry fails to manipulate organic farmers
- 12** UK advisors on GMOs call for anti-contamination and liability laws
- 14** German farmers withdraw from GM field trials
- 15** EU Regions call for GM free zones
- 16** Will Belgium give the red light for Bayer's oilseed rape?

Commission fails to lift the Moratorium

Questions over safety of GM maize remain

A proposal by the European Commission to authorise genetically modified (GM) maize Bt 11 for human consumption failed on 8 December. In order to get the GM maize from the Swiss biotech giant Syngenta approved the Commission needed a qualified majority of 62 votes out of a total of 87 votes. But during a meeting of the Standing Committee on the Food Chain and Animal Health, only 6 countries supported the Commissions proposal and consequently the EU moratorium on new authorisations of GMOs remains.

The countries that voted in favour were: Spain, UK, Netherlands, Finland, Sweden, Ireland (33 votes), while Germany, Belgium, and Italy (25 votes) abstained and six countries voted against: Denmark, Greece, Luxembourg, Austria, Portugal, France (29 votes).

The vote was an embarrassing setback for the commercialisation of GM foods in Europe and indicates that the EU is still deeply divided over the safety of GM foods. In the run up to the vote, Friends of the Earth Europe¹ had commented that there are still many unanswered questions about the safety of Syngenta's maize:

- 1) A report by the Austrian Government gives a damning verdict for the Bt11 application.² The researchers had access to the whole dossier and accompanying documentation. They conclude that:
 - there was no toxicological testing with the whole plant
 - there were no tests on the long term effects of eating the novel protein
 - the test for allergic reactions are insufficient and that many assumptions argued by Syngenta are false
 - the safety of Bt 11 is based on theoretical argument rather than evidence.

2) A new report by the French food safety authority AFSSA³, published on 26 November, heavily criticises the application by Syngenta. According to AFSSA:

- The foodtests with the maize described in the application do not concern Bt 11 sweet corn, but another Bt 11 maize variety (called “champ” in French) that is destined for animals.
- There are “notable differences” between the tested maize and Bt 11 sweet corn, especially with regard to the metabolism of sugars. With the testing done by Syngenta possible “unexpected effects” of Bt 11 sweet corn “cannot be excluded”.
- In order to eliminate the risk of unexpected effects it is “suitable to evaluate the impact of the regular consumption” of Bt 11 sweet corn by conducting toxicity tests on rats and chickens.

3) The EU’s scientific opinion raises unanswered questions. Although the old Scientific Committee on Foods (SCF) gave a positive verdict, the opinion they gave raised more questions than answers with many arguments based on pure assumptions. SCF concluded that it was “of the opinion that despite the large number of studies, the

company (Syngenta) did not commission systematic information on the composition of the genetically modified or control plants”. In fact, the SCF states that the evidence provided by Syngenta “provide only limited evidence for safety”. In the absence of adequate data from the applicant, the SCF appears instead to have relied on:

- the fact that there were no “visible adverse effects” when livestock were fed Bt 11 maize for “a few weeks”
- a study conducted on Bt tomatoes
- an unpublished, two-week study on mice.

The Bt 11 dossier will now be transferred to the Council of Agricultural Ministers. The ministers have three months to decide about the Commissions proposal to approve the maize. The ministers can only act by qualified majority and need 62 votes out of 87 votes to either approve or reject the Commissions proposal. If the ministers do not reach a decision, the European Commission has the legal power to approve the sweet corn on its own. However, with member states and scientists deeply divided over the safety of the maize, such a decision would certainly bring further troubles for the Commission.

¹ See for the full briefing: http://www.foeeurope.org/publications/bt11_briefing.pdf

² GaugitschH, Spök A, Hofer H, Lehner P, Kienzl-Plochberger K, Valenta R (2003), Toxikologie und Allergologie von GVO-Produkten. Roten Reihe des Bundesministeriums für Gesundheit und Frauen - Sektion IV, Band /03

³ <http://www.afssa.fr/ftp/basedoc/BIOT2003sa0353.pdf>

GMO trade dispute crawls forward

The transatlantic trade war over Europe's position on GMOs has entered its next stage with the US, Canada and Argentina requesting the WTO to form a Disputes Panel. However, attempts to decide who should sit on the Panel has become a slow, drawn-out process with both sides continuously rejecting each others suggestions. At the time of going to press the panelists were still not agreed. If no decision can be made then the two sides can ask the WTO's Director General to decide. Whatever happens the names and background of the Panellists will be a carefully guarded secret.

