

GMO-free Regions (GMFR) under current law - much more is possible.

1. At the time being most GMFRs are established via agreement between private persons e.g. farmers, breeders, food industry and other interested persons whilst **GMFRs enforced by public authorities are seen as not compliant with current national and particularly EC law**. They are considered as infringement on Fundamental Rights like Free Movement of Goods (Art. 28 EC-Treaty) and Free practising of profession (Art. 12 German Basic Law).

2. A corollary of this approach is that **no comprehensive ban of GMO in the respective region can be safeguarded** as agreements between private persons can only be reached on a voluntary basis. So only one declining farmer is able to "blow up" the whole project of a GMFR.

3. **That is why we have to lobby for provisions** on national and notably european level enabling GMFRs.

4. **But it would be a big mistake to rely only on that aspiration** because at the time being such amendments are no more than mere hopes, because:

- for political reasons such rules may never be achieved
- if achieved they might be watered down
- even if satisfying rules may be achieved, this legislation probably will take time; time we need to bridge under current rules

5. Therefore a painstaking scrutiny of the existing law is necessary and fruitful, as it shows that much more can be done

as generally assumed. The following analysis gives a brief **overview on already existing possibilities of legally enforced GMFR** we shouldn't hesitate to use.

6. Possibilities to establish GMFR or at least come close to that **under current german statutes**:

a. The newly inserted **§ 16b (1) Sentence 2 Genetic Engineering Act** allows for prohibiting the use of GMOs placed on the market in case the objective of coexistence can not be safeguarded. The only restriction for the authorities to resort to this instrument is that it can't be used for an overall ban of GMOs but only if "the circumstances of the individual case" require it.

An "individual case" within the meaning of that provision is not only constituted by noncompliance of one special farmer with good farming practice but **also if** - due to special circumstances of the used GMO (e.g. rapeseed) or special features of the region (e.g. small plots of land/topographic and geographic peculiarities) - **coexistence in principle can't be secured in the respective region**.

b. The also newly inserted **§ 34a German Federal Conservation Act** prescribes for each release and cultivation of GMOs in and close to Sites of the **European Ecological Network Natura 2000** (Areas pursuant to the Flora Fauna Habitat Directive and the Bird Protection Directive) an **assessment** of their implications on the respective site. In case the GMOs are only likely to have significant adverse effects on the site, the release or cultivation shall be impermissible.

c. But also the **established instruments** of the federal nature protection law can be used in this direction.

If GMOs are inconsistent with the protection purpose of nature reserve pursuant to § 23 or landscape reserve pursuant to § 26 they can be prohibited. Biosphere reserves according to § 25 even explicitly can be designated to that end.

d. **§ 29 German Seed Variety Law** allows for the establishment of "**closed seed areas**", which also could be exploited one or the other way for the project of GMFRs.

7. Art. 28 of the German Constitution guarantees the local municipalities the right to regulate their local affairs on their own responsibility. This fundamental right can also be made fruitful for the project of GMFR.

8. Provided the above mentioned restrictions are based on sound science, on a case by case approach and don't intend to prohibit GMO generally, **there won't be any infringement of EC law**, be it Art. 28ff. (Free Movement of Goods) or Art. 22/26a Deliberate Release Directive.

9. A **combined approach** of state-enforced GMFR and the already existing private agreements could yield positive synergetic effects in terms of using the state power for "discipline building" and the private agreement for marketing purposes etc.

10. We always have to keep in mind, that an **EU legislation** on GMO free Zones need not in every instance be an improvement. It **also could backfire** and take us the above mentioned opportunities we under Art. 26a Deliberate Release Directive (still) have.

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