Friends of the Earth Europe

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Contaminate or legislate?

European Commission policy on “coexistence”

Friends of the Earth Europe Position Paper

April 2006

INTRODUCTION

Opposition to genetically modified organisms (GMOs) in the European Union is growing. There are 12 national bans on specific GMOs in the EU[1] and 172 regions have passed resolutions declaring their desire to be GMO free. Public opinion polls consistently show that 70% or more of consumers do not want to eat GMOs[2]. However, the EU de-facto moratorium was brought to an end by the European Commission in 2004, despite there being no legislation on GMO contamination or liability.

GMO contamination is a new type of pollution created by industry. It involves living and replicating organisms, and because it involves the building blocks of life (genes), is irreversible as well as increasing over time. It can occur at any stage along the food chain as a result of natural processes and human intervention: from seed production, to crop growing, to harvesting, to storage, to transport, to processing and packaging.

The European Commission believes that genetically modified (GM) crops have an equal right to be grown alongside conventional and organic crops, and wants to facilitate an easy path for this to take place. They refuse to accept that organic and non-GM farmers have the right to remain free of GM contamination. The Commission's vision of 'coexistence' is intended to pave the way for GM crops, ensuring unnecessary burdens are not placed on biotech companies and the farmers who wish to grown them.

In practice, this has meant designing 'coexistence' rules to allow up to 0.9% GM contamination of conventional and organic crops, because anything containing up to 0.9% accidental GM contamination does not have to be labelled. But this denies consumers and farmers a genuine choice, and once accepted will lead to GM contamination creeping inevitably upwards.

GM farming can not 'coexist' in Europe without either accepting widespread GM contamination of non-GM crops or major changes to farming practices. The Commission clearly prefers the first option.

Friends of the Earth Europe believes that GM-free food and farming must be protected, and that GM-free means no GM at all, not 0.9%. The European Commission has conveniently misinterpreted EU legislation, and they must accept the need for tough contamination prevention and liability measures to eliminate any GM contamination.

CONTENTS

[1] See Table 1 page 6
[2] http://www.foeeurope.org/GMOs/explore/what_europeans.htm
[3] Communication from the Commission to the Council and the European Parliament: Report on the implementation of national measures on the coexistence of genetically modified crops with conventional and organic farming. COM(2006)104final, March 9th 2006.

1. The European Commission: Accepting or avoiding contamination?

The story so far:

- July 2003: The Deliberate Release Directive (2001/18/EC) is amended so that "*Member States may take appropriate measures to avoid the unintended presence of GMOs in other products*"[4]. Responsibility of ensuring 'coexistence' between GM and non-GM crops is therefore placed in the hands of Member States.
- July 2003: The Commission issued a Recommendation[5] to Member States "*on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming*". Whilst this Recommendation is non-binding, it sends a strong message to Member States. Key points include telling Member States not to make coexistence measures stricter than necessary to keep contamination below 0.9%, and stating that environmental and human health matters must not be taken into account.
- March 2005: Independent legal advice[6] commissioned by a group of NGOs including Friends of the Earth concludes that the Recommendation is "**fundamentally flawed"**. Labelling thresholds (0.9%) are "**legally irrelevant**" to coexistence measures, and objectives must not be restricted to economic issues only.
- February 2006: The European Commission's Joint Research Centre (JRC) publishes case studies looking at the economic impacts of coexistence. The study is hailed as providing evidence that 'coexistence' is possible with little or no changes to farming practices. But this is based on the Commission's flawed Recommendation, aiming for 0.9% GM contamination of non-GM crops. Even aiming for 0.9% contamination requires major changes to current agricultural practices.
- March 2006: The European Commission issues its "*Report on the implementation of national measures on the coexistence of genetically modified crops with conventional and organic farming*", summarising the progress since 2003 at Member State level in putting in place national 'coexistence' strategies, and the Commission's response to these strategies.

