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European Commission Report on Coexistence

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Report Highlights:

On March 9, 2006, the European Commission released a report on coexistence, the concurrent cultivation of conventional, organic and biotech crops in the European Union. It discusses coexistence legislation at the EU level and the Member State level. Overall, the Commission concludes that the development of a harmonized approach to supranational coexistence legislation is not necessary at the present time, largely because the EU has limited experience with biotech crops. The Commission will hold a conference on coexistence in Vienna, Austria on April 5-6.

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On March 9, 2006, the European Commission released a report on coexistence, the concurrent cultivation of conventional, organic, and biotech crops, in the European Union. The “Report on the Implementation of National Measures on the Coexistence of Genetically Modified Crops with Conventional and Organic Farming” was sent to the European Parliament and the Council. It discusses coexistence legislation at the EU level and the Member State level. Overall, the Commission concludes that the development of a harmonized approach to supranational coexistence legislation is not necessary at the present time, largely because the EU has limited experience with biotech crops. The Commission will hold a conference on coexistence in Vienna, Austria, on April 5 and 6 to allow for stakeholder consultations in this matter.

At the EU Level, the environmental and health aspects of biotech crops are already covered in Community legislation. [Directive 2001/18/EC](#) calls for taking action to avoid unintended mixing of crops and generally keeps Member States from prohibiting, restricting, or impeding the placement of biotech products on the market. It also provides for the possibility to exempt seed lots from labeling if they contain traces of biotech seeds authorized for cultivation in the EU that are below a certain, yet to be determined, threshold. [Regulation 1829/2003/EC](#) sets out rules regarding biotech products in animal feed. