

March 2006**POSITIONPAPER****The need for an European law against genetically engineered organism contamination****INTRODUCTION**

Greenpeace is against any releases of genetically engineered organisms (GE organisms also called genetically modified organisms, GM organisms) into the environment and the food chain. GE organisms are full of risks. Their (potential) effects on biodiversity and human health are negative or poorly understood and not properly evaluated. Moreover, some negative effects will only be identified after the release of the GE organisms; that is why the EU legislation on GE organism authorisations is based on the precautionary principle and foresees emergency measures to withdraw a GE organism from the market and from the environment.

It has been suggested that the uncontrolled and unwanted spread of GE organisms into the environment and the food chain can be avoided by so called "coexistence" rules. Coexistence is the term used for measures to separate genetically engineered (GE) and non-GE crops and foods. But mounting evidence shows that coexistence is impossible and that GE organisms, which are living organisms, once released into the environment, cannot be controlled and will lead to genetic contamination.¹ GE pollen can easily be transferred by the wind, via insects, (farm) animals, humans and during transportation. All these routes potentially lead to contamination of non-GE crops and the undermining of consumer's right to eat GE free food. Scandals such as the affair around *Bt10*, an unauthorised GE maize that entered the EU's environment and food chain for four years without being noticed, emphasize that the genetic engineering industry is not able to control its own products.

The term "coexistence" neglects biological reality. The larger the scale on which GE crops are grown, the more difficult it will become to maintain a GE organism free agriculture and to provide consumers and farmers with GE free products. The only true guarantee against genetic contamination is a ban on the cultivation of GE organisms.

EUROPEAN COMMISSION NEEDS TO ACT

However, in situations where environmental releases of GE organisms already exist specific legislation is needed in order to prevent the dissemination and (potential) damage of GE organisms, to protect non GE agriculture and food business, and to facilitate clean up operations and recalls. Such legislation should also cover the question of determining who is financially liable in the case of GE organism contamination.

¹ A recent report by Greenpeace and Genewatch UK reveals 113 cases of GM contamination worldwide, involving 39 countries - twice as many countries as are officially allowed to grow GM crops since they were first commercialised in 1996. See: www.gmcontaminationregister.org

If GE organisms are released into the environment, this could lead to (unforeseen) ecological damage. It could also lead to economic damage for non-GE farmers (both organic and conventional), processors, retailers and beekeepers. If non-GE crops and honey get contaminated by GE organisms this could result in a loss of income due to a lower market price of the crop and honey or difficulties in selling it. While the European Commission acknowledges that such loss of income is likely to occur², it has so far refused to draft legislation that would make the GE organism producers liable for such damages. Instead the Commission has left the establishment of anti-contamination and liability laws to the EU member states.

Greenpeace believes that the European Commission should stop dodging its responsibility and present – as soon as possible – a draft EU Directive that protects the environment, consumers and non-GE farmers (organic and conventional) from genetic contamination.

GUIDING PRINCIPLES

In our view the following key principles should form the basis of any law to avoid GE contamination:

Consumers have the right to eat GE free food.

The protection of GE free agriculture and food (production) is part of the precautionary principle. Where there is the risk that GE organisms cause health problems to consumers there has to be an uncontaminated alternative.

EU law on GE organisms should not give the right to GE organism producers to pollute the food of the vast majority of Europeans³ who do not wish to consume GE organisms. Therefore Greenpeace is against the application of any threshold (acceptance level) for the presence of GE organisms in food products. Furthermore, it should be reminded that in EU law exempting authorised GE organisms from mandatory labelling below a level of 0.9 % is only applicable for “adventitious and technically unavoidable” presence of GE organisms, when the operator is able to prove that he has taken all the necessary steps to prevent any presence of GE organisms in his products.

