

# Biotech Mailout

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**Friends of  
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## New EU member states block Monsanto - twice

During two recent votes on applications by Monsanto to allow Genetically Modified (GM) products into the EU, the new member states have played a key role in blocking these requests.

On 16 June 2004, a proposal by the European Commission to authorise Monsanto's oilseed rape GT 73, did not reach the required qualified majority of 88 out of 124 votes in the Committee on the deliberate release of GMOs into the environment. The division of the votes was as follows:

**For:** 43 votes (Belgium, Czech Republic, Finland, France, Netherlands, Latvia, Portugal, Slovakia, Sweden)

**Against:** 57 votes (Austria, Cyprus, Denmark, Estonia, Greece, Hungary, Italy, Malta, Lithuania, Luxembourg, Poland, UK)

**Abstentions:** 24 votes (Germany, Ireland, Spain, Slovenia)

Two weeks later, on 28 June 2004, during a meeting of the environment ministers in Luxembourg, the European Commission again failed to convince the EU member states to approve a GM product from Monsanto. This time, the deadlock was based on an application by Monsanto for the import and use as animal feed, of GM maize NK 603. The new member states again played a crucial role. This is how the environment ministers indicated their position:

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**For:** 59 votes (Czech Republic, Estonia, Finland, France, Ireland, Netherlands, Latvia, Poland, Portugal, Sweden, UK)

**Against:** 36 votes (Austria, Cyprus, Denmark, Greece, Hungary, Italy, Malta, Lithuania, Luxembourg)

**Abstentions:** 29 (Belgium, Germany, Spain, Slovakia, Slovenia)

From the division of their positions it is clear that the scepticism about GMOs and the policy of the European Commission is just as high in the new member states as in "old" Europe. This was then confirmed by several statements from authorities in the new member states.

For example, the Ministry of Agriculture, Natural Resources and Environment in Cyprus said the following in a recent statement on Monsanto's GM oilseed rape, GT 73: "In the event of such a spill (of GM oilseed rape, (FoEE)) into the environment, there will be severe negative effects on the biodiversity in Cyprus. (...) There is a need to strictly prevent living seeds from circulating into the environment."

In the same statement the Cypriot Ministry

explains why it does not agree with the European Commission: "The draft Commission Decision states that there is no need to implement special terms and precautions for the intended uses as far as handling or packaging of the product and the protection of specialised ecosystems, environmental types and geographical areas. Cyprus does not share this position for the reasons mentioned above."

In the North of Europe also, there are concerns. Recently, for example, the Lithuanian Minister of Environment, Arunas Kundrotas stated during a conference in his country, that Lithuania will stick to the precautionary principle as long as there is no proof of the safety of GMOs. (See also page 3 of this Biotech Mailout for a report on the GMO debate in Lithuania).

Legally speaking the European Commission has the powers to overrule the member state concerns if no qualified majority is reached in favour or against a request for the authorisation of a GMO(1). However, if the Commission approves products without sufficient support from the Member States and without convincing data about safety for animals, humans and the environment, it is bound to undermine the legitimacy of the EU's policy on GMOs.

**References:**

1. This has happened in the case of Bt 11, a GM maize that was recently approved by the Commission in spite of health concerns raised by several member states. For more details see FoEE's briefing on Bt 11: [http://www.foeeurope.org/GMOs/pending/bt11\\_briefingapril04.pdf](http://www.foeeurope.org/GMOs/pending/bt11_briefingapril04.pdf)

# Lithuania embraces precautionary principle

Over the last few months there have been very significant debates in Lithuania over the country's policy on GMOs. For the first time the country needed to present an official position on concrete EU applications. Turning to neighbours and old EU member states, did not help to avoid hot discussions between representatives from different organisations participating in the national GMO law steering committee.

During two committee meetings the following applications for the authorisations of GMOs were discussed by scientific experts and members of the GMO law steering committee: potato EH92-527-1 (for technical starch); rapeseed: GT73, MS8xRF3; maize: 1507, NK603, Mon810×Mon863, NK603×Mon863, NK603-xMON810, Bt11. These meetings raised considerable public interest and were covered on TV.

Eco-farmers, environmental NGOs and the ministry of Agriculture supported the idea not to approve new varieties of GMOs. They pointed out that the dangers of genetic pollution could not be contained, because there are mainly small-scale farms in Lithuania. Other arguments used by this group were the damage of intensive agriculture to nature and the lack of longterm investigations into the effects of GMOs on human health and nature.