Once the Panel is decided then they will take evidence (in secret) from both sides before coming to a ruling towards the end of next year. A notable absentee will be civil society who are prevented from officially participating or even knowing what is being argued. While informal sources in Brussels expect a WTO ruling against Europe's restrictive stance on GMOs, the EU will have the right to appeal. The WTO appellate body will then reconsider the case and come to a final and legally binding ruling 3-6 months after the first ruling. The losing party then will have to comply with the ruling and so either have to adapt its legislation or face heavy trade sanctions.

The US originally called for WTO consultations with the European Union on May 13th claiming that the de facto moratorium on GM products in Europe was a barrier to trade costing the US an estimate of US \$ 300 million in lost exports.

In addition to the moratorium the US also attacks the existing national safeguard measures that individual EU member states have set up.

This battle is not only about Europe: the Bush administration claims that this was not only harming their farmers but also stopping developing countries from adopting the controversial technology. However Egypt, the only African country supporting the US, withdrew even before the consultation process began. In a letter to the European Consumers' Organisation (BEUC), the Egyptian Government made the decision not to proceed "in conscious emulation of the need to preserve adequate and effective consumer and environmental protection." The move angered the US who reportedly tore up a draft free-trade agreement with the African country.

The European Commission has issued statements "regretting" the US move. They also take issue with President Bush's accusations that Europe's policy is hindering ending hunger in Africa, calling the allegations "not founded". They also point out opinion polls in the States that show "a whopping 92 percent of Americans support labelling".

The US-led action has already had an impact with the Commission upping its tempo to break the de facto moratorium, a clear signal that the EU caves in to US and WTO pressure.

However, even if the GM moratorium will be lifted, Europe will be struggling to defend the national safeguard measures under existing WTO rules. The national import bans are categorised as barrier to trade. In addition, the WTO acts according to the principle that a 'product is like a product'. Differentiation between production methods are not recognised and so a genetically modified crop is seen just as a conventional crop according to WTO jurisprudence. Furthermore WTO agreements currently do not accept the precautionary principle, a key international and European environmental principle. Instead WTO agreements are based on parties providing evidence based on 'sound science' approach. This approach assumes that science is a sufficient basis for decision making. This

approach is highly inadequate for decision making over environmental damage and consumer choice when conditions of uncertainty, irreversibility and ignorance exist.

With the EU's new labelling and traceability regulations now in force all eyes are on whether the US will launch a second complaint. The Bush Administration has already called the legislation "*more trade restrictive than necessary*". In a separate move, on November 25th a powerful list US agri-industry names wrote an open letter (see for the letter below) to US Trade Representative Zoellick demanding that the Administration challenges the new legislation. Attacking European consumers' right to know is likely to escalate already tense US-EU trading relations.

**WARNING: THIS LETTER BY THE US AGRICULTURAL LOBBY
ATTACKS CONSUMERS' RIGHTS**

The Honorable Robert Zoellick
United States Trade Representative

Dear Ambassador Zoellick:

On October 18, 2003, regulations were published in the Official Journal of the European Union (EU) establishing new requirements for the traceability and labeling of food and feed products and safety assessments for food and feed produced through biotechnology.

These requirements are non-tariff trade barriers that violate World Trade Organization (WTO) obligations and will result in significant losses to the U.S. food and agriculture industry. The undersigned organizations urge you to take immediate action to prevent further disruption of U.S. agricultural commodity and food product exports to the EU resulting from these regulations. The new regulations clearly violate the EU's WTO obligations. The Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade agreements (TBT) require that import restrictions not discriminate between imported and domestic products and not be overly restrictive to trade. The SPS agreement also requires that any measures which have the effect of restricting trade must be based on scientific principles. The new EU regulations are not consistent with these provisions and clearly discriminate against imported products. In addition, the requirements would set a precedent for process-based traceability and labeling that could create potentially insurmountable technical barriers to trade and discourage adoption and acceptance of new technologies, including biotechnology, around the globe. Products of modern biotechnology must undergo intensive scientific and regulatory review before being approved to enter the EU market, and the EU has not identified any science-based risks associated with approved biotech products. Despite this, the regulations use the "Precautionary Principle" and

► continue...

other non-science based factors to justify the implementation of costly and trade-restrictive traceability and labeling requirements. The United States Government consistently has opposed the use of such criteria for restricting trade and must challenge EU regulations that embody these concepts.

