



Position

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ESA is the voice of the European seed industry, representing those active in research, breeding, production and marketing of seeds of agricultural and ornamental plant species. It represents 37 national seed associations (and with that more than 1000 seed businesses in the EU, most of them SMEs) and 55 direct company members.

ESA's mission is to work for fair and proportionate regulation of the European seed industry, freedom of choice for customers in supplying seeds as a result of innovative, diverse technologies and production methods and for effective protection of intellectual property rights relating to plants and seed.

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on the

European Commission's proposals for a new policy approach to the authorization of GMOs for EU cultivation and coexistence of GM and non-GM crop production

ESA European Seed Association has taken note of the announcement of Commission President Barroso in his policy guidelines for the new European Commission to put forward proposals that would provide Member States with greater flexibility in their decision making on the actual cultivation of GM crops while the assessment of safety of GMOs for release into the environment and for their use in food and feed would continue to be decided on European level.

We are aware that the responsible service of the Commission, DG SANCO, is currently conducting a consultation with other relevant services on a possible political and legislative approach to this effect. While we understand that this consultation is still ongoing, we herewith want to provide a number of principle comments that are based on our understanding of the main elements of the proposals under consideration.

I. Revision of the guidelines for coexistence

Following the adoption of the GM food and feed and GM traceability and labelling Regulations and specifically the setting of the new GM labelling threshold of 0.9%, the 2003 Commission guidelines on coexistence established some principles how farmers should be enabled to grow GM and non-GM crops side-by-side while respecting this labelling threshold.

The very base of the coexistence guidelines is thus to enable choice and compliance of different farming models with a specific regulatory requirement – that of a labelling threshold for GM presence in non-GM crops. In its Communication and later discussions, the Commission quite rightly underlined that coexistence is not a safety issue, rather a mechanism to fairly distribute the burden and possible related costs between groups with different economic interests, considering differing practical farming environments. Hence, it was considered most appropriate to leave detailed practical planning of how best to achieve this coexistence, i.e. the compliance with the 0.9% labelling threshold, to Member States to consider their respective individual landscape and farming structures. However, these measures were subject to the Commission's scrutiny and acceptance as they were not supposed to go beyond what was considered necessary to comply with the legal obligation.

The new proposal (“Guidelines for the development of national cultivation measures”) give up the main legal and policy principles established by the existing GM related legislation.

- No more scrutiny of proportionality and scientific basis of national coexistence measures

The Commission gives a ‘carte blanche’ to Member States and potentially to any regional entity to set their own regulatory framework for GM cultivation and coexistence. With that, it abandons its proper role of ensuring the adoption of science-based and proportionate measures that provide legal certainty and are compatible with the principles of a common European single market. It effectively accepts that in the future, any requirement that supposedly may help to further minimize or even avoid any presence of GMOs in non-GM products may be established by any public entity. This approach makes European plant breeders, seed producers and farmers subject to a patchwork of different regulatory obligations. This is incompatible with the Internal Market and fair competition under a common rule of law. It is also an unacceptable policy approach for the institution that is supposed to be the “guardian of the Treaty”.

- Acceptance of (labelling) thresholds lower than 0.9%

The Commission intends to allow Member States (or regions or other entities) to set their own individual labelling requirements, provided these are lower than the EU labelling requirement established by a Council and European Parliament decision. As stated above, this will lead to a fragmentation of the Internal Market and greater legal uncertainty regarding the conditions under which material must or must not be traced and labelled and may or may not be moved from one legal entity to the other. It will establish an environment of mistrust controlling and dividing European farming communities.

It must also be underlined that these obligations will further distort fair competition between European and non-EU production. While imported material with GM contents up to 0.9% will not fall under the traceability and labelling obligations (and at least benefit from legal certainty), home grown GM produce would likely fall under the potentially stricter criteria and thus be seriously disadvantaged. It is incomprehensible that a Commission proposal would suggest to disregard an EU-wide standard, established by co-decision of the Council and the European Parliament, and to contradict it by regional or local measures to which no EU scrutiny is applied.

II. Revision of Directive 2001/18/EC

The current Directive 2001/18/EC contains a so-called ‘safeguard clause’ which allows Member States to suspend or restrict the cultivation of GM plants on grounds of environmental or consumer safety. Such a decision must be: based on specific scientific evidence; subject to a review by the European Food Safety Authority; and may be revoked in case the claim cannot be substantiated. In the past, the Commission defended this policy of science based decision making and regulatory decisions; a number of unfounded, unspecific and unscientific bans of GM crops could consequently not be upheld. The Commission thus fulfilled its obligation to assure a proper implementation and interpretation of EU law.

The Commission's new proposal abandons the principle of a European product authorisation. It accepts that European breeders, seed producers and farmers will have different access to technology and resulting products, despite the fact that the product has been evaluated and found to be safe following assessment against stringent EU rules and that its harvested material may circulate and be used freely according to the GM food and feed Regulation.

- Abandoning science and Community principles

In the past, national measures restricting the use of an approved product were subject to Commission scrutiny and acceptance, not simply notification. Only where these measures were based on product-specific scientific findings showing that the individual product would pose a threat to environmental safety or public health, could such national bans be accepted. Unspecific measures have always been rejected by the Commission as political measures favouring or discouraging a specific type of agriculture or economic interest. The new approach singles out GMOs as a specific category of products to which the founding policy principles and established legal framework of the European Union, such as non-discrimination and the Internal Market, do not apply.

- A patchwork of rules instead of Community law

While the new provision could allow Member States to ban the planting of GMOs, their free movement, processing and use in food and feed products shall still be allowed. In practice, this would mean that a GMO would be 100% legal for planting in one country and 100% illegal in another. As the harvested product may be freely transported and moved across the EU, it is unavoidable that traces will be found also in those Member States that will ban the product for planting. With the expected highly differentiated approaches of Member States and/or regions to Coexistence (see above) this will lead to a proliferation of applicable rules and consequences for operators. This will even further reduce legal certainty for seed companies and farmers.

- The absence of enabling measures

The Commission's draft proposal contains no provisions designed to manage a situation where authorisations for planting will differ among countries or regions, while the products as such may move freely in the internal market. It is imperative that the Commission sets thresholds for the unavoidable presence of GMOs in non-GM seed as one of the principle requirements for the implementation of its new policy approach. Without such thresholds, the proposal does not solve existing problems, rather creates new ones for seed companies, farmers and the whole agri-food chain in Europe.

Conclusion:

ESA supports the Commission in its aim to break the political deadlock in the authorisation of new GMOs for planting in the European Union. At the same time, we underline that the common market for seed must not be jeopardised and that without practical thresholds for the adventitious presence of GMOs in seed, the proposed measures and approach are unworkable, further increase legal uncertainty for breeders and farmers and will divide the farming community in Europe.