Scientists together with representatives of the Agriculture institute and the House of Agriculture were strongly promoting GMOs, "Lithuania can't stay in the stone age, when other countries are going forward", argued agricultural business supporters, trying to push the idea to develop government sponsored GMO research programmes.

However, when it was proposed to vote personally, almost all steering committee members voted against GMO approvals. Subsequently, during a national conference on GMOs, attended by scientists, NGOs and policymakers, the Lithuanian Minister of Environment, Arunas Kundrotas presented the official Lithuanian position on GMO's: since there is not enough proof that GMO's are safe, Lithuania will stick to the precautionary principle.

It is now the role of Lithuanian NGOs to ensure that the Minister keeps his promise and that other new member countries will also follow the precautionary principle.

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# GM Trade Dispute: What happens next?

From 2 - 4 June 2004, the first meeting of the panel of the US-led complaint against Europe's 'Measures Affecting the Approval and Marketing of Biotech Products' was held at the World Trade Organisation (WTO) in Geneva. The US, Canada, Argentina and the European Communities made their case in court and presented their scientific and legal strategy on GMOs. Prior to the hearing the WTO members had made detailed submissions.

The US, Canada and Argentina's legal strategy included outlining how the European Community's 'de facto moratorium' on the approval and marketing of Genetically Modified (GM) products and national safeguard measures (bans against certain GM products) in six EU member states are WTO incompatible and illegal barriers to trade. In its first submission to the WTO on 21 April 2003, the US justified its legal action against the EU by claiming that the US is: "*calling on the EC to allow its own approval procedures to run their course.*" **(1)**

Indeed, the first GMO approval occurred shortly after the EU's approval procedure had been finalised in April 2004. Yet, despite Europe's major attempt to appease the US by ending its de facto moratorium with the approval of BT 11 Maize on 19 May 2004, the Bush administration indicated that it intended to pursue its lawsuit irrespective of the ban's lifting. As Christopher Padilla, a spokesman for the United States' trade representative, stated: "*the approval of a single product does not affect our WTO challenge, ... the lifting of the moratorium does not indicate there is a consistently functioning approval process.*"

## ***The reductionist approach***

The US, Canada and Argentina are challenging the EU's provisions against a number of highly technical caveats, namely articles and sub-articles of the WTO's main GMO-related agreements: the Sanitary and Phytosanitary Agreement (SPS); the Agreement on Technical Barriers to Trade (TBT) and the 1994 General Agreement on Tariffs and Trade (GATT).

They are reducing complex biosafety matters to mere trade issues and are presenting this case as a 'simple case'. In contrast, they purposely discard arguments concerning the importance that the European regulatory changes have had on improving the scientific quality of European risk assessment and management of GMOs. They also fail to acknowledge its consumer-driven and democratically-led approach to decision-making. The US moreover argues that, the type of measures adopted by the EU, are unnecessary since GMOs have been proven safe in the US.

However, the reality is that the US Food and Drug Administration (FDA) do not oversee an independent, mandatory safety assessment process to determine the impact of GMOs on human health or the environment. As a recent report released by the Pew Initiative on Food and Biotechnology notes, "FDA currently has no affirmative postmarket inspection or compliance program for GM crops or foods **(2)**." Moreover, the FDA fails to "conduct any product sampling or inspection related to biotech foods." The FDA merely oversees a voluntary system under which corporations submit their own safety test procedures - often incomplete - and which the FDA maintains secret.

### ***The Strength of the EU's case***

In its 17 May 2004 submission and defence **(3)**, the EC countered US arguments that this is a simple case and that biotech products are safe. The EC drew attention to the scientific complexity and risks associated with GMOs identified in various scientific reports, including the UK field trials presented in September 2003. The EC highlighted strict precautionary measures adopted by other countries, including total bans on GMOs. Additionally, in order to explain why biotech products are risky, the EC mentioned the Cartagena Protocol on Biosafety, and national regulatory (biosafety) frameworks.