Finally, it is important that the Administration challenge the EU's new regulations in anticipation that other countries will come under pressure to adopt similar requirements and restrictions. Just as a number of other large importers subsequently adopted biotech labeling policies after the EU enacted its first labeling regulation, influence will be exerted for other countries to adopt trade-restrictive traceability and discriminatory, process-based labeling regimes. Further, international organizations such as the Codex Alimentarius Commission will have license to adopt similar requirements as global standards. U.S. agricultural commodity and food exports will be very negatively affected by these developments.

The U.S. government must take every possible action to confront these trade-distorting policies and prevent further erosion of U.S. agriculture and food export markets in the EU and other countries. Now that the EU's regulations have been finalized, we believe it is time to engage the EU in a WTO dispute settlement proceeding, and we urge that you initiate such action immediately. In addition, a review of the impact these requirements will have on U.S. agricultural commodity and food exports by the International Trade Commission should be requested to quantify economic losses to U.S. farmers, exporters, and food companies.

Our organizations appreciate your strong support of biotechnology and pledge our assistance to help you address this critical issue.

Sincerely,

American Farm Bureau Federation	National Cotton Council
American Feed Industry Association	National Grain and Feed Association
American Meat Institute	National Food Processors Association
American Seed Trade Association	National Grain Trade Council
American Soybean Association	National Oilseed Processors Association
Biotechnology Industry Organization	National Renderers Association
Corn Refiners Association	North American Millers Association
CropLife America	U.S. Grains Council
Grocery Manufacturers of America	USA Rice
National Association of State Departments of Agriculture	Wheat Export Trade Education Committee
National Association of Wheat Growers	cc: The Honorable Ann Veneman
National Corn Growers Association	

UK research shows:

Genetically modified crops harmful to wildlife

In October, the UK saw a flurry of activity on GM (genetically modified) crops with the publication of the first results of the farm scale evaluations of genetically modified herbicide tolerant (GMHT) crops. The research was commissioned by the UK government. It was conducted and peer reviewed by independent scientists and published by the Royal Society, the UK's oldest independent scientific academy. It is the largest scientific examination into the environmental effects of GMO's ever conducted. A total of 201 field scale test sites were planted over four years.

GM oilseed rape, sugar beet, fodder beet, maize and their non-GM counterparts had been grown for four years on field sized test sites, and the diversity and abundance of wildlife in the GM and non-GM halves had been compared. The crops tested were either resistant to glyphosate, manufactured by Monsanto, or glufosinate ammonium, manufactured by Bayer (formerly Aventis) and the publication of the results could not have been more timely, as a number of applications for EU approval to cultivate GMHT crops are currently being considered by member states (see also the article on Bayer's application in Belgium for the cultivation of GM oilseed rape on page 16 of this Biotech Mailout).

Conventional crops better for environment

The British researchers found that growing non-GM beet and spring oilseed rape was better for many groups of wildlife than growing the GM

equivalents. There were more insects, such as butterflies and bees, in and around the non-GM crops because there were more weeds to provide food and cover. In GMHT oilseed and beet crops it was found that, while weed plants grew in the early summer, they were wiped out before they could set seed. Over the longer term, it was predicted that this would lead to "accelerated species decline" for these plants. In both the non-GM and GMHT maize there was very low biodiversity, and the GMHT maize was better for many groups of wildlife than conventional maize. There were more weeds in and around the GMHT crops, more butterflies and bees around at certain times of year, and more weed seeds. The results for maize are due to the fact that on 75 per cent of the non-GM maize fields in the experiment, weeds were controlled using atrazine – one of the most powerful and persistent herbicides available. However, one week before the results were published, the EU banned atrazine from 2005, so the trials were not a realistic comparison of the future options for maize.

Skylark extinct in 20 years ?

The results do show that if GMHT beet and spring oilseed rape are grown commercially, their use could exacerbate the existing declines of weed species in agricultural areas. This might seem good news for farmers, but many weed species found in these crops are important food resources for the invertebrates, small mammals and birds that live on farmland. A UK modelling study⁴, also published in October, predicted

that, at the level of weed control possible using GMHT beet, the sky lark (*Alauda arvensis*) would become extinct in the UK in twenty years because of lack of food. Two common weeds, *Chenopodium album* and *Stellaria media*, which are important sources of food for wildlife, could disappear in half a century.

Just about the herbicide ?