Farmers and beekeepers have the right to produce without GE organisms

In a Recommendation to the EU Member States, published in 2003, the European Commission has put forward a 0.9 % contamination threshold for GE organisms, meaning that the presence of GE organisms in organic and conventional agricultural fields would be tolerated (without even labelling!) at any level lower than 0.9 %. This proposal is unacceptable. It will take away farmer and consumer's choice and endanger the growth of organic agriculture and other forms of sustainable agriculture. According to independent legal experts the

² See: Commission Recommendation 2003/556/EC of 23 July 2003 on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming, paragraph 1.1, page 39

³ A recent official EU study shows that a majority of Europeans (54%) agree that "food made from genetically modified organisms is dangerous". Just 14% disagree.

http://europa.eu.int/comm/public_opinion/archives/ebs/ebs_224_report_en.pdf

Commission's proposal is also "wrong in law".⁴ The 0.9 % labelling threshold is not meant to allow deliberate contamination of food products or crops, and it is irrelevant for the setting of measures aimed at preventing contamination of non-GE agriculture. The aim of such measures should be to prevent GE contamination of crops and food products above the detection level. What is needed is an EU law that guarantees zero GE contamination to organic and conventional producers. As seeds are the starting point of the food chain, the EU should give special consideration to the purity of seeds and take every effort to avoid the contamination of seeds by GE organisms.

The responsibility to avoid GE contamination should be on operators involved in genetic engineering

Genetic engineering operators (seed companies, farmers, etc.) who introduce GE organisms in a region should bear the responsibility of implementing measures necessary to prevent gene flow. Costs (such as testing costs, cleaning of machinery, administration costs to keep crops GE free, buffer-zones, etc.) that conventional and organic farmers, beekeepers and others in the food chain have to make in order to avoid genetic contamination have to be borne by genetic engineering producers.

Absence of contamination risk has to be demonstrated

If the release of GE organisms is not possible without causing contamination of the environment, non-GE crops, honey or other food products, permission for release shall not be granted. The burden of proof to demonstrate the absence of contamination risk is on the genetic engineering operator.

The location of GE fields should be recorded in public registers

Knowledge of intent to sow GE seeds in fields is essential for preventing the contamination of non-GE crops, and the control and monitoring of GE crops. Those farmers who wish to sow GE seed must be obliged to declare, at least six months beforehand, their intention to do so and the exact location of the fields to be sown. All landholders within a five-kilometre radius must be notified directly of the intent to sow GE organisms. Additionally, all information about the type of crops and the location of the fields should be made available to the public.⁵

Liability should be on genetic engineering operators according to the polluter-pays-principle

Current EU liability legislation as well as the vast majority of Europe's national liability laws are totally inadequate for GE organisms and leave most countries without any legal scheme in place. In practice this has already led to the "polluted pays" principle, for example in Spain, where organic farmers have suffered economic losses after their crops were contaminated by GE organisms.

Greenpeace believes that liability, in the case of GE contamination, must be defined by law, according to the polluter pays principle. Damages to biodiversity, human health and GE free agriculture and food (production) must be covered. The regime must be strict: genetic engineering polluters have to pay for the

⁴ Advice in the matter of co-existence, traceability and labelling of GM organisms, K.P.E. Lasok QC, Rebecca Harms, 21 January 2005, available from Greenpeace International.

⁵ A public register is already made mandatory in article 31 .3.b of EU Directive 2001/18. Greenpeace urges member states to no longer prevent transparency.

damage, regardless if they were at fault or not. The polluter also bears the onus of proving that they did not cause the contamination. Furthermore, there is no need to prove harm – contamination must be enough to trigger the liability provisions in order to ensure that cleanup occurs at the earliest possible point and long term and potentially irreversible harm to the environment and food production is avoided. The burden of costs (e.g. clean up costs, compensation payments for affected farmers, etc.) must rest on the biotechnology company holding the consent, the farmer growing GE organisms and the company distributing and importing them.

Legal protection needed for GE free zones

People living in and off GE free areas or regions should have the right to defend a stance preventing introduction of GE organisms in their territory in order to protect natural diversity or existing farm models. The introduction of GE organisms can hinder the further expansion of sustainable, non-GE agriculture, especially in areas where plots are small. These arguments justify recognition of the right of local and regional authorities to declare their areas GE free, as part of a strategy to protect their environment and landscapes, their culture and heritage, their seeds and farm practices, their sustainable rural development and the future of their economies.

CONCLUSION

The European Commission should stop dodging its responsibility and present – as soon as possible – a draft EU Directive that protects the environment, consumers and non-GE farmers (organic and conventional) from genetic contamination and that follows the principles outlined above. The EU member states and the European Parliament should be closely involved in the decision making process about this Directive.