



USDA Foreign Agricultural Service

GAIN Report

Global Agriculture Information Network

Template Version 2.09

Voluntary Report - public distribution

Date: 2/2/2005

GAIN Report Number: IT5003

Italy

Biotechnology

Italy's Coexistence Law - English Text

2005

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Report Highlights: Italy passed a national coexistence law for biotech, organic and conventional crops that sets the framework for individual regions to develop detailed rules so that Italian farmers can know their responsibilities vis-à-vis their neighbours. This report includes only a translation of the Italian law.

Includes PSD Changes: No
Includes Trade Matrix: No
Unscheduled Report
Rome [IT1]
[IT]

Urgent provisions to ensure the coexistence of transgenic, conventional and organic farming

THE PRESIDENT OF THE ITALIAN REPUBLIC

Having regard to Articles 77, 87 and 117 (second paragraph, letters e and s) of the Italian Constitution;

Considering the extraordinary and urgent need to define a minimum legal framework permitting the implementation of the measures required for the actual coexistence of the different kinds of agriculture that are currently practicable, given the imminent procurement of seeds for the upcoming sowing season;

Having regard to the Council of Ministers decision taken at the meeting of November 11, 2004;

At the initiative of the President of the Council of Ministers, the Ministry of Agriculture and Forestry, the Ministry of the Environment and the Ministry of Trade, in concert with the Ministries of European Community Policy, Regional Affairs, Justice, the Economy and Health;

Hereby issues
the following decree law:

Article 1.

(Aims)

1. This decree, which implements European Commission Recommendation 2003/556/EC of July 23, 2003, defines the minimum regulatory framework for the coexistence of transgenic crops (excluding those used for research or experimental purposes authorized pursuant to the decree of the Ministry of Agriculture and Forestry adopted, in concert with the Ministry of the Environment, on the basis of Article 8, paragraph 6 of Legislative Decree 224 of July 8, 2003) and conventional and organic farming, in order not to compromise the biodiversity of the natural environment and to guarantee freedom of enterprise, consumers' right of choice and the quality and genuineness of national agricultural production.
2. For the purposes of this decree, the following definitions shall apply:
 - a) Transgenic farming: agriculture that make use of genetically modified organisms, as defined in Article 3 of Legislative Decree 224 of July 8, 2003;
 - b) Organic farming: agriculture practiced in accordance with Council Regulation (EEC) 2092/91 of June 24, 1991;
 - c) Conventional farming: agriculture that does not fall into the categories as per letters a) and b) above.

Article 2.

(Safeguarding of the principle of coexistence)

1. The kinds of farming as per Article 1 shall be conducted such that the practice of one does not compromise the practice of the others.
2. The coexistence of the kinds of farming as per Article 1 shall be achieved so as to safeguard their distinctive nature and specificities and, as concerns the characteristics of the seeds used to produce such crops, so as to prevent all forms of contamination between transgenic seeds and conventional and organic seeds.
- 2- bis. In observance of the principle as per paragraph 1, transgenic crops shall be introduced without the slightest prejudice to pre-existing agricultural businesses and without requiring them to change or adapt their normal farming techniques. All regulations concerning protected areas apply as usual.

3. The implementation of the rules of coexistence must assure farmers, production chain operators and consumers the real possibility to choose among conventional, organic and transgenic products; therefore, transgenic farming must be practiced as part of production chains that are separate from those of conventional and organic farming.

Article 3.

(Application of measures of coexistence)

1. In order to prevent potential economic damage and the impact of the commingling of transgenic, organic and conventional crops, by decree of the Ministry of Agriculture and Forestry, of a non-regulatory nature with approval of the Permanent Conference for Relations between the State, the Regions and the Self-Governing Provinces of Trento and of Bolzano, issued subject to the opinion of the pertinent Parliamentary commissions, framework regulations for coexistence shall be defined, including with reference to border areas between regions, on the basis of the guidelines drawn up by the Committee as per Article 7 below. The above-mentioned decree shall be filed with the European Commission in accordance with the procedure stated in Council Directive 98/34/EC of June 22, 1998.
2. In the context of the regional coexistence plans, the regions and self-governing provinces—consistently with the European Commission Recommendation of July 23, 2003 (2003/556/EC)—may identify within their territories one or more homogeneous areas.

Article 4.

(Coexistence plans)

1. Each of the regions and self-governing provinces shall, with measures to be issued by their own governments, adopt a coexistence plan consistent with the decree as per Article 3 above. The plan shall contain the technical rules for achieving coexistence, through the use of instruments that guarantee the collaboration of the local territorial agencies on the basis of the principles of subsidiarity, differentiation and proportionality.
2. The regions and self-governing provinces, in executing the procedures as per paragraph 1, assure the participation of organizations, associations, organisms and other stakeholders.
3. The regions and self-governing provinces shall encourage voluntary agreements among farmers with a view to adopting the management measures provided for in the coexistence plan as per paragraph 1, to ensure the coexistence of transgenic, conventional and organic farming.
4. (3-*bis*.) The regions and self-governing provinces, to ensure fair compensation for any damage caused by disregard for the coexistence plan, and without prejudice to the provisions of Article 5, paragraph 1-*bis*, may create a fund permitting the restoration of the agricultural conditions that existed prior to the incident causing the damage, which shall function as established in the decree named above in Article 3, paragraph 1.

Article 5.