Main points in the Commission Report on Coexistence 2006:

Favours non mandatory measures • non-mandatory coexistence measures are sufficient • insurance schemes for contamination should not be mandatory • crop segregation should not be mandatory • case by case approval/notification procedures rejected • EU-wide law rejected, "wait and contaminate" approach adopted	**Disregards independent legal advice** • legal advice that 0.9% threshold is "legally irrelevant" ignored, but does not threaten legal action if Member States fix lower thresholds • legal opinion on Organic Regulation disregarded
Ignores Member States' and EU Regions' wishes • 50% of Member States' legal proposals on coexistence rejected • GMO-free Regions and Member States threatened with legal action • Member States not allowed to ban GMOs in ecologically sensitive areas • GMOs authorised under out-of-date legislation and Member State opposition ignored	**Rejects consideration of health and environmental issues** • only economic aspects considered • evidence of environmental damage and from growing GMOs ignored

[4] Article 26a, Directive 2001/18/EC, introduced by Regulation 1829/2003
[5] Commission Recommendation 2003/556/EC 23/07/2003
[6] Advice - In the matter of Co-existence, traceability and labelling of GMOs. K.P.E. Lasok QC and Rebecca Haynes, 21 January 2005. http://www.gmofree-europe.org/Summary_Lasok_Advice.pdf and http://www.foe.co.uk/resource/briefings/legal_opinion_in_the_matte.pdf

2. Detailed Critique of the Commission's Coexistence report[7]

a. Commission favours non-mandatory measures

- **Non-mandatory coexistence measures are deemed sufficient**

The Commission finds that non-mandatory measures have been sufficient in Spain "*as the market does not require the segregation of GM and non-GM maize for [animal] feed use*". This implies that if consumers are not aware that the meat they are eating is from GM-fed animals (labelling of such products is not required), then coexistence laws are not required. This also disregards the issues facing neighbouring farmers who have no idea what their neighbours are growing and therefore face the risk of contamination, with no clear liability laws.

GM contamination in Spain is causing problems, particularly for organic farmers - in February 2006, organic certifiers detected GM contamination of 12.6% in an organic maize field in Catalonia[8].

- **Insurance schemes for contamination should not be mandatory**

In considering liability rules, the Commission states that insurance schemes for economic damage due to contamination by GMOs "*should not be mandatory as the lack of a corresponding insurance market would make the cultivation of GM crops impossible*". Instead it favours compensation schemes such as that set up by Denmark at the end of 2005. Such schemes are weaker than private insurance because farmers may feel less directly responsible, and so take less care.

The absence of any market for insurance is a clear indication of how great the risk of contamination is perceived to be. A UK survey in 2003 found that insurers compared the risks associated with GMOs to thalidomide, asbestos and acts of terrorism[9].

- **Crop segregation should not be mandatory**

In its concluding points, the Commission announces that it will start work on developing "*best practices on segregation, leading to crop specific recommendations*". Recommendations are insufficient - strict segregation measures must be adopted and the cost of segregation must be on industry and GMO farmers.

- **Case by case approval/notification procedures rejected**

Whilst stating that "*farmers engaged in non-GM crop production do not have to change established farming techniques following the introduction of GM crops*", the Commission also questions measures that could prohibit GMOs being grown on a case by case basis at the farm-level. "*…case-by-case farm-level approval or notification procedures for GM crop cultivation"* are criticised because they could lead to "*duplication of authorisation for the use of GM crops that have been authorised for cultivation under Community legislation*". Farmers with established non-GM farming would therefore be unable to prohibit GMOs being grown in a neighbouring farm.

- **EU-wide law rejected, 'wait and contaminate' approach adopted**

The Commission does not recommend an EU-wide law on coexistence, using the excuse of limited experience and needing "*to conclude the process of implementing national coexistence measures*".

But while the Commission is pushing Member States to define laws, it is then rejecting their proposals – 50% of draft legislation notified to the Commission has been rejected so far. By favouring non-mandatory measures and delaying any concrete decisions until 2008 or later, they are opting for a 'wait-and-contaminate' approach.