It has been widely suggested that the results of the farm scale evaluations don't matter because they concern the herbicides and not the GM crops themselves⁵. However, it is clear that the GM crops are inseparably linked to the herbicides - they are the reason why the crops were modified in the first place and it is hard to see why a farmer would grow the GM crop without the herbicide, as GMHT crops have no other advantage. It is therefore misleading to state that the effects of growing GMHT crops can be ignored because "they are just about the herbicide".

The biotech industry has suggested that changes in farming practice could be used to offset the harmful effects of growing GM oilseed rape and beet - farmers growing GM oilseed rape could leave weedy stubbles over the winter in other crops, while farmers growing GM sugar beet could leave every hundredth row unplanted and unsprayed⁶. Regardless of whether these proposals are even practical, it is difficult to see how the companies could ever guarantee that such measures would actually be undertaken by farmers, or how they would be monitored and enforced. It has been suggested that the measures could be linked with agri-environment schemes, but these should be used to enhance biodiversity over all not to offset the harm caused by GM crops.

In any case, these suggestions are irrelevant to the regulatory context for GMHT crops. The EU's guidance to the GMO Deliberate Release Directive 2001/18 sets out how the risks of GM crops should be judged. The comparison of impact must be made against the equivalent non-GM crop and "has to be assessed on the basis of existing procedures"⁷. So, the harm caused by other agricultural activities, such as winter cropping, is not relevant. Neither are the untested and possibly unworkable mitigation measures that have been proposed by the industry. The risk assessment must consider what is happening now and what is most likely to happen with commercialisation.

In the end, it is most likely that farmers across the EU would use GMHT crops to control weeds as completely as possible. Directive 2001/18 requires member states to ensure that harm is 'prevented', and the only certain way of preventing the harm that GMHT oilseed rape and beet could cause to biodiversity is by refusing authorisation. The EU member states have made commitments under the Habitats Directive, the Birds Directive and the Convention on Biological Diversity to safeguard native biodiversity. These commitments must be the overriding consideration, rather than the commercial interests of the biotech companies.

For more information about the Farm Scale Evaluations visit the website of the UK Department of the Environment, Farming and Rural Affairs

<http://www.defra.gov.uk/environment/gm/fse/index.htm>

⁴ UK DEFRA research project EPG 1/5/188 *Modelling the effects on farmland food webs of herbicide and insecticide management in the agricultural ecosystem*. DEFRA=

⁵ For example, see the Submission of EuropaBio to the UK Advisory Committee on Releases to the Environment

⁶ Submission of JD Pigeon to the UK Advisory Committee on Releases to the Environment

⁷ OJ L 200 30.7.2002 Commission Decision of 24 July 2002. 2002/623/EC, p30.

Croatia adopts strict GMO laws

The Croatian Parliament has recently adopted several new laws regulating GMOs. These new laws, that in some aspects are stricter than EU law, are highly important since they can set a precedent for the making of GMO law in the Balkans and in others (non-EU) parts of Central and Eastern Europe, where currently regulation of GMOs is usually very weak or completely lacking. The new Croatian laws entered into force in spite of pressure by the US, who threatened Croatia in 2001 with WTO action if it went ahead with its restrictive policies on GMOs.

A new food law came into force in July 2003 requiring authorisation for all GM food and feed placed on the market. The Health Ministry has to keep a register of all GM foods marketed and the Agriculture Ministry has to maintain a register of all GM feed placed on the market. The Food Law also requires the labeling of GM food and feed. It provides no labeling threshold. Thresholds will be set up by by-laws issued by the Ministry of Agriculture.

The new Nature Protection Law agreed in September 2003 regulates the deliberate release of GMOs into the environment. It entered into force in late October. The new law bans the release of GMOs in protected areas and their buffer zones, in areas of organic farming and in areas that are of importance to ecotourism. The law also bans the deliberate release of GM seeds, except for areas specially designated by the Ministry of Agriculture and the Ministry of Environment and approved by the Government.

To date, in Croatia no permits have been granted for the deliberate release of GMOs - either for field trials, commercial cultivation or placing on the market.

Food and Feed law

The Food Law was passed by the Parliament on 14th July 2003 (Official Gazette NN 117/03) and has been in force since 23rd July 2003.

Article 33 of the law defines GMO food as food or food products which contain, or consist of GMO's and as food products produced from GMOs but not containing GMOs. Furthermore, the law refers to food containing, consisting of, or produced from GM micro-organisms, algae, yeasts, etc.