Finally, the EC questioned whether the WTO was the appropriate forum for resolving all the GMO issues raised in this dispute. In the submission, the EC says: 'it is not the purpose of the WTO agreement to trump the other relevant rules of international law, which permit - or even require a prudent and precautionary approach. There is a serious question whether the WTO is the appropriate international forum for resolving all the GMO issues that the complainants have raised in these cases. According to the EC, 'international cooperation' would have been the appropriate channel for building a sound international framework for addressing the GMO issue. **(4)**

### ***Civil society speaks out***

Various civil society groups and academics from around the world have submitted unsolicited documents to the WTO panel. On 25 May 2004, Friends of the Earth International handed in more than 100,000 citizens' objections from people in over 90 countries and from 544 organisations representing 48 million citizens, (see for more info: <http://www.bite-back.org>). Friends of the Earth declared a 'bio-hazard' area around the headquarters of the WTO, in protest at the US led complaint over genetically modified food.

At the same time two civil society coalitions, a

US-led and a global one, together with a group of researchers, have submitted unsolicited 'amicus curiae' ("friends of the court") briefs to the panel. It is unclear how they will be recognised.

### ***Next Steps***

The next steps in the process are rebuttal submissions from both parties; a 2nd hearing and maybe consultation with scientific experts. The panel, composed of 3 persons, will now have to decide whether to consult scientific experts. If scientists are consulted this would prolong the dispute timetable considerably. In other WTO cases (like hormone treated beef), the scientific advice period lasted about 600 days!

After the 2nd hearing a draft report will be prepared which will then develop into a final ruling. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform to WTO rules. The party then has to conform or face hefty trade sanctions.

### ***WTO standing at a crossroad***

As an institution already suffering from lack of credibility, the WTO faces major challenges as an arbitrator in this case. The consequences of a potential WTO ruling in favour of the US would have serious implications for consumers, farmers and the environment both in Europe and worldwide, with particularly severe repercussion on developing countries.

Indeed, if the WTO were to rule against the EU, countries worldwide would see themselves denied: **(a)** the possibility to enact GMO import bans as temporary measures to prevent the occurrence of risks associated with GMOs, and **(b)** the right to set appropriate levels of risk-assessment standards in accordance with national requirements. Indeed, a negative ruling for the EU would set a precedent that could severely undermine efforts to regulate GMOs

under the current Cartagena Protocol on Biosafety, by setting a maximum ceiling of protection both for consumers and the environment, above which countries would be threatened with trade sanctions.

Therefore, the WTO must recognise the limitations of its mandate in biosafety matters and acknowledge the Precautionary Principle and Cartagena Protocol on Biosafety as the most relevant international piece of legislation. Similarly, Friends of the Earth encourages the

US-led coalition countries to drop their WTO complaint and their bilateral political threats, in favour of a multilateral approach to global standard-setting.

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1. United States: European Communities - Measures Affecting the Approval and Marketing of Biotech Products - First submission of the United States, 21, April 2004, see:

<http://www.foeeurope.org/biteback/US.1stSub.BITEBACK.pdf>

2. Pew initiative on Food and Biotechnology, Report Identifies Issues in Government Oversight of Biotech Crops, News Release, 24 April, 2003

3. .See: [http://www.trade-environment.org/output/theme/tewto/EC\\_submission\\_biotech.pdf](http://www.trade-environment.org/output/theme/tewto/EC_submission_biotech.pdf)

4. CTSD, TradeBioRes, EC releases first submission in GMO dispute-US responds, 11 June 2004. See also European Communities: European Communities-Measures Affecting the Approval and Marketing of Biotech Products, WT/ DS 291/292/ and 293, First written submission by the European Communities, 17 May 2004, see:

<http://www.foeeurope.org/biteback/EU%20submission%20to%20WTO.pdf>

## German law on co-existence - improved

On 18 June 2004, the Bundestag (the German Parliament) adopted a new law, aimed at ensuring GM-free production and the co-existence of GM crops and non-GM crops. The law is based on the EU's deliberate release Directive 2001/18, which gives EU member states the possibility to take measures to avoid the presence of GMOs in other products. Compared to the draft proposal presented by the German federal government in

February (see Biotech Mailout, April 2004) several improvements have been introduced.

**The key provisions of the law are:**

- a public **register** providing farmers and others with precise information about the cultivation of GM crops in their neighbourhood;
- an obligation for GM operators to take **precautionary action** to protect GM free

farming and to prevent "material negative effects" (economic damage) as a result of releases of GMOs, in particular compliance with "**good farming practice**" during the cultivation of GM crops;

- a **compensation scheme** which compensates conventional and organic farmers if cross-contamination through GMOs causes economic damage;

- **protection of ecologically sensitive areas.** The new law amends the **Federal Nature Conservation Act** and states that field trials and the use and handling of GMOs will not be allowed if they affect an ecologically sensitive "Natura 2000" area significantly;

- **the possibility to refuse authorisations** if it can be shown (in advance) that for a specific product, co-existence is not possible.

