



GM Food and Crops: Maintaining Consumer Choice

A report of a survey on the enforcement of the EU
GM Traceability and Labelling Regulations

Executive Summary

The Survey

Between February and August 2005, GM Freeze carried out a survey of local authorities and other regulators responsible for the enforcement of the Genetically Modified Organisms (Traceability and Labelling) Regulations 2004 in England Wales, Scotland and Northern Ireland. Trading Standards and Environmental Health Departments and Port Health Authorities (PHAs) were contacted as appropriate for each nation in the UK.

The Department of Agriculture and Rural Development Northern Ireland was also surveyed because of its responsibility for animal feed. The Food Standards Agency was contacted concerning its monitoring of GM content in food and feed.

The response rate from local authorities who received the survey was 48% (about 20% of the number of local authority departments with some responsibility for the Genetically Modified Organisms (Traceability and Labelling) Regulations 2004/2005).

This was considered to be a representative sample of the authorities actually enforcing the Regulations. Only PHAs at ports where food or feed imports arrived from outside the EU were sent the questionnaire.

Results

- The majority of local authorities were aware of the 2004 Regulations although some seemed uncertain about their responsibilities under the previous GM labelling regulations introduced in 1999.
- Only one local authority had mounted a prosecution for a breach of the 1999 Regulations. This resulted in the offending company being fined £17,000. Three other local authorities had investigated breaches but no prosecutions had been carried out.
- 44% of authorities surveyed took no food samples in connection with the enforcement of the 1999 GM labelling regulation in 2003/04 and a further 23% did not provide an answer to the question. Only one authority took more than 30 samples in the year - 484 by a Scottish Council. Only 21% of Port Health Authorities confirmed that they had taken samples in connection with their enforcement activity.
- When asked if they were sufficiently financed to enable them to ensure consumer products were accurately labelled during 2003/04, one third agreed they were whilst 34% either disagreed or strongly disagreed, and a third who were neutral.
- 42% said they were satisfied that they could enforce the GM labelling regulations in restaurants and catering establishments, compared with 27% who disagreed or strongly disagreed, and one third were neutral.
- Staffing levels in Trading Standards and Environmental Health Departments vary greatly – from two to 72 full time equivalents – depending on the population of the local authority concerned and in Port Health Authorities from three to 40 full time equivalents, depending on the amount of trade regulated
- Budgets for testing food and feed and across the whole range of legislation ranged from £5,800 to £137,000.
- Delays in laying Statutory Instruments in England, Wales, Scotland and Northern Ireland meant that the 2004 regulations could not be enforced in the UK when they came into force in April 2004.
- 86% were aware of the existence of the new regulations with only 14% either not knowing or being unsure.
- There were delays in local authorities receiving final guidance on enforcing the 2004 regulations from the Food Standards Agency.
- 94% of respondents did not anticipate an increase in staff or operational budgets to enforce the extra requirements of the 2004 Regulations.

- 30% of respondents felt they were sufficiently financed to deliver the enforcement of the 2004 Regulations.
- 50% of respondents agreed that enforcement of the 2004 Regulation would cost more than the 1999 Regulation because of the requirement to label ingredients derived from GM crops.
- 53% agreed that enforcement of the 2004 Regulation would cost more because of the need to label animal feed.
- 35% felt that the lowering of the labelling threshold from 1% to 0.9% would increase enforcement costs.
- 56% disagreed or strongly disagreed that their department would increase staffing or monitoring budgets as a response to the 2004 Regulations.
- The costs of the basic test for GM presence varied considerably, from £95 to £250, averaging at £135.66 per sample. Charges quoted to identify a specific GM trait or to give a percentage presence of a GM trait or traits ranged from £106 to £600 per sample.
- The Food Standards Agency conducted a limited survey of GM content in ingredients for processed meat products and vegetarian 'meat' products at a cost of £9,200 in 2005. The results had not been published at the time of going to print.

Conclusions

The current level of enforcement of the Genetically Modified Organisms (Traceability and Labelling) Regulations 2004 in England, Wales, Scotland and Northern Ireland is not robust enough to ensure that only genetically modified organisms (GMOs) approved for commercial sale in the EU enter the food chain. Also the current enforcement activity does not provide adequate guarantees that labelling of food and animal feed for authorized GM content is accurate and reliable.