Article 34. of the concerned Food Law refers to placing on the market of "novel food" (which includes GMO's). The Ministry of Health in accordance with the Ministry of Agriculture and Forestry has to issue permission for placing GM food products on the market. Furthermore, the Ministry of Health has to register all issued permissions of GM food or foods produced from GMO's. In addition, the Ministry of Agriculture and Forestry has to register all importers of GM food products.

Part VIII of the Food Law refers to animal feed ("novel feed") produced from GMO(s), or feed which contains, or consists of GMO(s). The Ministry of Agriculture has to issue permission for placing GM feed on the market and also has to register all the issued permissions of GM feed. In addition, the Ministry of Agriculture has to register all the GM feed importers.

Part XI. of the Food Law refers to food and feed labelling as well as to labelling of “novel food and feed” (Articles 56 and 57). All GM food and feed has to be labelled very clearly with the following sentence: “this product contains or consists of genetically modified organisms”. There is no labelling threshold for GM food and feed regulated by the Food Law. Product approvals are not limited for the time being.

Part XVII. refers to Croatia’s Food Agency, which will be established by the Government and will be placed in Zagreb. The Food Agency’s purpose will be monitoring, and conducting risk assessment on both human and animal health. The Food Agency will have the right/power to ban and withdraw any GM food or feed if necessary, i.e. in case something goes wrong.

Nature Protection Law

The Nature Protection Law entered into force on 23 October and was published in the Official Gazette 162/03. The purpose of the law is to prevent the negative impact of GMO’s on biodiversity, the environment and human health. The scope of the law includes the contained use, deliberate release, commercialization and transport of GMO’s plus the destruction of GM waste. The law (in article 94 and 95) foresees the setting up of a Croatian Committee for GMO’s which has 70 members, including representatives from scientific, educational institutions, environmental NGO’s, consumer NGO’s, food producers and agricultural producers. The Committee’s mission statement is described in article 96, which says that the committee:

- Follows scientific research in the field and provides expert opinion about GMO use
- Provides advice and opinion about sociological, ethical, technical and technological, scientific and other conditions of GMO use.
- Informs the public about the conditions and developments in the field of GM technology and GMO use and about the committee opinions

- Cooperates with similar bodies abroad, exchanging information, data and experience

On the basis of the opinion of the Committee and a risk assessment that has to be provided by the applicant, the Croatian authorities can either refuse or grant a permit for the contained use, deliberate release or putting on the market of GMO’s. Under the law, the applicants are obliged to provide an intervention action plan, that should contain damage control measures to restrict the further spread of GMO pollution. The action plan should also contain measures to clean up the environment (e.g. a methodology for treatment of waste and wastewaters contaminated by GMO’s).

A permission for deliberate release is not granted in specially protected areas. Also the deliberate release of GM seeds is forbidden, except in specially designated areas. This is described in article 114, which reads as follows:

- (1) Deliberate release of GMOs is not allowed in protected areas, nor in the ecological network, nor in areas dedicated for organic production and ecotourism. It is prohibited to release GMOs in the buffer zones around these areas.
- (2) Buffer zones are areas sufficient to prevent GMO pollution in the areas where deliberate release is prohibited. These areas are determined as a part of the permit for deliberate release that an event will get.
- (3) GMO seeds are prohibited for deliberate release. Exception will be areas determined by the Minister of Agriculture and Minister for the Environment and approved by the Croatian Government.

Moreover, the government can, relying on the precautionary principle, adopt a legal decision imposing stricter measures than those adopted in the Nature Protection law, including the ban of GMO use (article 137).

Dutch biotech industry fails to manipulate organic farmers

Recent attempts by the Dutch biotech industry to sideline organic farmers and their concerns over coexistence appear to have backfired. On the first of December the Dutch biotech industry association, Niaba (which includes big biotech corporations such as Bayer and Syngenta), sent a letter to Dutch MP's co-signed by the mainstream farmers organization, LTO, and the Foundation for Consumers and Biotechnology, which has close links with the Consumentenbond, the biggest Dutch consumers union. It stated that there were "orientative talks" ongoing with Biologica, the Dutch organization of organic farmers and other organic operators. The letter also said that the initiative for measures to ensure co-existence between GM and non-GM crops should not be with the government, but "should lie and remain with the (market) parties involved."

