

GMO-free regions

Second European Conference

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Ladies and gentlemen,

Before presenting my ten theses on German law relating to genetic engineering, I should like to say a few brief words to introduce myself.

In my capacity as a lawyer, I have been dealing since 1998 with the law governing seeds and plant varieties. In numerous court cases that went all the way to the European Court of Justice and the Federal Court of Justice or are still pending before one or other of these bodies, there has been a concerted effort by the seed industry to obtain wider industrial property rights. Let me cite the examples of the disputes over the so-called farmer's privilege or over the attempt to eliminate the Linda potato variety following the expiry of its 30-year plant-variety protection.

Since October 2005, I have been a member of the German Bundestag, where my main area of responsibility in the Committee on Legal Affairs and the Committee on the Environment, Nature Conservation and Nuclear Safety is environmental law. Issues relating to the Genetic Engineering Act (*Gentechnikgesetz*) are a matter for the Committee on Consumer Protection, Food and Agriculture, of which I am a substitute member.

The current German Genetic Engineering Act essentially lays down that farmers who do not grow genetically modified crops must put up with contamination and outcrossing on their land as long as their neighbour who grows GM crops adheres to what is known as ‘good professional practice’. There is no precise definition of that concept. There are only provisions on minimum distances, pollen barriers and the like. A farmer who operates without genetically engineered seeds and plants can, however, claim against GMO users if he suffers significant damage, for example if the situation compels him to have his produce labelled. In such cases, it is not a matter of whether a GMO user is at fault. If two or more GMO users are involved, they are jointly and severally liable.

This absolute liability has generated a great deal of discussion. The coalition agreement of the new Federal Government refers to a revision of the Genetic Engineering Act, although the precise details of this revision have yet to be defined. Consideration should be given, for instance, to a compensatory fund to pay for damages that occur through outcrossing in spite of compliance with good professional practice. This fund should be financed by the ‘interested business circles’, although it is questionable whether provision can be made for compulsory payments and uncertain when such a fund would make payments.

The coalition agreement also re-emphasises that consumers’ freedom of choice must remain guaranteed, along with the co-existence of conventional and GM farming. I firmly believe that these aims belong to the realm of constitutional law, because their pursuit determines whether individual farmers’ rights are infringed or safeguarded as well as

affecting the right of all people to choose freely the type of food they eat. This is why all legislative amendments must be measured against these basic values.

The proceedings of the Federal Court of Justice and the European Court that I monitor are not the only proof that it is always a bad thing when legislators use vague legal concepts, the meaning of which subsequently has to be precisely defined in lengthy judicial proceedings. It is already clear today that the concept of 'good professional practice' is not sufficiently well defined. I need hardly stress that individual farmers would be unable to find the time and money required for lengthy legal actions. At the same time, many issues will have to be resolved before the courts. For example, there is the question whether loss of goodwill is quantifiable and can be part of an award for damages. For this reason, farmers and consumers should give consideration in good time to the formation of collective bodies through which appropriate judicial actions can be funded. I shall return to this point shortly.

In subsequent discussions it would make matters considerably easier if clear labelling requirements were laid down, not only in national law but at the European level too, particularly with regard to quality marks relating, for instance, to the purity of seed, which could be used as evidence in a court of law.

In addition, the principle of freedom to contract should be emphasised time and again. If, for example, numerous farmers seek contractual assurances from a supplier of animal feed that the feed contains no genetically engineered ingredients, the supplier is liable for the assurances he gives in the framework of a private contract. It is, of

course, easier for farmers to obtain such assurances as a collective body. To this end, the creation of networks is extremely useful, as was shown a year ago at the first Berlin conference. Appropriate collective bodies can also create the sort of transparency within local communities that might stand them in good stead in future disputes, for example by ensuring that witnesses are available.

A crucial consideration, in my estimation, is the scope for local authorities to define GM-free areas within the territory of their communes and to include in lease agreements with farming businesses a clause prohibiting the cultivation of GM crops. I believe that the special constitutional status of the communes allows them to take such action within their own territory, notwithstanding the provisions of European and national law on genetic engineering. In this context, it is also permissible, in my view, for the local authorities to impose certain conditions on suppliers of food to hospitals and day nurseries, conditions which may include a requirement to supply only GM-free foodstuffs.

Ladies and gentlemen, you will be aware that my talk has not dealt at all with ethical or political considerations, important though these undoubtedly are. My concern – and it will remain the main concern of my political work – is to ensure that a legal framework is created within which GM-free production can take place, thereby guaranteeing freedom of choice for consumers.

Thank you.