- **the possibility to refuse and/or withdraw approvals** on the basis of potential ecological damage of a GMO due to enhanced invasive potential.

### **Public Register**

The public register will be designed with the aim of ensuring co-existence. Precise information about the location of parcels where GMOs are intended to be released will be available to the public. Anybody who intends to commercially grow GMOs has the obligation to report this at least three months in advance to the authorities for the purpose of registration. However, for field trials this period is only three days. In the register, a unique identifier (based on OECD criteria) and other data relating to the GMO will be kept for 15 years.

Compared to the draft law (see Biotech Mailout April 2004) these are considerable improvements. For example: under the draft law the register was not fully accessible to the public and GMO growers could make a special

application for "exclusion of information". Also in the draft law, the unique identifier was not mentioned. Though this may seem a detail, the unique identifier is an important tool to trace genetic contamination.

### **Genetic contamination**

The new law obliges GMO operators to take precautionary action to avoid "material negative effects", especially during the cultivation (including field trials) of GM crops, but also during other specific ways of handling GMOs, such as processing. According to the law, material negative effects (economic damage) occurs when products cannot be placed on the market because of cross contamination with GMOs. Contrary to the recently adopted Danish co-existence law, (see page 10 of this Biotech Mailout) the German law recognises that economic damage can also occur when the contamination stays below the European labelling threshold of 0.9 % **(1)**.

This is of great importance, since the market (retailers etc.) might refuse to sell products that contain less than 0.9 % GM pollution. It was the German Parliament who strengthened the law on this crucial aspect. Furthermore, according to the law, economic damage also occurs if owing to the presence of GMOs, a neighbouring farmer is no longer able to label his produce as "organic" within the meaning under EU Regulation No. 2092/91 or as produced "without genetic modification" within the meaning of the relevant German legislation **(2)**.

### **Provision of product information**

The new law lays down that persons placing GMOs on the market must supply accompanying information with the product. This information must show how material negative effects can be avoided in the handling of the relevant GMO, for example through precise details of the GMO's cultivation design, such as recommended

isolation distances between the GMO crop and non-GM crops in neighbouring fields.

Rules of "good farming practice" will be issued to specify these obligations in greater detail. To enable the authorities to modify these rules in the light of future experience with the cultivation of GM crops, those marketing or handling GMOs are under the obligation to monitor for negative effects and to notify the authorities of new findings relevant to risk.

### ***Compensation scheme***

The new law establishes the principle of 'joint and several liability' of all neighbouring farmers which might have caused the cross-contamination, so that a farmer who has sustained damage will be free to decide which neighbour to claim compensation from. The reasoning behind the principle of joint and several liability is that - if several neighbouring farmers cultivate GMOs - it cannot always be determined after the event which one has been responsible for damage in a specific case.

However, if damage through cross-contamination to non-GM farmers occurs, although neighbouring GM farmers have respected the instructions provided by the GM seed producer (see paragraph above), the seed producers can be held liable. In that case the GM farmer can sue the GM seed producer for providing inadequate product information. This will force the producer of GMOs to take into account the latest scientific evidence about the dissemination of a particular GMO and will make it impossible to only rely on those studies that mention the shortest "safe distance" to neighbouring fields.

### ***Ecologically sensitive areas***

The new law contains special provisions for the protection of ecologically sensitive areas, which form part of the "Natura 2000" network. Field

trials, the use and handling of GMOs in such areas will not be allowed if they affect a "Natura 2000" area significantly.

### ***Refusal of authorisations***

The law gives the possibility to refuse and/or withdraw authorisations if it can be shown that in a specific case (specific product in a specific region) coexistence is not possible. A refusal can take place when it can be shown in advance, that co-existence cannot be guaranteed. An authorisation can be withdrawn if during the cultivation of GM crops it becomes apparent that the GM plants are cross-contaminating non-GM plants. The legal basis for the refusal and/or withdrawal is the Recommendation on co-existence that was published by the European Commission in July 2003. In this Recommendation the Commission states "measures of a regional dimension could be considered" if other measures (such as separation distances between adjacent fields) are not effective (Recommendation, point 2.1.5).