This clearly contradicts the Commission's own statement in the report, that "*coexistence refers to the ability of farmers to make a practical choice between conventional, organic and genetically modified (GM) crop production. It is also a precondition for consumer choice*"

[7] Communication from the Commission to the Council and the European Parliament: Report on the implementation of national measures on the coexistence of genetically modified crops with conventional and organic farming. COM(2006)104final, March 9th 2006.
[8] Communication from Plataforma Transgènics Fora! (PTF!), March 20th 2006
[9] http://www.farm.org.uk/FM_Content.aspx?ID=138

b. Commission ignores Member States' and Regions' wishes

- **50% of Member States' legal proposals on coexistence rejected**

The Commission has rejected 50% of the draft legislation notified by Members States because they would "*create obstacles to the free movement of goods*". This conflicts with the Commission's approach that "*the subsidiarity-based approach to coexistence allows member states to tailor coexistence measures to the needs of their local conditions*", and confirms that its policy is failing.

- **GMO-free Regions and Member States threatened with legal action**

The report states that "*where measures provide for a total ban of GM crops, they are in conflict with Community legislation and cannot be considered legitimate coexistence measures*" and that the Commission will take "*necessary steps*" to ensure this at regional and national levels.

172 EU regions and 4500 other zones have now declared their wish to be GMO-free[10]. The Commission itself has stated previously that it would be: "*difficult to reject these attempts at establishing GM-free zones, which are driven by strong public local concern and economic considerations (such as protection of local traditional agriculture)*"[11]

- **Member States not allowed to ban GMOs in ecologically sensitive areas**

As a result of the Commission's purely economic approach to coexistence, it rejects Member States' initiatives to prohibit or restrict GMO cultivation in national parks or other ecologically sensitive areas. This could lead to irreversible contamination of some of Europe's remaining areas that are rich in biodiversity. Yet current EU legislation specifically allows conditions or restrictions to be placed on individual GMOs for the protection of particular ecosystems/environment and/or geographical areas[12].

- **GMOs authorised under out-of-date legislation and Member State opposition ignored**

The report refers to, but avoids drawing any conclusions on, the two GM maize crops that are authorised for commercial growing in the EU: Syngenta's Bt176 and Monsanto's MON810.

The report fails to mention that they were authorised under old GMO legislation (Directive 90/220/EC) and therefore were not subject to the health and environmental impact assessments that are now required.

It also fails to mention the seven national bans in force against these GMOs for safety reasons (see Table 1, page 6), and does not refer to the contamination and liability issues that have been observed in Spain where commercial growing takes place with no legally binding coexistence measures.

c. Commision disregards independent legal advice

- **Legal advice that 0.9% threshold is "legally irrelevant" ignored, but no legal action threatened if Member States fix lower thresholds**

The Commission notes that some countries have chosen a threshold lower than its recommended 0.9% but does not threaten them with legal action. This would appear to confirm independent legal advice which concludes that the labelling threshold (0.9%) is "*legally irrelevant*" to deciding how to implement co-existence measures. The advice concludes that there is no legislative provision requiring Member States to limit coexistence measures to go no further than necessary to ensure that GM content stays below the labelling threshold. See Section 3 for more detail.

From the policy perspective, coexistence means the ability of farmers to make a practical choice between conventional, organic and GM crop production. Measures that allow a certain level of GM content could not be said to be directed at enabling farmers to make such a choice.

[10] www.gmofree-europe.org
[11] Commission press release, 28 January 2004, GMOs: Commission takes stock of progress
[12] Article 6 (5) (e) of the Genetically Modified Food and Feed Regulation 1829/2003

- **Legal opinion on Organic Regulation disregarded**

The independent legal advice (see Section 3) states that the Organic Regulation provides that, in order to be labelled or referred to as organic a product must not contain GMOs in any quantity. Co-existence measures operating to a "baseline norm" (such as the 0.9% labelling thresholds) would cause organic labelling to become meaningless in terms of GM content. This would seriously undermine EU policy to expand this sector of agriculture.

But in December 2005 the European Commission produced a new draft Regulation for organic production. This included an announcement that products containing up to 0.9 per cent GMO content could be labelled as organic. According to Commission staff this is already law, because no separate threshold was ever agreed for organics in GM labelling laws. If this proposal is agreed, consumer confidence in organic food will be seriously undermined and the industry could be irreversibly damaged.

