Europe's de-facto GM ban

For more than 15 years, the European Union has maintained a near-moratorium on approving the cultivation of genetically modified (GM) crops. This does not mean that the EU is anti-GM - Europe imports millions of tonnes of animal feed from the US, Argentina and Brazil each year, 85% of which is genetically modified. What it means is that European farmers are denied the choice of whether to grow GM crops available elsewhere in the world, and that European scientists have no outlet for GM crop R&D they are conducting here at home irrespective of its scientific merit or agricultural potential.

The only cultivation exception is Bt maize currently grown on 135,000 hectares in Spain (and in smaller amounts in Portugal, Romania, Czech Republic and Slovakia) which received EU approval back in 1998 before the anti-GM campaign had successfully stalled European policymaking. Since that time, dozens of applications have been made for GM cultivation approval, and none have been granted because anti-GM states will always block approval on political grounds at the European Council. Although the legislation provides for approval to be granted by the European Commission if the Member States can't agree a position, the Commission has been reluctant to act in these circumstances. For example, an application made in 2001 for a different insect-resistant maize (Pioneer's '1507' seed) should have been approved after an inconclusive Member State vote in February this year, but the Commission still has not issued the EU consent.

There is a strong group of countries in the EU that will oppose all GM cultivation irrespective of the trait, the gene or the crop. These member states currently include France, Hungary, Austria, Poland and possibly Italy and Germany. France has lost cases both at the European Court of Justice and in its own courts trying to justify its ongoing ban on Bt maize - because it could not present the courts with any meaningful scientific evidence. In contrast, the group of countries that is open to allowing GM cultivation (after science-based assessment on a case-by-case basis) would include the UK, and likely Netherlands, Spain and Denmark.

Assessment is formally conducted by the European Food Safety Authority, but blocking has been maintained with spurious new 'science' and other procedural means by the anti group of countries at the European Council. Approvals never gain a 'qualified majority' of votes, and so don't proceed.
The European Council GM cultivation proposal

Read the European Commission’s own summary here.

Nearly all EU member states – both pro and anti-GM – now support a proposal agreed by the European Council and the Commission, after four years of tortuous negotiations beginning in 2010. Under this carefully-crafted compromise anti-GM member states would be entitled to ask the Commission for an opt-out after a cultivation application is made, where its territory would be excluded from the scope of a company’s application for EU approval of a GM crop.

That is Stage 1. Only if the company refused to accept an opt-out request would a member state be entitled to move to Stage 2, which would be the implementation of a national ban against the GM crop on non-safety grounds. In practice, any GM seed approval applicant would be highly likely to agree to a national opt-out, in order to avoid triggering a ban, and because they would be unlikely to be able to sell seeds in a hostile country in any case.

It is important to recognise that the opt-out and national bans against GM crops would no longer have to be science-based: countries would not have to advance any safety or environmental impact case as they do currently. In effect, this would allow a cultural or religious aversion to GM in principle to be sufficient cause for preventing cultivation on a country’s territory – a major step back for the principle of evidence-based policymaking. Hence the delicate nature of this compromise: in return for allowing GM cultivation in pro-GM member states, anti-GM member states would no longer have to defend their decisions scientifically.

The biotechnology industry\(^4\) – ironically, joined by the anti-GM green groups\(^5\) – is hostile to the European Council’s proposed compromise. Monsanto says that it is already possible for individual member states to be excluded from product approvals using current legislation, and that the European Council’s approach is a further retreat from science-based policy. In addition, Monsanto has also said that there is no investment case for GM in Europe because of the politicised seed regulatory system – so the argument now is about whether or not public-sector crop biotech, not Monsanto’s latest seeds, will ever reach European farmers.

However, there is no realistic prospect of the deadlock in Europe changing. The scientific risk assessments will continue to be brushed aside and caricatures of the technique and its uses are still in widespread circulation both in member states and in Brussels.

While companies are withdrawing from Europe (Monsanto and BASF most notably but others are following and have downgraded their investments), there are still public-sector GM applications currently being developed by universities and research institutes that hold significant potential for reducing the environmental footprint of farming. [see here for a list of examples from plum pox virus to pollution by pig faeces] Researchers and plant breeders will not continue with these projects, or develop innovative new ideas for European
agriculture, if there is no realistic prospect of these new crops ever reaching the farmers they are intended to benefit – in other words, if an indefinite de-facto EU moratorium is maintained.

We think people should vote on these issues – what GM actually is in Europe – rather than on a simplistic and tired trope about Monsanto.