### ***Cases of high invasive potential***

In those cases where it can be shown that GMOs have a greater potential to invade nature than their natural counterparts, the authorities have the possibility to stop the introduction of a certain GMO. This is in order to prevent that a GMO establishes itself permanently in nature.

### ***FoE's assessment***

Friends of the Earth, believes that the new German law contains several interesting elements for the protection of GM-free agriculture and GM-free food production. For example, the public register is essential to ensure that non-GM farmers can demand that their neighbours take appropriate measures to avoid genetic contamination. The register could also be useful for nature protection organisations and (regional) authorities to intervene when it becomes

apparent that GMOs could threaten ecologically sensitive zones. It is however very strange that in the case of field trials the notification period for GM releases is only three days in advance, which makes it extremely difficult to take appropriate measures in time.

It is positive that the law recognises that measures are needed to avoid GM contamination below 0.9 %. This is essential, since the biotech industry is lobbying for an interpretation of EU law, whereby any contamination below 0.9 % would be taken for granted. Needless to say this would violate consumers' and farmers' right to choose.

It still remains to be seen how effective the new German law will be. The effectiveness of the law heavily depends on actions by seed producers and GM farmers. It is as yet unknown if they can avoid GM contamination - it is quite obvious that this will be extremely difficult, given the fact that GM contamination can travel long distances. Possibly the only solution is the establishment of large GM-free zones and it is very questionable if GM producers and GM operators would take the initiative in that direction.

Another issue is control. How will it be controlled if GM producers and GM operators abide by the law? Probably the German state will have to play a more important role and set up a control mechanism, since the control should not be left to affected farmers alone, who may not have the means to do so.

Also in the area of liability, more state intervention is needed. In the current law there is

only civil liability, which means that the claiming of damage as a result of GM contamination is left to private parties. This means that the victims themselves will have to take the risk of initiating a legal procedure against their neighbours. It would be better if the state would play a more active role in these procedures.

Another area of weakness is the protection of nature against the risks of GMOs. What happens if an ecologically sensitive area is damaged by the release of GMOs? Will the state claim compensation or will NGOs get the possibility to do so? The law does not answer these questions. Also, in effect the protection that the law offers for ecologically sensitive zones is restricted to Natura 2000 areas, which only form 2.5 % of the surface area of Germany.

This is because the possibility to intervene outside Natura 2000 areas in cases of "enhanced invasiveness" of GMOs is fairly restricted, since this possibility is only mentioned in the reasoning accompanying the law and not in the law itself.

### ***What's next ?***

The law as adopted by the German Parliament will now go to the Bundestag. The Bundestag is a legislative body representing the 16 German states, who together make up the Federation. The Bundestag can still overrule the law adopted by the Parliament, but only when its reaches a two-thirds majority against it. In that case there will be no law at all. The vote in the Bundestag is expected in the autumn of 2004, with 24 September 2004 as the first potential date.

### **References:**

1. Under EC legislation, all food and feed consisting of or produced from GMOs must be labelled "genetically modified". If the content of genetically modified material amounts to less than 0.9% of the relevant ingredient, labelling is not mandatory if the presence of the material is adventitious or technically unavoidable.
2. In Germany, the label "without genetic engineering" can be used on a voluntary basis and subject to specific requirements laid down in national law.

# Danish co-existence law is full of weaknesses

On 26 May 2004, the Danish Parliament adopted a law that regulates the co-existence between genetically modified, conventional and organic agriculture. The Danish law is the first of a series of national co-existence laws that are expected to be adopted within the EU over the next year. Therefore the Danish law could set an important precedent.

This is a matter of great concern to environmentalists, consumer organisations and GM-free farmers. GM-agriculture threatens existing agriculture both by the risk of biological contamination and by economic damage caused by the extra costs of measures aiming to prevent GM contamination. To this dual challenge the Danish co-existence law offers no guarantees. In the long run the law could even be a threat to the environment and to the freedom of consumers and farmers, to choose products without Genetically Modified Organisms (GMOs).