Rather than a separate threshold for organics, 'coexistence' measures must aim for no detectable contamination in all types of non-GM farming, whether organic or not.

d. Commission rejects consideration of health and environmental issues

- **Only economic aspects considered**

The report states that "*the issues to be addressed in the context of coexistence concern only the economic aspects of the admixture of GM and non-GM crops, and the appropriate measures to prevent admixture*". But this contradicts the independent legal advice (see Section 3) which concludes that Member States must have regard to the aims of protecting human health and the environment in adopting any co-existence measures.

Furthermore, it should also be noted that the Cartagena Protocol on Biosafety has emphasised the "environmental" and "sanitary" aspects[13] of 'coexistence'.

- **Evidence of environmental damage from growing GMOs ignored**

In rejecting Slovenia's attempt to make participation in agri-environmental schemes conditional upon not using GMOs, the report states "*the use of GMOs has no demonstrable disadvantage for the environment if they are applied within the conditions of their consent*". Yet the four-year programme of Farm Scale Evaluations in the UK, the largest and most thorough study of GM herbicide tolerant crops in the world, clearly demonstrated that the growing of GM beet and oilseed rape led to negative impacts on biodiversity[14].

Table 1 - National bans on GMOs

Germany - Syngenta's Bt176 maize (banned 31/03/2000) - Reason: effects on non-target insects + transfer of antibiotic resistance genes to humans and animals + insects could develop resistance to the Bt
France - Bayer's oilseed rape Topas 19/2 (banned 16/11/1998) - Reason: impact of genetic escape and spread of herbicide tolerance
France - Bayer's oilseed rape MS1xRf1 (banned 16/11/1998) - Reason: impact of genetic escape and spread of herbicide tolerance
Austria - Syngenta's Bt176 maize (banned 13/02/1997) - Reason: effects on non-target insects such as butterflies + transfer of antibiotic resistance genes to humans and animals
Austria - Bayer's T25 maize (banned 28/4/2000) - Reason: protection of sensitive areas, lack of monitoring plan and concerns about the herbicide used
Austria - Monsanto's MON810 maize (banned 10/06/1999) - Reason: Effects on non-target insects
Austria – Proposal for a ban (issued 23/01/06) on Monsanto's GT73 oilseed rape – Reason: Risk of genetic contamination and inadequate risk assessment.
Luxembourg - Syngenta's Bt176 maize (banned 07/02/1997) - Reason: Transfer of antibiotic resistance genes to humans and animals
Greece - Bayer's oilseed rape Topas 19/2 (banned 08/09/1998) - Reason: impact of genetic escape
Greece, **Poland** and **Hungary** have all banned Monsanto Maize MON810 seeds.

[13] Boisson de Chazournes, L. & Mbengue, MM. "International legal aspects of the coexistence between GM and non GM products: approaches under international environment law" Law Faculty of Geneva at EU COEXTRA conference, Montpellier, France, November 2005
[14] Managing GM crops with herbicides: effects on farmland wildlife. http://www.defra.gov.uk/environment/gm/fse/results/fse-summary-05.pdf

Review of Commission position on "coexistence" 2003-2006

2003 Recommendation		***2006 Report***	
States that coexistence is an economic issue only.		Maintains position, ignoring independent legal advice that concludes that Member States must have regard to the aims of protecting human health and the environment in adopting any coexistence measures.	
States that "*Measures of regional dimension could be considered*". Commissioner Fischer Boel states in 2005 "*I can only encourage the regions to further develop their local and regional expertise for the production of high-quality food products*"[15]		Threatens GMO-free Regions with legal action	
States that the labelling threshold (0.9%) applies for coexistence		Maintains position, ignoring independent legal advice that concludes there is no legislative provision requiring Member States to limit coexistence measures to those needed to keep GM content below the labelling threshold.	
No solution given for liability in case of contamination, states that Member States should "*examine existing civil liability laws*"		Continues to avoid issue of liability and also states that insurance schemes "*should not be mandatory*"	
Non-mandatory segregation measures		Maintains position, announcing work on "*best practices on segregation, leading to crop specific recommendations*", implying voluntary agreements for segregation.	
The Commission will *"report to the Council and the European Parliament on the experience gained in the Member States concerning the implementation of measures to address coexistence"*		Takes the same line as the biotech industry, disregarding evidence of environmental damage and economic loss in Spain Takes a "wait-and-contaminate" approach and fails to announce a ban on GMO cultivation until such a time as a strict EU-wide law is in place	

