

Thin Ice



the GM Freeze Campaign newsletter

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Commission's GM crop plans on the rocks?

The Commission's plan to devolve decisions on GM cultivation to Member States (see www.gmfreeze.org) hit major obstacles when Germany, Italy, France and even pro-GM Spain all queried its legality, with Belgium saying it "has some doubts" and one report from Brussels saying the first debate ended with "most capitals raising serious objections". A Belgian Presidency source said, "There is huge opposition against the proposals by Member States, for several different reasons." A meeting in October appeared to consolidate objections, with the French representative saying they "refuse even to enter into this discussion".

The Commission adopted non-binding guidelines on co-existence in July as part of an attempted twin-track alteration of GM approvals. The guidelines permit technical restrictions on GM cultivation effectively prohibiting them while legislative changes to enable outright bans, which require a weighted qualified majority vote, run their course.

It is unclear, however, if new

"The new approach on GM cultivation sets a dangerous legal precedent, jeopardising the internal market for authorised products."

"flexibility" will either stand up legally or grant any real power to ban GMOs. By breaking the fundamental continuity of the Single Market, the Commission's proposals could invite retaliation from trading partners, including those involved in the US-led 2006 WTO dispute. The US Trade Representative, who could revive suspended requests for WTO sanctions, has indicated the proposals are unlikely to be acceptable. Canadian officials wrote to EU Embassies saying they are watching the situation "closely". Canada only settled out of the WTO dispute last year with assurances of ongoing "dialogue" about GMOs.

Commissioner Dalli says an EU legal review of the proposals did not find any contradictions of WTO policy.

The Commission also removed wording indicating new powers are granted in exchange for expedited crop approvals and added, "The Member States will also have to respect the general principles of the Treaties and the Single Market, and be consistent with the international obligations of the EU."

This may have been in part to appease industry. A letter to the Belgian Presidency from a wide range of food and agriculture companies, including biotech umbrella EuropaBio, said, "The new approach on GM cultivation sets a dangerous legal precedent, jeopardising the internal market for authorised products." They fear GMOs being approved at EU level but then facing a tangled network of restrictions across the EU, meaning companies would have to press each Member State to accept each GMO in turn. However disappointed industry may be with the performance of the current authorisation process, they prefer it to negotiating 27 different processes.

The UK is said to have concerns about the legal viability of the proposals and wants more information. The Scottish Government reminded Defra Minister and former biotech lobbyist Caroline Spelman that they are "fundamentally opposed to the cultivation of GM crops in Scotland". Scottish MEP Alyn Smith, a member of the European Parliament's Agriculture and Rural Development Committee said, "This 'offer' looks more and more dubious the closer you examine it."

Dalli said he will continue to approve GMOs that fail to achieve the required qualified majority, as he did with Amflora (see TI 17, 18 and below), while these discussions continue.

GET ACTIVE

■ Thank you to everyone who blogs, tweets and shares what we do on social networking sites. This is a great way to spread the word and help us build pressure at key times. If you don't already, a simple way to start is to share our press releases (or the url) when you receive them.

■ Another big "Thank You!" to everyone who donated to our fighting fund to reveal the location of the Somerset GM contamination. At the time of writing we raised £1,436. We'll keep you informed about progress in the tribunal.

■ Have you asked your MP to sign EDM 772 yet? (see <http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=41732&SESSION=905>)

Applying the brakes

There have been a number of legal and regulatory developments regarding GM food and crops recently, so we wanted to offer an overview. More details are always available from eve@gmfreeze.org

Brazil

In June Bayer withdrew its application for LL62 (glufosinate tolerant) GM rice after an eight-year attempt at authorisation. At a court-ordered hearing revealing widespread opposition from many major rice producers, the company admitted the GM process unintentionally produced novel proteins but no safety studies had been conducted.

In July a court ruling prohibited Bayer from marketing LL maize for failing to provide for post-release monitoring. The ruling annulled a National Biosafety Council approval for commercial release because it was based on "irregular procedures".

Chile

In July the Transparency Council unanimously ruled that the locations of GM seed growers must be published, dismissing company claims to confidentiality. Cultivation and export of GM crops is prohibited, but production of GM seed is not, with critics saying insufficient public debate has led to potential damage being disregarded.

EU

In June Syngenta's bid to buy Monsanto's hybrid sunflower business triggered an EU anti-trust investigation. A ruling is expected in late October.

In July the European Court of Justice ruled that Monsanto cannot use an EU patent to block Argentinean soya imports, agreeing with a preliminary finding in a Dutch suit withdrawn by the company that the patent does not extend to soya meal containing RR (Roundup Ready) DNA. Farmers in Argentina do not pay Monsanto royalties on RR soya seed farm-saved from their crops, which are sold in an underground market.

India

In July authorities refused permission for "early stage tests" of a new GM groundnut developed in Karnataka. In September Environment Minister Jairam Ramesh rejected a report recommending limited release of Bt brinjal (see TI 17) saying it did not reflect the views of the larger scientific community and saying, "I have not heard from even one state wanting to revoke moratorium on Bt brinjal."

