

## **IOFGA ADDITIONAL SUBMISSION TO THE CO-EXISTENCE WORKING GROUP December 2004**

This submission, additional to the Irish Organic Farmers and Growers Association's (IOFGA) submission of 12/11/2004, is presented to the Coexistence Working Group in order that IOFGA's concerns will be specifically addressed if a coexistence framework is devised for Ireland in response to the EU Commission Recommendation C(2003) 2624, despite the documented articulated concerns of a wide range of groups throughout Ireland.

IOFGA is fundamentally opposed to the introduction of GM crop material to Ireland and will continue to support a total ban on its introduction. IOFGA has strongly recommended that the consultation on coexistence be broadened according to Ireland's obligations to international conventions and in line with internationally-accepted best consultation practice and in line with the EU's own recommendations on consultations.

While acknowledging the plans for a coexistence framework in Ireland are an outcome of Directive 2001/18, IOFGA considers C2003/2624 as a development inappropriate to Directive 2001/18's implementation: the rationale presented in C2003/2624 that the anti-risk strategy of good labeling will protect the consumer vis a vis GM foods is unreasonable and indefensible. The insistence of the Coexistence Working Group that development of a coexistence framework for Ireland will proceed despite IOFGA's documented concerns, obliges it to set out its views below under 6 headings on such a framework despite IOFGA's total opposition to introduction of GM crop material to Ireland. Setting out those views from 1 to 7 clearly indicates the breadth of the Pandora's Box-type effect that would be caused by permitting cultivation of GM crop material in Ireland.

1. Legal Instrument
2. Role of Precautionary Principle
3. Biosafety Advisory Body
4. Risk Management
5. Obligation to inform competent authority of adverse effects
6. Liability and Compensation
7. Review

### **1. LEGAL INSTRUMENT**

- 1.1. IOFGA proposes that the introduction for any coexistence framework be by means of primary legislation, ie, an Act of the Oireachtas, rather than by Statutory Instrument. This approach is called for in particular to buttress new concepts regarding liability in the context of the 'Polluter Pays Principle', aspects of which may not be sufficiently underpinned by subordinate legislation, particularly if a party to a liability case or challenge is likely to be a multinational corporation.

### **2. ROLE OF PRECAUTIONARY PRINCIPLE**

- 2.1. IOFGA proposes that the coexistence framework must fully incorporate the Precautionary Principle and ensure that principle is taken into account in the framework's implementation as is stated at (8) in preamble of Directive 2001/18.
- 2.2. In assessing the validity of current 'science' knowledge and opinion regarding GM crops, the lessons learned within the EU and worldwide regarding the undue influence of the tobacco industry throughout the 1980s & 90s must be recalled. The tobacco "industry sought to prevent passage of the directive within the EC legislature, to substitute industry-authored proposals in place of the original directive, and if necessary to use litigation to prevent implementation of the directive after its passage. The tobacco industry sought to delay, and eventually defeat, the EC directive on tobacco advertising and sponsorship by seeking to enlist the aid of figures at the highest levels of European politics while at times attempting to conceal the industry's role".<sup>1</sup> Such lessons ought to be part of any 'precautionary'

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<sup>1</sup> "Tobacco industry strategies for influencing European Community tobacco advertising legislation" Neuman et al in The Lancet, vol 359 pp 1323-1330, 13/4/2003. Evidence of the tobacco industry's undue influence in EU decision-

consideration of GM crops and their risk to the biosphere including human, animal and plant health and safety.

### 3. BIOSAFETY ADVISORY BODY

- 3.1. An effective coexistence framework must include clear specification of authorization bodies with a remit for biosafety at a national level. A Biosafety Council-type institution is required, its roles including  
Development, in an inclusive manner, of Ireland's 'opinion' on GM matters  
Authorization of field trials and marketing  
Such a council must include representation of environmental NGOs and other appropriate civil society groupings. Any authorization body within the state with a remit for biosafety must include a focus on environmental conservation.

