

Greenpeace and Friends of the Earth Europe's written contribution to the Stakeholder consultation on the European Coexistence Bureau Technical Working Group for Maize Crop Production

23 October 2008

1. 'Coexistence'¹ is impossible

Contamination of conventional crops is one of the major problems associated with the growing of genetically engineered (GE) plants and one of the reasons why we believe there should be no release of genetically modified organisms (GMOs) into the environment.

Mounting evidence shows that 'coexistence' between GM and conventional and organic crops is impossible. GMOs, being living organisms, once released into the environment, cannot be controlled and will lead to genetic contamination. GMOs can easily be transferred by the wind, via insects, farm and wild animals and humans. The genetic contamination undermines farmers' right to produce GM-free products as well as consumer's right to eat GM free food. This is further exacerbated by the lack of political will at the EU level to ensure that non GM farming is protected from genetic contamination. 'Coexistence' is a policy concept that the European Commission is clearly using as a means to enable contamination rather than prevent it.

Every year dozens of cases of genetic contamination are reported worldwide.

While 90% of GMOs are cultivated in four countries contamination spreads beyond their borders. Greenpeace's GM Contamination Register Report² alone has recorded 216 officially reported contamination events in 57 countries. The number of undetected and/or unreported cases is estimated to be of a greater magnitude, since most countries do not monitor GMOs after commercialisation and even detected GM contamination is often not published by food producers.

Alarming contamination cases have also been caused by experimental crops. A clear example is the global contamination accident caused by Bayer's GM rice (LL601) in 2006 and 2007. This GM variety of long grain rice was tested on field trials in the US between 1998 and 2001. Despite the fact that field trials were discontinued, five years afterwards dozens of US rice products contaminated with Bayer LL601 were found throughout the world, causing massive financial costs to the rice industry.³

1 Greenpeace and Friends of the Earth do not endorse the term 'coexistence', which has been introduced by the European Commission in an attempt to imply that GMOs can be introduced in the environment without creating problems to agriculture and food production. For this reason the term in the text will be used in quotation marks.

2 Greenpeace and GeneWatch UK. 2007. GM contamination register. Online: <http://www.gmcontaminationregister.org>

3 Greenpeace International. 2007. Rice industry in crisis. Online: <http://www.greenpeace.org/raw/content/international/press/reports/rice-industry-in-crisis.pdf>

2. The Commission policy on ‘coexistence’ aiming at limiting GM-contamination below 0.9% is wrong in law

The Commission's interpretation of ‘coexistence’ in the Commission Recommendation⁴ is legally flawed. According to Directive 2001/18 (Article 26a) and Regulation 1829/2003 (Recital 28) ‘coexistence’ measures should be put in place in order to “*avoid the unintended presence of GMOs in other products*” and not to keep products below the 0.9% labelling threshold - as it is currently advocated by the Commission.

The 0.9% labelling threshold in final products is legally irrelevant when deciding how to implement ‘coexistence’ measures. Under EU law such a threshold is valid only if the contamination is “*adventitious*” and “*technically unavoidable*”.

Measures aiming at avoiding GM contamination must ensure that contamination of conventional and organic crops is prevented and cannot, as it is now, aim at allowing an ‘acceptable’ level of contamination.

3. ‘Coexistence’ measures aiming for 0.9% GM contamination at the farm gate (Commission interpretation) violate the polluter pays principle

Establishing measures that allow GM contamination up to 0.9% at the farm gate, as the Commission recommends through its legally flawed approach (see point 2 above), imposes heavy economic burdens on all operators along the food processing chain. Since contamination happens throughout the food chain (e.g. during storage, transport, food processing, etc.) agricultural produce cannot leave the farm gate with 0.9% GM contamination, otherwise the product will have to be labelled as containing GMOs.

This approach contradicts the polluter pays principle enshrined in the EU treaty, by imposing costly measures on all down-stream operators to avoid contamination and by forcing them to sell their products at a lower price should the contamination level be higher than 0.9%.

4. ‘Coexistence’ measures aiming for 0.9% GM contamination at the farm gate (Commission interpretation) jeopardize consumers' right to choose GM-free products

The mandate paper of the European Coexistence Bureau states that the purpose of ‘coexistence’ is to ensure “*the ability of farmers to choose between the cultivation of genetically modified (GM) crops or non-GM crops*”. However, consumers have a right to choose GM-free products: “*Member States may take appropriate measures to avoid the unintended presence of GMOs in other products*” (Directive 2001/18 Article 26a). As outlined above (point 3), products leaving the farm can easily be contaminated in the processing chain.

The aim has to be to ensure a sufficient supply of GM-free food and feed, otherwise the consumer will be forced to eat food contaminated with GMOs against their own will. If consumer choice for GM-free products at 0.00% contamination level cannot be guaranteed, GMOs should not be cultivated.