It is disturbing that minimal activity is reported by some regulators, suggesting enforcement of the Regulations has a low priority with some local

authorities. This may reflect the 'luke-warm' attitude of the Food Standards Agency (FSA) towards them. The low level of enforcement activity is to a large extent due to the tight budgets which local authorities have for carrying out all monitoring of food and animal feed across the range of regulations they have to enforce, which limits the number of samples that can be taken. As a result, there is over reliance by regulators on monitoring traceability paper trails without verifying the GM content of food and feed by independent analysis. The central authority (the Food Standards Agency) has failed to provide additional finance to all local authority Trading Standards Departments, Environmental Health Departments and Port Health Authorities (PHAs) to enable them fulfill their duties. This is despite the FSA recognising that enforcement costs will rise by 78%¹ because of the additional need to monitor animal feed and derivatives of GM crops in the 2004 Regulations. There is an immediate need for the FSA to increase their commitment to the enforcement of the 2004 Regulations by increasing funding and support to the PHAs - key regulator at the ports.

Failure to address the financial short-fall leaves the UK vulnerable to unauthorised and potentially harmful experimental genes entering the food and feed chain in the UK, such as Bt10 maize. Bt10 may have been entering the UK undetected for four years in shipments of maize from the USA. Ships carrying maize gluten for animal feed into the UK from the USA are estimated to arrive at the rate of one every five weeks.

It would also make sense for responsibility for monitoring food and feed imports at ports for GM presence to be in the hands of one department rather than shared between the PHAs and Trading Standards in England and PHA and DARDNI in Northern Ireland, as is that case at present. As PHAs are on the spot where food and feed enter the country, they should take prime responsibility for enforcing the regulations on imports and be funded accordingly by the FSA. In the long run this would be the most effective way to prevent unauthorised and illegal GMOs entering the country.

A briefing for the Secretary of State prepared for the Council of Ministers meeting in April 2005, and released by the FSA to GM Freeze on 8th August 2005, made it clear that civil servants

see the significance of the Bt10 incident. When referring to a future report on Regulation 1929/30 (which regulates the authorisation and marketing of GM food and feed) the briefing said *"No doubt the Bt10 incident will figure in this report and may lead GM critics to call for tighter regulation of imports"*. Few would argue with this point of view when there is potential for unauthorised GM crops, some of which could have serious health implications and be very costly to clear-up, to enter the UK.

In the meantime, local authorities will be required to carry on with insufficient finances to enforce regulations which have massive public support and support from the three main political parties. Parliament might rightly ask Government why Regulations are approved when there is insufficient budget allocated to allow them to be enforced to the level that the public is expecting.

The FSA needs to rapidly move from its current luke-warm approach to enforcement to positive leadership committed to adequately funding and supporting local authorities to do the job at local level.

Recommendations

- 1 The enforcement of the Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004 should be financed from the central budget of the Food Standards Agency and delivered by local authorities.
- 2 Cargoes arriving at the ports from countries where GM crops are grown should be the primary target of monitoring programmes.
- 3 Responsibility for monitoring and enforcement at the ports should be with a single local authority department – the PHAs. Their funding should increase to enable them to carry out this duty effectively.
- 4 Cargoes should be held at port until monitoring has verified that there are no unauthorised GM traits present and ascertained the percentage content of authorised GM in each cargo.
- 5 Cargoes containing unauthorised traits should be returned to the country of origin at the exporter's expense.
- 6 The Authorities responsible for monitoring cargoes should be provided by the FSA with clear sampling protocols which give the minimum number of samples needed to verify the GM content of cargoes of varying sizes.
- 7 Monitoring programmes should include crops transshipped from other EU ports or grown in the EU, including any entering via the Channel Tunnel.
- 8 Local authorities should also be funded by the FSA to carry out random checks on retail samples and animal feed samples to ensure that labelling is accurate and companies are keeping the required traceability paper trail.
- 9 Retail monitoring should not specifically target companies who have chosen to market their products as GM-free but include all companies selling products likely to be contaminated with approved or unapproved GMOs.
- 10 Fines arising from prosecutions should be used to enhance existing monitoring programmes including laboratories capable of identifying and quantifying a full range of GM traits.
- 11 Biotechnology companies should be required under EU law to provide analytical methods and reference materials for all the GM traits they have released commercially or experimentally anywhere for the same crop species as a pre-condition for receiving a marketing consent for a GMO in the EU.
- 12 Should any contamination of the food/feed chain with unauthorised GM traits take place, the biotechnology company which developed the trait should be liable for any harm arising from the contamination to health, the environment or the economy.

¹ <http://www.food.gov.uk/multimedia/pdfs/gmconsultria.pdf>