Since the letter was sent just two days before a Dutch parliamentary committee was due to debate anti-contamination measures and liability for GM crops, it could easily have misled the Dutch MP's. But the Dutch organic union responded quickly to key MP's. In an email they said that their organization rejected the letter by the GM industry. They also stated that "legally binding rules to ensure production without GMOs are unavoidable." ⁸

MPs concerned about liability

Consequently, the letter by the Dutch biotech industry association did not have much impact on the debate in the Dutch Parliament. During the debate - that took place on 4 December - major opposition parties -such as the Partij van de Arbeid (the Dutch Labour party)- called for more intervention by the Dutch government to ensure that conventional and organic production in The Netherlands remains GMO free. The Dutch Labour party is specifically concerned about liability and seriously doubts if the biotech industry and (organic) farmers will ever reach a voluntary agreement on the issue of financial responsibility for non-GM products that get contaminated by GMO's. This scepticism was strengthened when -during the debate in the Parliament- it was announced that the biggest Dutch agricultural insurer, Interpolis, does not want to insure damage that could result from the release of GMO's. Another important issue during the debate was transparency. Several MP's pleaded for the installment of public registers in which it would have to be indicated where GMO crops are grown.

After the debate in the Parliament it was announced that a working group will be set up to study the issue of liability and GMO's. This

working group consists of representatives from three Ministries: environment, agriculture and justice. They will have to come up with a proposal on how to compensate non-GM farmers and other non-GM operators, who could suffer economic losses when their crops get contaminated by GMO's.

Voluntary agreement possible ?

Furthermore the Dutch Minister of Agriculture Veerman announced that (organic) farmers, the biotech industry and consumers organisations will be given the time until July 2004 to come up with a joint solution for the co-existence problem. This solution should give guarantees for the continuation of GM free agriculture in The Netherlands. If the parties do not reach an agreement before July 2004, the Dutch government might consider to propose legally binding co-existence rules.

Although the announcement by the Dutch minister has put the stakeholders under pressure to come up with an agreement, it is questionable if they will manage to do so. Dutch organic farmers and biotech companies are deeply split over

what measures are needed to ensure the freedom for farmers and consumers to choose products that are not genetically modified. Furthermore, it remains to be seen if the Dutch consumer organisations will stick to their agreement with the biotech industry to plead for a voluntary co-existence system. This position seems untenable, since so far nowhere else in Europe (and maybe even not in the world) consumer unions have taken a position that is so close to big biotech corporations and one wonders what would happen if the members of these unions find out about it.

Also the recent developments in other countries might soon shed another light on the Dutch debate. It will for example be difficult for Dutch stakeholders to stick to a voluntary approach when at the same time in the UK even Bayer has agreed to legally binding rules (see page 12 of this Mailout). Also the fact that in Germany the biggest farmers organization Deutscher Bauernverband (see page 14 of this Mailout) now calls for legally binding co-existence and liability rules, may change the direction chosen in The Netherlands.

⁸ Email to Dutch MPs of 3 december by Bert van Ruitenbeek, director of Biologica.

UK advisors on GMOs call for anti-contamination and liability laws

On 25th November 2003, the UK Government advisor on biotechnology issues affecting agriculture and the environment, the AEBC⁹, published its report on co-existence and liability¹⁰. It concluded that if GM crops are to be commercially grown in the UK, coexistence legislation would be needed. The report sets out a framework for the UK Government to bring forward such legislation.

Co-existence recommendations

There is consensus between all the members of the panel that co-existence¹¹ should be governed by legally binding rules. They said: "We are confident that a laissez faire approach to growing GM crops would be less likely to achieve co-existence than having rules in place". The report recommends that farmers growing GMOs should be required to follow legally enforceable crop management protocols to ensure that the level of GMO's in conventional and organic products stays below the 0,9 % labelling threshold for GMO's that is laid down in EU legislation.¹²

In the words of the AEBC: "legally binding protocols would require authority in statutory legislation to establish the regulatory framework". These unified conclusions are remarkable, since in the panel is made up of a wide range of stakeholders, including a representative from Bayer

(who is also chair of the Agriculture Biotechnology Council, the umbrella group for biotech industry in the UK) and the director of Genewatch UK, an NGO. So far biotech companies and their umbrella organisations have been against legally binding rules to avoid genetic contamination. But in the AEBC report the industry has for the first time acknowledged that additional legislation is needed to ensure the freedom of farmers and consumer to choose products that are not genetically modified. This is despite pushing for a voluntary approach within panel meetings and the rumour that a minority report would be released recommending much weaker measures.