3. Independent legal opinion raises serious concerns over Commission Recommendation

The Commission's Regulation of 2003 tries to significantly narrow the power given to Member States, stating that:

- Member States are not allowed to take into account environmental and human health matters in preparing their coexistence measures. Only 'economic issues' are relevant.
- Member States are not allowed to make their co-existence measures stricter than is necessary to keep GM contamination below 0.9%. This is the level of accidental contamination at which products must be labelled as containing GMOs

[15] Commissioner Fischer Boel speaking note, Committee of the Regions Round Table on coexistence, June 2005

A coalition of organisations in the UK obtained a legal opinion[16] on this Recommendation from Paul Lasok QC, a leading European lawyer. The opinion concluded that the Recommendation is "fundamentally flawed" and that the approach of the Commission has "no basis in Community legislation" and is "wrong in law". In particular:

a. The objectives of coexistence must not be restricted to 'economic issues' only. Member States must have regard to the aims of protecting human health and the environment in adopting any co-existence measures.
Although an environmental risk assessment is undertaken during the authorisation process, GMO legislation recognises a continuing need to protect health and the environment, such as continuing monitoring requirements and a safeguard clause allowing GMOs to be suspended and withdrawn. In addition, Regulation 1830/2003 on the traceability and labelling of GMOs states that the principal aim of the legislation, apart from informing consumer choice, is to enable the proper monitoring of GMOs and to take appropriate safeguard measures.

b. The labelling thresholds (0.9%) are 'legally irrelevant' to deciding how to implement coexistence measures
There is no legislative provision requiring Member States to limit coexistence measures to go no further than those necessary to keep GM content below the labelling threshold of 0.9%. Furthermore, the structure of the legislation would indicate that a limitation on the scope of "appropriate" coexistence measures by reference to labelling thresholds would be illogical since coexistence measures precede the fulfilment of the labelling requirements.

c. Coexistence measures based on the labelling threshold of 0.9% would make it extremely difficult for operators to avoid labelling their products as containing GMOs even where their products contained GMOs at less than 0.9%.
The labelling threshold of 0.9% only applies to GM content that is 'adventitious or technically unavoidable' i.e. accidental. Operators have to prove that they have taken steps to avoid the presence of such material. It is argued that GM presence which is "built-in", for example by designing coexistence measures to allow up to 0.9% GM contamination, can not be defined as adventitious, and therefore any known contamination would have to be labelled, even if it is below 0.9%. Coexistence measures should aim to prevent the avoidable contamination of non-GM produce, and not merely minimise such contamination to (acceptable) tolerance levels.

d. The Organic Regulation provides that, in order to be labelled or referred to as organic, a product must not contain GMOs in any quantity.
The Organic Regulation[17] states that *"genetically modified organisms and/or any product derived from such organisms must not be used"*, and in relation to processed products that *"the organic label may be applied if the product has been produced without the use of genetically modified organisms and/or any products derived from such organisms".* The wording "must not be used" and "without the use of" refers to both active and passive (or unconscious or unintentional) use: 'use' in this context extends therefore to *de facto* use. So in order to be labelled or referred to as organic, a product must not contain GMOs or GM derivatives in **whatever quantity**. No threshold content is permitted, irrespective of whether or not such content is adventitious or technically unavoidable.
If coexistence measures were to operate to a "baseline norm" (such as the 0.9% labelling thresholds) there is a very real risk that the "organic" label could become defunct.

Commission response to the legal advice
The coalition of NGOs wrote to the Commission in March 2005 requesting an urgent meeting to discuss the findings of the legal opinion, but the Commission has to date failed to respond to this request. A written reply was sent to NGOs after a reminder letter six months after the publication of the legal advice. In its letter, the Commission fails to directly respond to any of the points made by Paul Lasok QC. Instead, the Commission refers to Article 22 of Directive 2001/18 about not prohibiting, restricting and impeding the placing of GMOs on the market.