In August Kerala Agriculture Minister Mullakkara Retnakaran voiced strong reservations about the "draconian" Biotechnology Regulatory Authority Bill (see TI 17). Writing to the Union Agriculture Minister objecting to the move to centralise such decisions and curtail freedom of expression opposing the technology he said, "We are sure you would agree with me that the destiny of India's agriculture cannot be left to a three member Authority with unlimited powers and unquestionable freedom, that too

without an iota of accountability and transparency." Orissa, Kerala and Assam also oppose the Bill, with Madhya Pradesh Agriculture Minister Ramakrishna Kusumaria saying it ignores the constitutional powers that State governments had over their Agriculture and Health, and went against the federal structure of the republic.

Italy

In September a court fined a farmer 25,000 euros for growing MON810 GM maize, which is approved at EU level but banned by the Italian government pending agreement coexistence legislation. The farmer intends to appeal.

US

In June the West Virginia Attorney General announced a fraud investigation into potential "unfair and deceptive practices" violating the state's Consumer Credit and Protection Act in the marketing claims that Monsanto's GM RR2 soya seed gives higher yields that have not materialised on farms. The yields claims are the basis for pricing RR2 42% higher than RR1, but if they cannot be substantiated the company would be subject to "injunctive relief, restitution and disgorgement, as well as civil penalties".

In July an alliance of NGOs filed a suit against the USDA over its approval of an open-air field trial of ArborGen's GM "cold tolerant" eucalyptus trees in 28 secret sites in seven states (see TI 18). The suit claims approval was granted despite minimal environmental impact assessment and the objections of a number of official agencies. The USDA is also said to be considering an ArborGen request to permit unrestricted commercial planting of the GM trees.

In August a Federal Judge rescinded the USDA approval of GM sugar beet following the 2009 finding that the USDA had violated Federal Law by deregulating the crop without an Environmental Impact Statement. The Judge prohibited any future planting or sales until the USDA is in compliance with the law. He expressed his "concern that Defendants are not taking this process seriously". The same Judge ruled in October that the USDA had again acted illegally in disregarding the Court's ban by issuing four companies "permits" to plant the crop. Remedies may include destruction of those crops.

Also in August a lawsuit seeking class action status was filed in a US District Court against Monsanto on behalf of purchasers of their stock for allegedly failing to disclose declining demand for glyphosate. The plaintiffs argue that "positive statements about Monsanto's earnings, prospects and financial condition were materially misleading". The move followed the July announcement by the Kendall Law Group's investigation into possible breaches of fiduciary duty by the company's directors and officers, led by former Federal Judge Joe Kendall.

GM salmon struggles up Capitol Hill

In June news emerged that US company AquaBounty had applied for FDA approval for its GM salmon. Strong, active resistance in the US, long said by the biotech industry to be content with GM in their food, showed that in fact many are not, but feel helpless without labels to help them steer clear. Opposition spread rapidly. By the end of September:

- The senior scientist at the influential Consumers Union disputed the FDA's finding of no "material difference" between GM and natural salmon, and cited precedent for labels to help consumers avoid sensitive foods, also arguing, "You need this labelling so if there's a problem down the road, you can trace it back." The FDA appears to have conceded the labels point, but is struggling to decide who is responsible. Predictably AquaBounty resist labels but does not appear to resist voluntary labels of non-GM salmon (neatly shifting the costs onto non-GM producers). An FDA decision may take months.
- The Chair of the House of Representative's Oversight Committee's Domestic Policy Subpanel urged the FDA not to "ram" the decision through, writing to the FDA Deputy

Commissioner, "Given the magnitude of interest and concern expressed by the public on issues of food safety, food labelling and the environmental impact of GE animals, it is clear that serious and irreversible damage will result if public comment is curtailed."

- Thirty-two Representatives and Senators urged the FDA to "halt all proceedings" and reject the GM salmon. One Senator said, "Critical information has been kept from the public and consequently only FDA and [the company] know important details about the approval process."
- International concern included Canadian protests that the company plans production in Canada (GM eggs) and Panama (growing on GM salmon) specifically to avoid the broad-ranging formal Environmental Impact Statement that would be required of US operations. One professor of sustainable science urged the FDA to be cautious because, "The assessment does not adequately address the major questions that should be asked about genetic and ecological risks."
- Industrial condemnation included a spokesperson for the Scottish Salmon Producers Organisation

saying, "GM salmon is not permitted in Scottish farmed salmon and we don't foresee that changing any time soon." Scotland is the world's second largest salmon producer. The International Salmon Farmers Association expressed concern that consumers may be driven away from all farmed salmon, especially if the GM fish are not labelled, and opposition was expressed by the salmon industries in Alaska, Seattle, Charleston, the Atlantic Salmon Federation and others.

An FDA panel found they do not have sufficient safety data on the fish to make either environmental or food decisions and recommended further study. One member said, "It is extremely important how this precedent gets set. And it's not an economic issue. It may be, but it can't be. Economics is the shovel with which we dig the grave at the very end of these [discussions]." AquaBounty's CEO claimed the panel was confused by data and misinterpreted it, but critics called the data "flimsy", "dangerous" and "sloppy".