**The most important elements of the law are:**

- Separation distances between fields where Genetically Modified (GM) crops and non-GM crops are grown, are established for several species. The aim of these separation distances is to ensure that the presence of GMOs in non-GM products stays below 0.9 %.
- A precondition of the law is the assumption that GM contamination in seeds remains below 0.1%.
- A compensation fund is set up for those cases where economic losses occur as a result of GM contamination of conventional and organic products. The compensation scheme will cover

the difference between the GM-free and the GM crop sale prices. Organic farmers get compensation if they need to recertify their fields following GM contamination. However, for conventional farmers the compensation scheme is for most instances practically non-existent (see below under "Liability scheme" for further details)

- The compensation scheme is financed via a fee of a hundred Danish crowns (13,4 euro) per hectare, to be paid by the GM grower. The agreement stipulates that the Danish authorities will always try to recover compensation costs by prosecuting the GMO-farmers who caused the contamination.
- The GM grower should inform all neighbours. GM growers are registered and published on Internet.
- The law introduces an obligatory course for GM growers and a "GMO-drivers' licence" that farmers must have before they can start growing GMOs.
- Some GM-crops (rape seed, grasses and clover) are temporarily banned in Denmark, as no effective co-existence measures could be established for these crops.

**Threshold**

Although there are certainly some positive elements (such as the public register) in the new legislation, it would be quite misleading to say that these provisions are enough to safeguard conventional and organic agriculture from GM contamination. The law fundamentally fails to address any contamination below the threshold

of 0.9 %. This of course undermines the choice of consumers, who might end up eating 9 GM meals out of every 1000 without even knowing.

Originally the 0.9% threshold was intended as a buffer for the entire food chain. In the Danish law this buffer is spent already at field level; there is no margin of error left for the subsequent users further down in the production chain.

Moreover, the way in which the threshold is used in the Danish law is not in accordance with EU legislation, which clearly says that the threshold of 0.9 % is not to be applied unconditionally, but is only intended for "adventitious or technically unavoidable presence" of GMO's (see for example EU Regulation 1829/2003, article 12). The Danish law thus completely ignores the EU law that obliges operators to supply evidence that they have taken appropriate steps to avoid any (detectable) presence of GMOs.

### **Separation distances**

Furthermore, the separation distances between GM fields and non-GM fields are too narrowly defined. The law prescribes that the following separation distances: 200 metres between non GM corn and GM corn, 150 metres for oilseed rape, and 0 metres for wheat. It is obvious that these distances are totally inadequate to prevent contamination of non-GM crops. The Danes should have known this. The Danish separation distance for wheat (0%) is based on the assumption that wheat is 100% self pollinating, while Hicks' research on crosspollination in wheat in Canada, has meant that Canada recently increased the separation distance in wheat from 30m to 300m. As far as maize is concerned: already in 2002 the EU's Environment Agency EEA (see also Biotech Mailout April 2002) wrote in a report that, "evidence suggests that GM maize would cross pollinate non-GM maize plants up to and beyond their recommended isolation distance of 200m."

The same EEA report says that GM oilseed rape can cross-pollinate traditional and organic plants over a distance of 4 kilometres. A more recent report by the UK's environment ministry DEFRA even found that pollen from GM oilseed rape travels as far as 26 kilometres, roughly 175 times farther than the isolation distance considered appropriate by the Danish lawmakers.

### **Liability scheme not effective**

The liability scheme that is introduced in the law, although of a very limited nature, does contain some interesting elements, at least in theory. By installing a compensation fund the Danes have managed to avoid that the burden of proof in cases of genetic contamination will lie with the victims. The economic costs of the unwanted dissemination of GMOs will have to be carried by GM operators (not the GMO seed industry!) via a fee per hectare. After the fund has paid the compensation, it is up to the Danish government to try to prosecute the GM framer(s) that caused the contamination.

However, the liability regime can hardly be called effective. The compensation scheme does not cover contamination occurring outside a narrowly defined zone e.g. for corn, the compensation scheme covers only GM-pollution that occurs within the 100m immediately outside the 200m separation distance around the GM-field.

For those crops like wheat, that have no separation distance there is also no compensation. Even for farmers that are inside the compensation zone the right to compensation is very limited. Only contamination occurring as a result of cross-pollination is covered. Moreover, damage has to be reported the same year as the crop is grown on a neighbouring field, so there is no compensation if the contamination (from the

seeds bank, truck spillage, etc.) is discovered in the years that follow. Another major weakness of the compensation scheme is that it only covers economic and not environmental damage, as may occur as a result of the escape of GMOs to wild plants.