It would appear therefore that the Commission's approach to coexistence is not one of avoiding contamination and protecting health and the environment, but of ensuring that GMO trade goes unimpeded.

[16] Advice - In the matter of Co-existence, traceability and labelling of GMOs. K.P.E. Lasok QC and Rebecca Haynes, 21 January 2005. http://www.gmofree-europe.org/Coexistence_Lasok_Advice.pdf
[17] Regulation 2092/91

4. Joint Research Centre (JRC) report: widespread contamination or widespread changes to farming?

The Joint Research Centre (JRC) report of February 2006, *New case studies on the coexistence of GM and non-GM crops in European agriculture*, was hailed as proof that a threshold of 0.9% contamination of crops, and 0.5% contamination of seeds, could be met in European agriculture with few or no changes to agricultural practices. The report was intended to "*provide a science-based reference to support any future design and implementation of coexistence measures within the EU*".

But a closer read of the report reveals that its findings are not this straightforward, particularly for maize – the only GM crop currently authorised for cultivation in the EU. The report also assumes, based on the European Commission's Recommendation, and contrary to independent legal advice (see above) that coexistence should aim for a target of 0.9% contamination of non-GM crops.

The case studies for maize are based on a model, which provides "*reasonable agreement*" with observed contamination rates, used to investigate various scenarios. In general, the model suggests that clustering GM fields together makes achievement of the 0.9% threshold a lot easier to achieve. For example, the report notes that a situation where 10% of maize fields are GM and scattered throughout a particular landscape is a lot harder to manage than a situation where 50% of fields are GM, but grouped together.

But where GM fields are not conveniently grouped together, difficulties in achieving 0.9% with few or no changes to agricultural practice become obvious. Coexistence measures such as lowering the GM presence in seeds, non-GM buffer zones, isolation distances, and flowering time lags are all suggested, each of which has associated practical difficulties and economic impacts.

Indeed, the report suggested that a "*flexible decision-support system*" would be required to facilitate coexistence for these trickier situations. This system would require consideration of key factors such as isolation distances, area of the non-GM fields which could be contaminated, climate, landscape patterns, and even the amount of pollen produced by the maize varieties. This is clearly something of a departure from current agricultural practices.

In essence, coexistence would require either the designation of particular areas which could be used for GM, to ensure such fields were clustered together; or a case by case assessment for individual fields using the "flexible support system". The former would be contrary to the European Commission's view that "*farmers should be able to choose the production type they prefer, without imposing the necessity to change already established production patterns in the neighbourhood*", and the latter would raise significant issues around practicality and feasibility, particularly when coexistence on a national scale is considered.

The JRC report is based on allowing a certain level of contamination, only suggesting measures to reduce contamination when there is a danger that the threshold of 0.9% will be exceeded. But the 0.9% labelling threshold should only be applied to "*adventitious or technically unavoidable*" contamination. As the independent legal advice (see Section 3) argues, GM presence that is 'built-in' can not be regarded as adventitious. And 'technically unavoidable' is an absolute requirement, not tempered by any reference to 'reasonable', so should not be applied to systematic contamination that could technically be avoided. The JRC report, in common with the Commission's Recommendation, is based on a misinterpretation of the legislation.

The JRC report's conclusions for seed production are also based around aiming for a threshold of 0.5% GM contamination – other thresholds are examined, but the conclusion that coexistence is possible with little or no changes to agricultural practice is based around a 0.5% threshold only. Again this is misleading, as, for example in maize, meeting the threshold relies on seed plots being the "right" size and the wind blowing in the "right direction"[18]. Furthermore, over the last years, it has been clearly demonstrated that a 0.1% seed purity level has been achieved both in Europe and in seeds from countries that grow GMOs commercially.[19].

