

ESA - POSITION on presence of EU-approved GMOs in seed

ESA calls the Commission to finally end the existing legal uncertainty for plant breeders and farmers by establishing:

- a maximum level for the presence of EU-approved GMOs* in seed
- a uniform EU sampling and testing protocol to ensure reliable results

For more than 10 years, the European Commission has promised to set thresholds to regulate the adventitious or technically unavoidable presence of GMOs in seed. ESA European Seed Association as well as Member States (MS) have repeatedly called upon the Commission to follow up on this promise with concrete action. In 2008, the Environment Council underlined the necessity of seed thresholds. Despite the increasing GM cultivation worldwide and the growing number of GMOs approved and present in Europe, inaction persists.

The new Commission proposal to maintain the authorisation of GMOs on EU level while giving Member States the right to decide themselves on the cultivation of GM crops on their territory further increases the need for a solution. In practice, it means that an EU-approved GMO could be legal for planting in some countries while in others even a very low and technically unavoidable presence of the very same GMO in seed or in farmer's fields would be illegal. Naturally, traces of such approved GMOs will be found not only in feed or food but as well in seed and in fields, also in those Member States that do not allow its use for commercial plantings. Together with different rules and standards of Member States and regions on Coexistence, this further reduces legal certainty for seed companies and farmers, even beyond the impediments already now caused by MS invoking the safeguard clause.

ESA supports the Commission in its aim to break the political deadlock in the authorisation of GMOs in the European Union. But we underline that the common market for seed must not be jeopardised. Without acceptance of the adventitious presence of all EU-approved GMOs also in seed and fields and without harmonised sampling and testing protocols, the proposed new approach will be as unworkable as the status quo and -with different authorisation statuses of GMOs within the EU- even further increase legal uncertainty for breeders and farmers and divide the farming community in Europe.

In the following, ESA sets out the principle requirements for legislation that would establish sustainable standards for the presence of EU-approved GMOs in seed and legal certainty for seed businesses and farmers:

• Set a maximum level for EU-approved GMOs in seed

The marketing of seed of plant varieties of all species is strictly regulated by the EU Seed Marketing Directives in which quality standards and control

* EU-approved means GMOs approved for cultivation under EU Directive 2001/18/EC or Regulation 1829/2003 and GMOs approved for import and food and feed use under EU Regulation 1829/2003.

measures are established. While these standards are very high, the EU Directives as all international seed legislation recognise the fact that seed is produced in an open farm environment and that a certain level of impurities cannot be avoided. Consequently, respective tolerances are established. Such a tolerance must also be set for the presence of approved GMOs as it constitutes a similar impurity that can never be fully avoided in plant breeding and seed production. It must encompass all GMOs assessed and authorised by the EU, i.e. those authorised for cultivation and those authorised for import and use in food and feed.

The standard for adventitious presence of EU-approved GMOs in seed should be defined in such a way that it enables farmers to respect the labelling threshold of 0.9% for food and feed products.

A differentiation between events approved for cultivation and those approved for food and feed use is obsolete when farmers are assured that seed will not contain higher levels than the legal standard. In line with the new policy approach and based on the scientific findings of (a.o.) the EU's Scientific Committee for Plants, ESA is of the opinion that a uniform maximum level of 0.4% for all EU-approved GMOs will assure that farmers can meet the 0.9% labelling threshold. While for some crops even a level of 0.5% would assure this, for reasons of clarity and simplification, ESA would accept a uniform maximum level of 0.4%.

This maximum level of 0.4% would thus establish a marketing threshold for the presence of all EU-approved GMOs in seed with the consequence that commercialisation of seed containing higher levels would not be allowed.

• **Harmonise the sampling and testing protocol for reliable results**

It is a long standing experience, also acknowledged by the Commission, that non-harmonised sampling and testing rules jeopardize the functioning of the Internal Market and cause legal uncertainty for operators.

For clarity and legal certainty it is thus imperative that control tests by official bodies regarding the detection of GMOs in seed are carried out according to a defined and legally binding protocol. The current patchwork of rules and practices, even within the territory of Member States, causes legal uncertainty and is incompatible with the EU's general common rule of law as well as its harmonised legislation in the policy area of plant varieties and seed. ESA underlines that such a standard sampling and testing protocol is indispensable for the implementation of any GMO threshold.

With this Position, ESA European Seed Association reiterates that a practical acceptance of the presence of all EU-approved GMOs in seed and an agreed sampling and testing protocol are imperative for the functioning of the EU's Common Market for seed, for legal certainty of seed companies and farmers, for the continued access of Europe to improved genetics and varieties, and with that for the competitiveness of Europe's agri-food chain.