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Theses for the Berlin conference, 14-15 January 2006,

Workshop Legal Strategies – regional, national, EU

1. The present German Genetic Engineering Act (*Gentechnikgesetz*) contains rules taken from the private-nuisance provisions of the German Civil Code or *Bürgerliches Gesetzbuch*.
 - (a) Farmers who do not grow GM crops must put up with contamination through the adventitious presence of GMOs in their crops as long as the neighbouring farmer growing GM crops adheres to ‘good professional practice’.
 - (b) A farmer who does not grow GM crops can, however, claim against GMO users if he suffers ‘significant damage’, for example if the situation compels him to have his harvest labelled.
 - (c) If two or more GMO users are involved, they are jointly and severally liable..
2. The question of the coexistence of GM and non-GM foodstuffs and consumers’ freedom of choice relate to constitutional principles enshrined in Articles 12 and 20a of the Basic Law (*Grundgesetz*). Every legislative amendment must therefore adhere to these constitutional principles.
3. This constitutional dimension also creates the need for clearly formulated laws and statutory orders, otherwise lengthy judicial proceedings will be required so that the courts can define vague legal concepts such as ‘good professional practice’.
4. Since outcrossing will remain unavoidable, and since farmers who wish to work without GMOs are required, in certain circumstances, to tolerate contamination through the adventitious presence of GMOs in their crops, it is imperative to enact far-reaching rules on damages awardable to farmers who work without genetically engineered seeds and plants. An individual farmer who does not grow GM crops would be financially ruined by years of

litigation. In practice, he would not be able to demonstrate beyond doubt the causes of the incrossing and the sources of the contaminant organisms. Any legislative amendment must take account of these specific aspects.

5. Many questions still remain unresolved. For example, in cases where GM-free farmers suffer a loss of goodwill as a result of incrossing, are they covered by the rules on damages? Who foots the bill for tests if no adventitious presence is detected?
6. Whatever the answers to these questions, the necessary transparency must be achieved through clear and comprehensive labelling requirements and quality-assurance measures. In order to avoid costly and time-consuming preliminary investigations, consideration must be given to the introduction of a binding quality mark for seed supplies, for example. Such certification would also have to be taken into account in judicial proceedings.
7. In accordance with the principle of freedom to contract, farmers and suppliers or farmers and consumers can settle any matters contractually. It must be borne in mind that all contracting parties are liable for assurances they give regarding product characteristics.
8. Collective bodies comprising several farmers are useful in differentiating farms that do not grow GM crops from those that do. Neighbours would be able to testify, for example, if a member farmer were involved in litigation. Moreover, the members of such bodies could jointly finance any legal actions, etc.
9. By virtue of their special constitutional status, the communes should also designate GM-free zones in their own territory and formulate lease agreements accordingly.
10. Consumers will ultimately determine the future relevance of genetic engineering. Here too, local authorities can reflect the current wishes of the majority of consumers by imposing quality standards for the procurement of food for hospitals or day nurseries, for example, and opting for GM-free foodstuffs.