'Coexistence' must aim to avoid GM contamination of non-GM crops, not aim to allow a certain level of contamination. The JRC's report does identify that 0.1% (the current limit of detection) can be achieved, but will require very strict coexistence measures that would go beyond action on individual farms or co-ordination between neighbouring farms. If this is the only way that GM crops can be grown without

[18] JRC press release 24 February 2006: New report considers co-existence of GM and non-GM crops and seeds – footnote 2.
[19] http://www.saveourseeds.org/Download_Centre/ten_arguments.pdf

contaminating non-GM agriculture, then this is what must be done. The Commission must accept that their Recommendation is not compatible with current legislation, as demonstrated by the legal opinion.

GM crops cannot be grown across Europe without either major changes to agricultural practice, or widespread GM contamination. The European Commission's preferred option is clearly widespread GM contamination.

5. Commission states "No decision before in-depth consultation"

According to the Commission "*before any decision is taken, the Commission will engage in an in-depth consultative process with stakeholders. A conference in Vienna on 5-6 April will provide an ideal occasion for such a discussion*."[20]

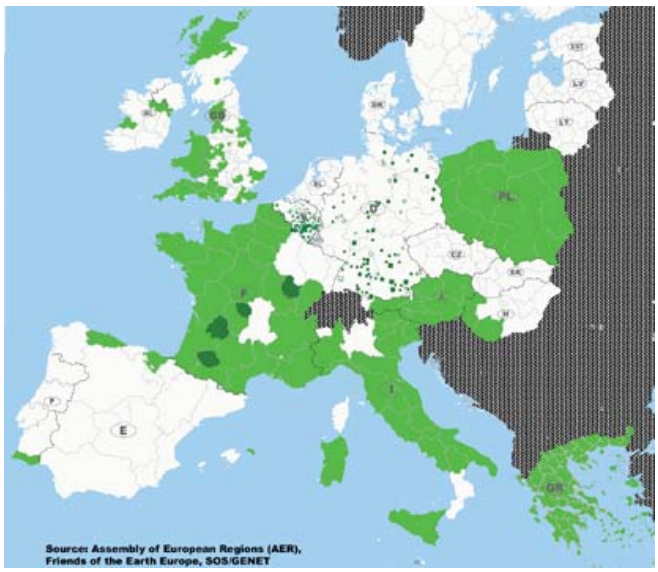
Friends of the Earth Europe supports an in-depth stakeholder consultation but strongly questions whether a conference is adequate or sufficient. Furthermore, the conference is by invitation only, and NGOs have had difficulty registering. According the Commission, NGOs invited must work at the European level, excluding national organisations. This is particularly surprising given the Commission's insistence that coexistence must be kept at the Member State level.

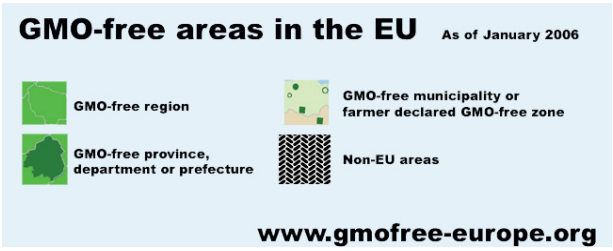
The Commission has also made a weak attempt at setting up a working group on coexistence[21], **COEX-NET**, to compile information for its report. The Decision establishing the group states: "*A network group for exchange and coordination of information on scientific studies and best practices developed in the field of coexistence of cultivation of different types of genetically modified, conventional and organic crops, hereinafter referred to as 'the group', is hereby established and attached to the Commission*."

The need to include different experts in the group's work is also included in the Decision:
"It is essential that the Commission has the possibility to organise working group meetings open to national and other experts, where necessary."

According to the Commissioner for Agriculture, Mrs Fischer Boel[22]: "*I strongly believe that dialog and information-sharing are important in order to find solutions for coexistence… [COEX-NET] will consist of representatives of the Member States and the meetings will be organised by my services [DG agriculture]. We have reserved ourselves the possibility to invite technical experts on a case-by-case basis. These can also include experts from the regions*."