However, there is no consensus amongst the panel on how co-existence arrangements should be arranged to try to deliver an adventitious presence of 0,1% for organic products, or conventional products where supermarkets have specified this threshold. They admitted that 0,1% may be unachievable in practice if GM crop cultivation became widespread. A number of representatives on the panel wanted statutory rules on coexistence to be designed to deliver a 0.1% threshold, but this view was not shared by industry representatives.

Another important recommendation is that GM commercial crops should be subject to a probationary period of limited growing to test how

effective the coexistence rules will be. In addition, there should be the option to suspend GM approvals if co-existence rules break down and consumer choice is compromised.

Liability

There is agreement amongst the panel that farmers should have access to compensation if there is financial loss related to contamination above the statutory threshold of 0,9%. Although it was recommended that the development of an insurance market would be the best option, this is non-existent in the UK. A survey carried out by FARM in October ¹³ confirmed this and showed that no insurance company was prepared to provide this insurance; either to farmers wishing to grow GM crops or farmers wanting to protect their non-GM crops from contamination. In the absence of an insurance market the panel suggested that compensation could be provided temporarily by:

- Agricultural Biotechnology companies holding GM consents
- The Government (and thus the taxpayer).
- Consent holders and other parts of the agricultural supply industry
- A combination of Government and Industry
- All farmers through contributing a small levy on harvested crops.

The panel could not agree on compensation for contamination if the 0,1% threshold for organic crops is exceeded. Those members that thought

it essential also believe that the GM consent-holders and/or Government should fund compensation. On the other side, the biotech industry believes that it is unreasonable to expect compensation from any source other than the organic sector.

On environmental liability, the recommendations state that the Government should use the general approach of the draft EU Environmental Liability Directive to develop the UK's liability regime for any damage caused by the release of GMOs to the environment. Compensation from the GM crop consent-holder (or other responsible party who can be shown to have caused the damage) should be available for environmental remediation costs, irrespective of criminal liability. Also the costs for remediation of diffuse impacts of GM (from an unidentifiable source) could be chargeable to biotech companies (amongst other options).

Friends of the Earth has drafted a GM contamination and liability Bill which sets out the precise measures that would be needed if GM crops are to be grown in the UK. We are lobbying to get this taken up as UK legislation.

In the New Year, the UK Government is due to publish its GM policy. The policy will be informed by this new report as well as the results of the Farm scale crop trials, the GM public debate, science review and cost benefit review which were published in the summer.

⁹ Agriculture and Environment Biotechnology Commission

¹⁰ GM Crops? Co-existence & Liability? AEBC Report Published in 25th November 2003

It is available at: http://www.aebc.gov.uk/aebc/coexistence_liability.shtml

¹¹ Co-existence is the term used to indicate that GM crops are grown together with conventional and organic products

¹² According to European law all foodproducts that contain more than 0.9% GMO's have to be labelled.

¹³ See more at http://www.farm.org.uk/FM_Content.aspx?ID=138

German farmers withdraw from GM field trials

In the beginning of November, the government of the German region Saxony-Anhalt signed an agreement with six major chemical and seed companies to start large field trials with GMO crops. However, at the last moment before the signing of the papers and after months of preparation the major German farmers organisation - Deutscher Bauernverband- pulled out of the project. At the press conference organised by the government of Saxony-Anhalt, the ministers Rehberger and Wernicke had to admit that without the participation of the farmers, the trials were now cancelled. Originally 16 organisations were supposed to sign the agreement, but at the end only 6 organisations were left. All of them are corporations that are already lobbying for years to bring their GM products to the market: Pioneer Hi-bred, Syngenta, Monsanto, Bayer CropsScience, BASF and the Kleinwanzlebener Saatzucht (KWS)

The German field tests are designed to test the co-existence between genetically modified (GM) and non GM crops and to find out how gene flow to neighbouring fields can be contained. But German farmers say that they will reject large scale trials involving GMOs as long as there are no legally binding co-existence rules, that guarantee freedom of choice for farmers and consumers. They are also urging the German gov-

ernment to present a clear framework for liability problems, that could arise when organic and conventional products get contaminated by GMOs. In a joint statement of 6 november the Deutscher Bauernverband and their regional farmers organisation in Saxony-Anhalt state that: "We firmly reject that every regional German state takes decisions on its own, without clear rules for co-existence being established." The statement was followed by another press release on 25 November, which announced that the farmers organisation had established the first GMO free zone in Germany. The zone is situated in the German region Mecklenburg-Vorpommern and covers 10.000 hectares. Fifteen farmers, among them four organic farmers, have agreed on a voluntary basis that they will not use genetically modified seeds. In the statement the Deutscher Bauernverband says that by founding the GMO free zone they want to give a "signal" to the German government that it should "establish legally binding rules for liability and isolation distances between different forms of agriculture."