The FDA had not set a timetable for a final decision at the time of writing.

"If you put a label on genetically engineered food you might as well put a skull and crossbones on it."

Norman Braksick, president of Monsanto subsidiary Asgrow Seed Co in 1994

Errors spread GM contamination despite 'rigorous' controls

China In July Greenpeace found illegal GM rice at two processing plants sourcing rice from strategic stores used for emergency relief after natural disasters. Earlier in the year they found unauthorised GM rice in seed stocks in two provinces and on sale at supermarkets including Wal-Mart. China bans cultivation and processing of GM rice, although field tests are conducted in Hunan province.

Finland The illegal GM FP967 "Triffid" continues to be found in flax supplies (see TI 16, 17, 18).

France/UK In July French agriculture testing authorities found an unauthorised GM trait in soya seed before it was sown. Defra found seed from the same batch had been sown in Sussex and the crop was destroyed.

Ireland In July Department of Agriculture testing discovered the unauthorised GM NK603 in seed for a conventional maize trial, despite a certificate of analysis from Pioneer Hi-Bred showing the seed to be GM-free. The plants were destroyed and the trial abandoned.

Sweden In September BASF was summoned to explain how fields meant to contain the newly-approved GM Amflora came to be illegally planted with the unauthorised experimental GM potato Amadea.

Amflora crops in the rest of Sweden, Germany and the Czech Republic are also being checked. In October France and Poland joined Hungary, Austria and Luxembourg's EU Court of Justice legal challenge of the Commission's Amflora authorisation.

Clones in the UK food chain?

In August a UK farmer told a US newspaper he was selling milk from the offspring of cloned cattle into the human food supply, sparking wide-ranging debate about cloning for farm animals, animal welfare in industrial agriculture and food safety regulation.

An FSA investigation could not substantiate that such milk had ever been sold, but more surprisingly found that two bulls from cloned lines traced to a farm in Scotland were slaughtered and sold into the food chain, with meat from one eaten without consumers knowing its origin. UK authorities view this as a breach of novel food regulations. However EU authorities say the law only applies to the clones themselves, not their offspring. The EU Parliament had already rejected both views, voting in July for a full ban on food from both clones and offspring with a moratorium until this can be enacted.

The Scottish farmer remained unrepentant, at first saying he would apply for a special FSA license to sell milk from his 96 clone offspring as a "premium" product, but later quietly withdrawing from this saying he would instead sell the animals on.

FSA Chair Lord Rooker admitted the failure of the Agency's regulation of cloning, telling fellow FSA Board members, "You can't regulate what you can't count and what you can't check on. That is an impossibility. How can you prevent the public being misled? We can't on this." This prompted GM Freeze and others to call for interim legislation to fully trace cloned cattle imports and their offspring through existing paperwork to prevent them entering the food chain. The FSA's own survey results showing strong public opposition to food from clones.

UK NEWS

In September Government Ministers confirmed that the FSA's public "dialogue" on GM, beset by criticism and high-level resignations over bias (see TI 18), will "not continue in its current format". In addition, the Coalition Government has reduced the role of FSA, which will continue in a food safety role, but nutrition policy and labelling moved to the Department of Health and non-safety related labelling and food composition policy went to Defra.

In September press reports congratulated the "success" of the GM potato trial in Norfolk (see TI 18), saying the plants had survived "five days of intense late-blight infection". Critics pointed out that the trial size is tiny (licensed for "not more than" 200 plants per year) and that one of the two GM "blight resistant" varieties was in fact killed by blight. The declarations of success were even tempered by the scientist leading the trial, who acknowledged, "We have not done any proper analysis of the data." So far the project has cost UK taxpayers over £1.7 million to produce a GM potato for which there is no market.

Against this record of investment in "successful" research, in May a Defra-

sponsored taxonomy and biodiversity workshop in Ghana with participants from Togo, Benin, Nigeria and Burkina Faso urged farmers to adopt GM cultivation to "boost food production". In June UN Special Rapporteur on the Right to Food Olivier de Schutter presented findings of the widest study of agroecological production ever conducted saying, "Governments and international agencies urgently need to boost ecological farming techniques to increase food production and save the climate... Even if it makes the task [of feeding the world] more complex, we have to find a way of addressing global hunger, climate change, and the depletion of natural resources, all at the same time. Anything short of this would be an exercise in futility."

Two months later, a UN Conference on Trade and Development report found, "When the new African agricultural revolution is eventually implemented, it is likely to be built on Africa's own indigenous technology and knowledge requirements and the nutrition and food security needs of its people."

Will Defra and Dfid finally take note?

The GM Freeze Campaign is calling on the Government for a Freeze on:

- The growing of genetically modified plants and the production of genetically modified farm animals for any commercial purpose.
- Imports of genetically modified foods, plants, farm crops and farm animals, and produce from genetically modified plants and animals.
- The patenting of genetic resources for food and farm crops.

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