However, almost a year after the working group was set up, the Commission has organised only one introductory meeting. No work programme is publicly available and no stakeholders have been invited to any future meeting, to our knowledge. The report that COEX-NET was supposed to contribute to has been issued. No timeline for future meetings is publicly available. A discussion and decision on the next steps to be taken on coexistence is currently planned for the May and June EU Agriculture Councils.





There are 172 regions and 4500 other areas that have declared themselves GMO-free.

[20] Commission press release, 9/03/2006
[21] European Commission Decision of 21 June 2005, 2005/463/EC
[22] CoR Hearing on coexistence, June 2005: http://saveourseeds.org/downloads/Fischer_Boe_coexistence_CoR_27June2005.pdf

6. Recommendations

Friends of the Earth Europe is calling for:

- **An EU-wide ban of GMOs currently authorised for cultivation and a moratorium on all GMO cultivation** until an EU law preventing contamination and establishing strict liability is in place
- **In-depth stakeholder consultation on contamination and liability** that involves all stakeholders, not just those working at European level. This should include a detailed response by the European Commission to the independent legal advice that concludes that the Recommendation on coexistence is "fundamentally flawed" and that the use of labelling thresholds is "legally irrelevant"
- **The inclusion of health and environmental aspects in coexistence**, particularly as the work of the European Food Safety Authority has recently been put into question by EU Member States and the European Commission[23]
- **The right for regions to ban GMOs**
- **A review of recent evidence on potential hazards and contamination risks of GMOs** as this appears to indicate, in our view, that it is premature to be considering the commercial growing of GMOs in the EU. For example, studies indicating the negative impacts on biodiversity found in the UK Farm Scale Evaluations persisted for at least another two years[24], that oilseed rape seed can survive in soil for up to 15 years[25], that the toxin from Bt maize can move up the food chain[26] and that GM peas producing a protein not associated with allergic reactions caused an immune response in mice[27].
- **Research into low input and sustainable agriculture** that contributes to quality food, the environment and economic growth in Europe. In particular to ensure that substantial funding under Framework Programme 7 be aimed at such research
- **EU and Member States to maintain a ban on Terminator Technology**[28] (GURTS) which following its worldwide discreditation and UN moratorium at the end of the 90s, has been repackaged by the biotechnology industry as a "biosafety" measure.

Furthermore, Friends of the Earth Europe is calling for an EU-wide law on contamination and liability that includes:

- Measures that ensure that conventional and organic agriculture products do not contain any GM contamination
- Environmental, health and economic issues as well as the protection of existing farming systems
- Uncontaminated honey production
- 0.9% threshold to be changed to detection level, as supported by legal advice – for all non-GM farming, not just organic.
- Mandatory written consent from neighbouring farmers to avoid GMO cultivation having an adverse affect on existing farms and farming practise
- Public registers with the location of GM crops, including websites accessible to all
- Costs of segregation clearly on the biotech sector, in line with the EU's Polluter Pays principle
- Liability on GM farmer and industry. Case of unintended contamination by non GMO farmer (if farmers gets seeds that are contaminated at low level and then by seed saving contamination increases) must also be taken into account
- If liability is defined within a compensation fund, then all costs of segregation must be included
- Liability must on no account involve public money or non GM farmers
- Seed thresholds must be set at detection level

[23] See, for example, 'Ministers urge more change for GM crop rules', Environment Daily 2055, 09/03/06

[24] Firbank LG et al (2006). *Effects of genetically modified herbicide-tolerant cropping systems on weed seedbanks in two years of following crops*. Biology Letters 2(1):140-3

[25] Lutman et al (2005). *Persistence of seeds from crops of conventional and herbicide tolerant oilseed rape (Brassica napus)*. Proc R Soc B 272:1909-15

[26] Harwood et al (2005). *Uptake of Bt endotoxins by nontarget herbivores and higher order arthropod predators: molecular evidence from a transgenic corn agroecosystem*. Molecular Ecology 14:2815-2823

[27] Prescott VE et al (2005). *Transgenic expression of bean alpha-amylase inhibitor in peas results in altered structure and immunogenicity*. Journal of Agricultural and Food Chemistry 53:9023-30

[28] Terminator Technology is genetic seed sterilization technology

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