(Liability)

1. Farmers and the other parties identified in the coexistence plan as per Article 4 are required to observe the measures specified in the plan.

1. *bis* Farmers who suffer damage due to other parties' disregard for measures of the coexistence plan are entitled to compensation. Such compensation shall be paid by whatever party has caused the damage through disregard for the coexistence plan as per Article 4 and/or the in-house coexistence plan as per paragraph 3 of this Article 5. The parties who fail to comply with the measures bear the burden of proof arising from their non-compliance. The same liability applies to the suppliers of production equipment and other operators of the primary production chain.

1-*ter*. The decree named at Article 3, paragraph 1 specifies the various kinds of compensation for damage as per paragraph 1-*bis* and for damage stemming from contamination for which no party is liable. The decree also defines the procedures by which the injured farmer may access the National Solidarity Fund set up in accordance with Legislative Decree 102 of March 29, 2004, within the limits of the fund's capacity. Lastly, the decree specifies the ways in which farmers, without any additional expense to the State, can take out specific insurance policies to cover the potential liabilities and damages governed by this Article 5.

2. Farmers will not be held liable as per paragraph 1-*bis* if they have used seeds certified by the public authorities that also come with the seed company's declaration as to the absence of genetically modified organisms pursuant to applicable law.
3. Any party planning to grow crops using genetically modified organisms must file notice as per Article 30, paragraph 2 of Legislative Decree 224 of July 8, 2003, draw up an in-house coexistence plan on the basis of the plan as per Article 4, and keep separate books of record on the coexistence measures adopted.
4. The regions and self-governing provinces shall define the rules and procedures for the collection and recording of the information as per paragraph 3, in the context of the National Agricultural Information System (Sistema informativo agricolo nazionale—SIAN) pursuant to Article 15 of Legislative Decree 173 of April 30, 1998.

Article 6.
(Penalties)

1. Unless otherwise stated in Articles 35, paragraph 10 and 36 of Legislative Decree 224 of July 8, 2003, any party who fails to comply with the measures as per Article 4, paragraph 1 shall be fined a minimum of EUR 2,500 and a maximum of EUR 25,000.
2. Any party not observing the provisions of 8 Article will be punished by imprisonment of one to two years or by fine of Euro 5,000 to 50,000.

Article 7.
(Evaluation, monitoring and information on coexistence)

1. The "Advisory Committee for the Coexistence of Transgenic, Conventional and Organic Farming" is instituted as part of the Ministry of Agriculture and Forestry.
2. The committee's organization and functioning are defined by decree of the Ministry of Agriculture and Forestry, in concert with the Ministry of the Environment and the Ministry of Regional Affairs, and with the approval of the Permanent Conference for Relations between the State, the Regions and the Self-Governing Provinces of Trento and Bolzano. The committee is made up of qualified experts on the subject with documented independence from all parties with interests in the matters governed by this decree, two of them appointed by the Ministry of Agriculture and Forestry, one by the Ministry of the Environment, one by the National Committee for Biosecurity

and Biotechnologies, four by the Permanent Conference (as above), two by the Conference of Italian University Chancellors and two by the Council for Agricultural Research and Experimentation (CRA).

3. Within 120 days of the enactment date of the law that converts this decree, the committee as per paragraph 1 shall propose—in keeping with the European Commission's Recommendation of July 23, 2003 (2003/556/EC)—the guidelines for adoption of the decree as mentioned in Article 3, paragraph 1. The committee shall also monitor observance of the principles and provisions of this decree and submit the results of such monitoring to the appropriate national authority. For the purposes of preparing the guidelines, the committee shall solicit the opinion of the organizations belonging to the Agriculture Roundtable as per Article 20 of Legislative Decree 228 of May 18, 2001.
4. The committee is further charged with proposing measures for the standardization of control procedures. Such measures shall be adopted as established in Article 3, paragraph 1.
5. The committee experts receive no payment in addition to the attendance fee envisaged by current law. The attendance fee, the functioning of the committee and the associated activities are paid for by the Ministry of Agriculture and Forestry from its ordinary budget at no additional expense to the State.

Article 8.

(Transitional provisions)

1. In pursuit of the aims stated in Article 1, until the individual measures as per Article 4 are adopted, transgenic crops—with the exception of those authorized for research and experimental purposes—are not permitted.

Article 9.

(Financial provision)

1. Except as otherwise stated in Article 7, the enactment of this decree shall in no way generate any additional expense to the State.

Article 10.

(Coming into force)

1. This decree shall come into force the day after it is published in the Official Gazette (*Gazzetta Ufficiale*) of the Republic of Italy, and will be submitted to the Senate and the Chamber of Deputies for conversion into law.

This Decree, bearing the seal of the State, shall be entered in the Official Register of Legislative Enactments of the Republic of Italy. All persons concerned by it are required to comply and to ensure compliance with it.

Done at Rome on November 22, 2004.

CIAMPI

Berlusconi – Alemanno – Matteoli – Marzano – Buttiglione – La Loggia – Siniscalco – Sirchia
Seen by the Minister of Justice: Castelli

AGENDA

Article 4.

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The Italian Senate, on the occasion of examining Bill 3264, commits the national government to portraying to the regions and self-governing provinces the need to adopt by their own hand, by December 31, 2005, the coexistence plan as per Article 3 of Decree Law 279 of 2004.

If the regions and self-governing provinces have not taken said measure by that date, the government shall take all steps necessary to exercise its power to act in their stead.