

## ESA Position

on

**Council Agreement on labelling of GM food and feed,  
Commission Statement to the European Parliament and  
recent Court cases regarding  
Adventitious Presence of GMOs in conventional products**

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The European seed industry represented by ESA has consistently requested practical solutions to deal with issues arising from the progression of GM crop production worldwide. In particular, the seed industry has repeatedly called for workable thresholds for adventitious presence of GM material ("AP") in seeds to minimize confusion and uncertainty across Member States' authorities and all stakeholders.

With the recent political agreement of the Agriculture Council on the Commission's proposal for a Regulation on GM food and feed, the European seed industry represented by the European Seed Association considers it necessary and timely once again to stress the need to follow-up this agreement by workable and adequate legislative proposals for the adventitious presence of GM in seed.

The Commission has already developed proposals to amend the seeds marketing directives to introduce labelling for adventitious presence of a limited number of GM events authorised for cultivation in the EU. Industry has expressed its concerns about these proposals: the threshold levels being proposed; the scope of the proposals (needs to include AP of all events); and the legal basis for the proposals.

Such proposals should incorporate not only the Agriculture Council's political agreement but also the recent decisions by the French Conseil d'Etat, the Verwaltungsgericht Gelsenkirchen as well as discussions held in the Environment Council. All these developments support the positions expressed by the seed industry over the last years and prove the need for a more far-reaching approach in the Commission's legislative proposals.

In detail, ESA would like to point out the following:

## 1. Council Agreement on the labeling of GM food and feed

This acknowledges the fact of adventitious presence and proposes thresholds for both approved GM and those GMs which are not (yet) authorized but have received positive scientific risk assessment before the date of application of the regulation. The seed industry insists that these rules must be extended to seed on the same basis so that it is not placed in a disadvantaged position *vis à vis* all other actors in the food and feed chains by being asked to comply with unnecessary, disproportionate and unreasonable lower thresholds.

## 2. Clarification of the Commission's position

Clearly there has been a change in Commission's legal appreciation of adventitious presence as evidenced by the statement of Commissioner Wallstroem in the European Parliament:

"...as for the scope of Directive 18/2001/EC, this clearly relates to cultivation of a GM seed product itself and not a conventional seed product containing traces of GM seeds..."

Those Member States' judicial authorities that have dealt with this specific issue to date have supported the Commission's new legal appreciation.

## 3. Legal appreciations of Adventitious presence of GM in conventional products

The Conseil d'État in France recently confirmed that there are no EU regulations established for the labeling of traces of GM material in harvested crops (decision no. 229017 of 20.11.2002, case 'Golden Harvest Zelder'). It also suggested that none are required and by implication that seed containing such traces could be sold, planted, harvested and processed.

Also the decision of 28 November 2002 by the Administrative Court of Gelsenkirchen (Germany) is the latest confirmation of this legal appreciation that the sale of conventional products containing adventitious presence of GM material does not constitute placing on the market of a GM product.

## **Conclusion:**

ESA calls upon the Commission to re-assess its position as contained in its Working Document on amending the seed marketing Directives of June 2002 in light of the Agriculture Council's political agreement, its own legal appreciation as stated by Commissioner Wallstroem and the growing number of legal appreciations from EU Member States pointing to the fact that the adventitious presence of GMOs in a conventional product does not constitute a placing on the market and that therefore the marketing of the product may not be made dependable on respective specific provisions in EU legislation.

The European seed industry again wishes to stress that legislation is needed that provides both legal certainty to seed industry, farmers, processors and consumers as well as proportionate and practicable solutions that are economically and biologically sustainable in a world with an ever increasing number of GM events and GM seed and crop production.

Such legislation would have to include the following:

- Thresholds for AP which will be economically viable for the EU based seed industry. ESA has consistently asked for a threshold level of minimum 1%.  
In any case, substantially lower thresholds for the adventitious presence of GM in seed in comparison to food or feed would constitute an unjustified shift of burden, cost and responsibility towards the seed industry. It is the responsibility of all actors along the chain to meet the same requirements.
- Any thresholds must include not only events authorised for cultivation in the European Union according to Directive 2001/18/EC but must include also events approved in third countries (OECD) with comparable legislation safeguarding that these events are safe for the environment and public health and events authorised for field trials according to part B of Directive 2001/18/EC. Legislation demanding zero tolerances for the adventitious presence of such events is unrealistic and takes neither the biological facts nor the international nature of plant breeding and seed production into account.
- To successfully implement any thresholds for the adventitious presence of GMOs, an agreed testing and sampling protocol is a precondition. Only with such a protocol will the legal certainty needed by all actors along the food and feed chain and including the seed industry be achieved.