⁴ Commission Recommendation 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 (notified under document number C(2003) 2624)

5. 'Coexistence' is not purely an economic issue – environmental and health considerations have to be taken into account

GM contamination is not only an economic issue as the Commission states in its Recommendations;⁴ inappropriate 'coexistence' measures leading to contamination of non-GM crops leads to serious environmental costs.

Environmental and safety concerns remain of fundamental importance throughout the cultivation of GMOs. Directive 2001/18 recognises an ongoing need to protect human health and the environment. EU law foresees post-marketing monitoring requirements and a safeguard clause allowing GMOs authorisations to be suspended and the products to be withdrawn from the market – as some means of addressing this requirement.

'Coexistence' measures introduced by member states have to ensure the protection of human health and the environment.

6. 'Coexistence' is not purely an economic issue – social impacts of GM contamination have to be taken into account

Recently published peer reviewed scientific study has pointed to the social consequences of GM contamination in Spain.⁵ The study concludes that the small acreage of Bt corn grown in Spain has created conflicts within society. *"The concept of coexistence and its proposed implementation ... generates new social conflicts through the individualization of choice and impacts."*

'Coexistence' cannot be understood as a purely economic issue. Contamination leads to social tensions. Social considerations have to be all taken into account.

7. Need for a holistic and integrated approach

Genetic contamination can occur at any stage of the production chain: during seed production, cultivation, storing, transport and processing. In order to safeguard conventional and organic agriculture from genetic contamination strict measures should be enacted. Measures aimed at preventing GM contamination cannot be considered separately, as it is currently happening (seed thresholds, 'coexistence' measures, labelling threshold etc.). These measures should be integrated in one system and discussed in an integrated and holistic manner. Contamination has to be avoided at every stage of crop cultivation and food production.

8. GMOs growers must bear responsibility for contamination accidents

The technical working group paper on maize states that ensuring 'coexistence' is a joint responsibility of GM and non-GM growers: *"the TWG-Maize will identify measures that are to be implemented by the different types of operators (GM or non-GM crop growers)"*. This contradicts the polluter pays principle and the Commission Recommendation.⁴ This latter states that GM growers should bear the responsibility for implementing 'coexistence' measures:

"As a general principle, during the phase of introduction of a new production type in a

⁵ Binimelis, R. 2008. Coexistence of plants and coexistence of farmers: is an individual choice possible? Journal of Agricultural and Environmental Ethics doi 10.1007/s10806-008-9099-4

region, operators (farmers) who introduce the new production type should bear the responsibility of implementing the farm management measures necessary to limit gene flow." (Commission Recommendation paragraph 2.1.7)

The Vienna conference in 2006⁶ also concluded that that GM farmers are responsible for preventing contamination.

GM farmers have to bear the full responsibility to prevent contamination.

9. Liability measures need to be introduced

In Spain, organic farmers are currently driven out of business because of GM contamination. The economic losses that these farmers suffer after their crops are contaminated with GMOs are born by themselves, the polluted, not by the polluters.⁵

The current lack of any meaningful liability regime is the missing link that makes current 'coexistence' rules useless. Without a strict liability regime that puts the burden of proof on GM-farmers and operators (polluters) there is no real incentive to prevent contamination of neighbouring farmers and operators along the food processing chain.

The EU has to implement a liability regime that puts the burden of proof on GM farmers and producers and that requires them to stipulate insurance policies.

10. Seeds must not have any GMO contamination

Seeds are the starting point of production. Allowing even a minimal level of contamination of conventional seed stocks will make GMO-free agriculture impossible and will condemn conventional and organic producers. Allowing seed producers to sell contaminated seeds without any label, will unjustly make it even more difficult for all subsequent economic operators to avoid contamination.

Seed purity has to be ensured with all means.

Documents attached to this submission:

- A critique of the Commission's most recent paper on 'coexistence' (2006):
http://www.foeeurope.org/publications/2006/contaminate_or_legislate.pdf
- Legal advice on 'coexistence' by Paul Lasok QC:
http://www.foe.co.uk/resource/briefings/legal_opinion_in_the_matte.pdf

Contacts:

Marco Contiero

Greenpeace European Unit
EU GMO Policy Director
tel.: +32 (0) 2274 1906
e-mail: marco.contiero@greenpeace.org

Helen Holder

Friends of the Earth Europe
EU Coordinator of GMOs, Food and Farming Campaign
tel.: +32 (0) 2 542 01 82
e-mail: helen.holder@foeeurope.org

⁶ The European Commission together with the Austrian Presidency of the Council held a conference "Co-existence of genetically modified, conventional and organic crops – freedom of choice" from 4-6 April 2006 in Vienna, Austria.