For more information (in German only), see:

http://www.bauernverband.de/print/pressemitteilung_1093.html

EU Regions call for GM free zones

Ten European regional governments¹⁴ from all over Europe have called on the European Commission to agree that European regions could define their own territory or part of it as a GMO free zone. During their joint presentation in Brussels in November the regions also requested that the European Commission clearly specifies “the responsibilities, in case of contamination of products from the conventional and organic farming with genetically modified crops, on the basis of the polluter-pays principle.”

The regions are responding to the Commission Recommendation on measures that EU member states could take to ensure the co-existence of genetically modified (GM) with conventional and organic crops, which was published on 23 July (see also Biotech Mailout September 2003). They state that the policy laid down in the Commission Recommendation could threaten high quality and organic production systems. According to the ten regions “the acceptance of

a coexistence of GM and GM free organism as defined in the Commission Recommendation of 23 July 2003 could imply the fruitlessness of what has been made up to now by the public and private actors at the level of production system, regulation, and regional promotion;”

Since they feel that so far the Commission has failed to protect their interest, some regions have already made their own laws. During the meeting in Brussels several examples of such laws were presented by regional authorities. Agricultural minister Barbini from the Italian region Tuscany explained that his region has made a special law (law number 53) that bans GMOs. He stated that Tuscany does not believe in the coexistence concept given the small size of the enterprises in his region, that does not allow for the separation of GM and non GM crops. He appealed to all regions in Europe that have similar conditions to join Tuscany in order to preserve biodiversity.

¹⁴The ten regions are: Basque Country (Spain), Aquitaine (France), Limousin (France), Marche (France), Salzburg (Austria), Upper-Austria (Austria), Schleswig-Holstein (Germany), Thrace-Rodopi (Greece), Tuscany (Italy) and Wales (UK)

Will Belgium give the red light for Bayer's oilseed rape?

In October the Belgian Biosafety Council seemed all set to present a positive opinion on Bayer's application for the cultivation of genetically modified MS8xRF3 oilseed rape. Such an advice would be a first step towards possible approval of this GMO in the EU. Bayer's oilseed rape had been notified under Directive 2001/18. Under this Directive one member state (the one where the product is first notified, in this case Belgium) has to make a risk assessment. This risk assessment is the basis for decision-making on the authorisation of the GM product in the whole EU.

But the results of the UK Farm Scale Evaluations (FSE, see page 6 of this Mailout) changed everything. The British studies showed –among other things- that biomass and seed rain of non-crop plants in GM spring oilseed rape was five times less than in conventional spring oilseed rape. This totally contradicted Bayer's claim in the notification dossier that “adaptations of cultivation and management techniques for the genetically modified oilseed rape are limited to changes in herbicide use, without any adverse environmental impact.”

Confronted with the new scientific information, the Belgian Biosafety authorities decided to

postpone the publication of the risk assessment. However, at the same time they have indicated that according to them the results of the FSE should be treated “totally separate” from the Bayer dossier.

This is a very strange and untenable position, since the FSE contain new scientific information on adverse environmental effects that concern exactly the same variety of oilseed rape as the one that Bayer has applied for.

In a letter that Friends of the Earth has written together with 6 Belgian NGO's to the Belgian authorities it is made very clear that the FSE provide more than sufficient information to reject Bayer's application. This should be done on the basis of EU Directive 2001/18, that –among other things- says that “adverse effects on human health and the environment” have to be avoided. Friends of the Earth has also made clear to the Belgian authorities that it would fly in the face of science if the Belgians would give a positive advice, in spite of the overwhelming evidence against Bayer's oilseed rape. At this moment it is still unclear when the Belgians will make a final decision.

Friends of the Earth Europe is the largest grassroots environmental network in the world, campaigning to protect the environment and create sustainable societies. Friends of the Earth Europe unities more than 30 national member organisations with thousands of local groups.

The Biotech Mailout is printed quarterly and is also available online at www.foeeurope.org/biotechnology/about.htm

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