Last but not least, a major drawback of the law is that it only deals with co-existence in the agricultural phase of the production process. Possible admixture between GMOs and non-GMOs during transport, processing etc. is not regulated. Needless to say that this could lead to further contamination, that could go easily above the labelling threshold of 0.9%, since this maximum threshold is already allowed in the agricultural phase. In other words: the law opens the door to major economic damage, since not many consumers are likely to buy products that are contaminated over the 0.9 % threshold and that have to be labelled as GMOs under EU law.

### **Conclusion**

The Danish law seems to be a compromise between the interests of the environment, consumers and non-GM producers on the one hand and farmers who might want to grow GMOs in the future on the other. It sets out several principles aimed at protecting the interests of the environment and of those who want to stay GMO

free, such as the polluter-pays principle and the principle of transparency.

Simultaneously, the law also gives ample space to GM producers, mainly by neglecting biological laws concerning the distances that living organisms can travel. Given the fact that inadequate separation distances will in the end mean that GMOs end up everywhere, eventually the law favours GM producers. In spite of the attempts to satisfy everyone, the end of the game will be that the freedom of choice will be lost and that the environment will be contaminated. Provided of course, that anyone in Denmark will be interested in growing GM crops commercially, which still remains to be seen.

It is hoped that this law will not set the standard for other EU member states, since it is too weak to offer any meaningful protection against the unwanted and uncontrolled spread of GMOs into the environment. Nor does it offer adequate protection for consumers and producers who want to avoid GMOs.

#### **Thanks to:**

Greenpeace Nordic

<http://www.greenpeace.dk>

NOAH (Friends of the Earth Denmark)

<http://www.noah.dk>

# Old Spanish government fails to adopt co-existence law

In March 2004, the Spanish government proposed a very unsatisfactory decree to develop co-existence measures in Spain that was heavily criticised by environmental NGO's like Friends of the Earth, "Ecologistas en Acción", Greenpeace and COAG, a mainstream farmer's organisation in Spain. Together they developed a critique to the proposal that was supported by more than 50 other organisations in Spain. Fortunately, the proposal was not adopted in the last meeting of the former Spanish ministers and a new proposal is expected from the new socialist government.

According to the critique of the proposal done by the group, the former Spanish minister failed to address the issue of co-existence:

- The proposal minimised the bearing of the genetic contamination and proposed a non-scientific based distance of 25 metres. The NGO's report showed that many scientific studies agreed that genetic contamination might occur even with considerable distance, up to 800 metres **(1)**. Also, a new scientific study by the US organisation Union of Concerned Scientists had reported **(2)** in February 2004 that in the USA, since the introduction of GMOs in 1996, "seed of traditional varieties are pervasively contaminated".

- It established the adventitious threshold of 0.9% as the level of contamination permitted, which legitimised the presence of GMO in seeds and food. Art. 12 of the Regulation (EC) 1829/2003 on food and feed establishes an "adventitious threshold" for cases when the presence of GMO is adventitious or technically unavoidable, so trying to legitimise the presence

of GMO that should be avoided is contrary to the European law.

- It treated as equal GM and conventional and organic crops, without taking into consideration the environmental, social, economic and ethical risks that GMOs could introduce. This is in contradiction with the Recommendation of the European Commission on co-existence **(3)** that established that coexistence measures should leave farmers the right to "choose the production type they prefer, without imposing the necessity to change already established production patterns in the neighbourhood".

- The proposal failed to ensure liability because all the responsibility is for farmers and the biotech industry does not have to take any responsibility. The contaminated farmers would have to go to "civil" court to demand compensation by the GM farmer. That could be both a time and money - consuming process, as has already occurred in North America, and it would create an atmosphere of distrust between neighbours.

- It also failed to put in place compulsory co-existence measures. Public registers for recording the location of GMOs commercially grown were not compulsory. As GM farmers, who would not be damaged in cases of contamination, do not have any interest in registering their GM crops, they would do it only if it would be compulsory.

Without any information about where the GM crops are growing, it is not possible to establish suitable measures to prevent contamination and do the monitoring of crops. This is why in the UK,

it has been proposed to impel the organisation applying for marketing permission should publish their intention to grow GM crops and allow neighbouring farmers to reject it, if they see their production undermined (4).

The proposal failed to be approved by former ministers before the end of the legislative period. Spain is the only country where GM crops - Bt176 and Mon 810 - have been released commercially since 1998. During all those years, the cultivation of GM corn in Spain has taken place without any proper control and without any official evaluation. This is why the absence of coexistence regulation - that should address prevention of genetic contamination and liability in cases of contamination or other problems - is already a real problem in Spain.