**European Parliament environment committee amendments**

*Read the European Parliament’s proposals here.*

Before the European Commission and Council’s proposals can become EU law they must first go through the European Parliament (EP). The key EP institution is the Environment Committee, which is led by green-oriented MEPs generally with strong anti-GMO attitudes. Accordingly, amendments have been put forward to the Council’s proposals that appear to have the express intention of making them unworkable – or so objectionable as to not then be acceptable to the European Council. This would entirely wreck the delicate compromise and precipitate many more years of logjam and stasis. (For the antis, it might be argued, another decade of non-decision on GM is as good, if not better, than a formal and permanent EU-wide ban.)

The most damaging proposed EP amendment is the removal of the requirement for a member state to first request a national opt-out before a national ban can be introduced, proposed in Amendment 24. This would mean that a group of countries could straightaway ban GM crops permanently without the need to advance any evidence for doing so. It would be unfair because it would raise pressure on those member states who do want to move forward on allowing GM cultivation – anti-GM activists would point to countries with bans as reasons why GM should not be tolerated anywhere.

**Amendment 24** also allows member states to ban all genetically modified organisms (GMOs) or groups of GMOs together as a class. A member state may "adopt measures restricting or prohibiting the cultivation of a GMO or of groups of GMOs defined by a crop or trait or of all GMOs in all or part of its territory..." In other words, no distinction would be made between herbicide-tolerant, insect-resistant, nutritionally-improved or any other GM crop, and no note would be taken of the gene, the trait or indeed whether any modified DNA or novel protein might even be present in the resulting product. This would totally undermine the principle of science-based and case-by-case assessment, in effect elevating religious aversion to GM technology into legally-binding national policy. This makes even less sense today when there are numerous techniques for genomic editing and otherwise modifying DNA, so it is no longer clear what a 'GMO' even is.

**Amendment 24** also provides a laundry-list of anti-GM concerns that might be used as justification for a ban, including the "prevention of the development of
pest resistance", "invasiveness" of a GMO, "prevention of negative impacts caused by changes in agricultural practices linked to the cultivation of GMOs", "biodiversity", "lack of adequate data concerning potential negative impacts" and so on. Anyone following this debate will spot that these typically form the core of anti-GM arguments, but say nothing that does not apply to all agriculture and are intentionally framed to present GM in a bad light. They also undermine the central role for the European Food Safety Authority which is currently tasked with making science-based assessments (probably the strictest in the world already) and whose judgements should apply across the entire single market.

**Amendment 22** requires that opt-outs be justified on "compelling grounds". Superficially this sounds like a good idea – why should an opt-out not be justified scientifically? In reality this is a ploy to ensure that an opt-out system, if agreed, is unworkable – no GM applicant will agree to an opt-out on the basis that its product is unsafe for consumption or dangerous to the environment. Because no applicant will agree to an opt-out that involves agreeing that its product is unsafe or damaging, this will allow anti-GM states to move straight to a ban. This amendment is probably a fall-back if the immediate ban proposal is dropped in negotiations, particularly as it is difficult to argue against and appears on the surface to advance evidence-based policymaking while in reality doing the opposite.

**Amendments 25 and 26**: These amendments would allow a member state to enact a ban at any time during the standard 10 year authorisation period, and without any "new objective circumstances" (European Council's original proposed wording) to justify it. These amendments seem to be intended to ensure that no investment decisions will be taken in European crop biotechnology by creating a situation of permanent uncertainty – any new government with anti-GM attitudes at any point in a decade may impose a ban despite agreements made earlier without any reasons for doing so other than political ones.

**Amendment 29** proposes that member states must set up a system of "financial liability and financial guarantees ... which ensures that the polluter pays for unintended effects or damage that might occur due to the deliberate release or placing on the market of GMOs". This amendment is an open invitation to nuisance lawsuits by organic growers and marketers claiming 'contamination' and in any case is unnecessary as a liability regime for GMOs in respect of biodiversity already exists in the EU. It is clearly intended as another way to keep the EU as a hostile environment for anyone aiming to grow a genetically modified crop by raising the costs and risks for GMO growers.
Timeline
The proposals are currently scheduled for second reading in the European Parliament on Wednesday 5th November 2014. If passed in their current amended form, the European Council, the Commission and the European Parliament will try to resolve their differing positions at trilogue meetings. It is essential that the amendments from the Parliament’s Environment Committee are not passed as the official position of the Parliament – because they are so extreme they will not be reconcilable in trilogue. This would unravel the many years of work by member states in the European Council and likely lead to more years of GM policymaking deadlock, leaving Europe further behind in agricultural improvement and innovation and making the continent increasingly hostile for science, research and innovation in general.
A GM industrial starch potato did receive EU clearance in 2010, but the authorisation was later annulled on legal grounds.


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