### 4. RISK MANAGEMENT

It is important to note that separation of GM crop material from non-GM crop material will be necessary throughout the food chain, not just at farm level. Any serious attempt to manage the risks associated with GM crop material involves compulsory record-keeping on the part of all those involved – the seed-producing company, seed-distributing company, farmer, farm contractors, all food processors dealing with the GM crop material – all companies and sole traders handling GM crop material from seed production via farm to fork. The record-keeping protocol and retention of records for a 10 year period must be specified in the legislation.

#### 4.1. Licencing Procedure

The licencing procedure as specified in Directive 2001/18 will be compulsory for all GM crops grown in Ireland.

The environmental risk assessment element of the license procedure will be specified in detail in the legislation. Acceptable sources of "Independent scientific advice", referred to in (20) in the preamble to Directive 2001/18, will be specified in the legislation.

#### 4.2. Site Registration

A publicly-accessible site register and map will provide farmers and all other interested parties with precise information about license applications and approved licenses. Registration of all GM crop licenses will be mandatory.

#### 4.3. Farming practices regarding cultivation of GM crops and production of GM seed

- 4.3.1. Specified farming practices to prevent negative effects of GM crops will be compulsory for any licence-holder.
- 4.3.2. Regarding Ireland's choice of separation distances as a contamination prevention measure and the evidence available from studies of separation distances and contamination: the scale of the study is extremely significant, indicating that the evidence must be from agricultural scale studies and commercial experience, rather than from small-scale studies as much of the variability in evidence to date has been from small-scale studies.
- 4.3.3. In addition regarding separation distances, there must be no attempt to use average distances derived from different studies, as has been attempted in another member state: such a practice would mean that roughly half the farms are going to be routinely contaminated above the threshold from the outset.

#### 4.4. Practices regarding transportation and storage of GM crops

- 4.4.1. Specified practices to prevent negative effects of GM crops will be compulsory regarding transport and storage of any GM crop material
- 4.5. Practices regarding processing of GM crops
  - 4.5.1. Specified practices to prevent negative effects of GM crop material will be compulsory regarding processing of any GM crop material
- 4.6. Monitoring of GM Crop material during growth, transport storage and processing
- 4.7. Costs of implementation of the licencing, registration, specified practices in farming, transport, storing, processing and monitoring shall be borne by the individual licenced farmers, transporters and processors in question.
- 4.8. Failure to comply with any of the specified practices at 4.1 to 4.7 above and 5 below will incur penalties that are effective, proportionate and dissuasive, in line with Art 33 of Directive 2001/18.

#### 5 OBLIGATION TO INFORM COMPETENT AUTHORITY OF ADVERSE EFFECTS

Specify an obligation in the legislation to inform the competent authority of any observed adverse effects on human health, animal health or the environment.

#### 6 LIABILITY AND COMPENSATION

6.1 All issues of liability regarding GM crops shall be dealt with in accordance with the Polluter Pays Principle which implies that liability will be shared between the licensed farmer growing the crop and the company who produced the GM seed.

6.2 Existing liability legislation in the UK has been deemed inadequate in terms of GM crop liability by The Soil Association and so it is likely that the effect on Irish law of UK case law makes Irish legislation similarly inadequate. The coexistence framework legislation should address this issue, at least with respect to the following situations: organic and non-GM farmers suffering costs or reduced income due to the risk of or actual GM crop material contamination; environmental damages caused by GM crops; health damages caused by GM crops; the liability provisions must not require a farmer to prove the source of the GM crop material since if several farmers are growing GM crops in the region, it will be impossible to know the farm source of the contamination.

6.3 A government-run compensation scheme to allow organic and other non-GM farmers quick access to compensation is likely to be necessary, given the time and cost required for prosecution for individual farmers taking a case against a multi-national company. Such a scheme should be funded by the biotechnology companies.

#### 7 REVIEW

The framework will be formally and systematically reviewed at the end of a two year period and on an ongoing basis at three year intervals.