### ***A new perspective - does it open up with the new government?***

According to recent public declarations by the two ministers (for Agriculture and Environment) with competence in their dossiers, the new Spanish government will take a more precautionary approach on GMOs, ending the

blind pro-GMO policy that characterised the former government.

The Minister of Agriculture has announced that they are revising the proposal on "co-existence" and they are considering "partially" the demands of the "critique" that the Environmental NGOs made to the "old" proposal (5). Moreover, the Ministry has offered to the environmental organisations to be part of the National Commission of Bio-security in charge of the monitoring of GM crops growing in Spain, which will also be in charge of the "co-existence" measures (6).

This is the first time that environmental organisations are taken into account on the GMO issue in Spain. The Minister of Environment announced that she would seek for independent scientific advice to evaluate if Spain will continue growing extensive GM crops (7). Additionally, since the new Spanish government is in place, a more precautionary approach at EU level was perceived, for example, Spain has abstained when Member States voted on the approval of new types of GMOs (Bt11, NK 603 and GT 73).

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# French Food Safety Authorities: No proof of safety of Bayer's GM rice

In the last issue (see Biotech Mailout, April 2004) it was reported that Bayer had sent an application to the European Commission for the commercialisation of Genetically Modified (GM) rice LL62. After the UK competent authority gave a positive risk assessment, 9 out of 15 countries have raised objections against its safety. The French opinion is now available to the public (1) and it has raised objections on the following issues:

○ **Molecular characterisation:** Absence of data on the description of the gene where the disruption took place as well as the position of the disruption of the gene.

○ **Lack of consideration of unanticipated changes:** It is not possible to arrive to a "sound conclusion" from the poultry and pig feeding study. No data is available about the "production conditions" of the GM rice LLRice62 and non-GM rice. Additionally, in the statistic's analysis of the poultry feeding study submitted, the exact value of the level of signification of the group effect is

missing, as well as the measure of the residual variability.

The AFSSA (French Food Safety Authority) has requested a rat feeding study on toxicity/tolerance during 90 days. They want to confirm the absence of toxicity of the PAT protein and the absence of fatal effects on animal health after regular consumption of rice. The rat feeding study on toxicity submitted by Bayer is not acceptable because they are not feeding the rats, but they are given the potential toxic protein "via intravenosa".

Friends of the Earth appreciates that the French Food Safety authorities make their scientific opinions on GMOs available for the public and urges other member states to follow the French example. Currently the EU approval procedure for GMOs lacks transparency and essential pieces of information are missing. This makes it difficult for members of the public, NGOs, independent scientists, regional authorities etc. to monitor and - if needed criticise - the possible approvals of GMOs.

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# Spain withdraws Bt 176 corn over health concerns

Spain is presently the only country in the EU that tolerates large-scale commercial release of GM crops, with approximately 20,000 - 30,000 hectares grown each year since 1998. In 1998, one variety of insect resistant corn with the genetic modification Bt176 was approved and since then commercially grown. In 2003 and 2004, the government authorised another 5 and 9 GM corn varieties respectively - with genetic modifications Bt176 and MON810.

During all those years, the cultivation of Bt 176 corn in Spain has taken place without any proper control and without any official evaluation. This situation was particularly worrying because, Bt 176 corn could provoke insect resistance rapidly: in the US Bt 176 varieties were withdrawn by the EPA from the revised list of registered products, for concerns about an uncompleted protection against target insects and thereby the risk of appearance of insect resistance.

The withdrawal in the US took place already in October 2001. However not until recently the EU woke up to this signal: the European Food Safety Authority (EFSA) published an opinion on 19th April 2004 in which it recommends that Bt 176 corn "should not be present in GM plants placed on the market" for its gene of resistance to the antibiotic ampicillin. Four days after the EFSA advice, the Spanish Agency for Food Security stated, "this Bt 176 corn will not be allowed to be sown and grown from January 2005".

In other words: after six years of growing and eating Bt 176 corn and furthermore, contaminating the food production with this corn, the authorities revoke the authorisation due to health concerns. Let us hope that contamination is not too generalised and that a way back is possible. Let us also hope that the EU will be able to learn from the bad Spanish experience. It is absolutely not the example to follow for the rest of the European countries.

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

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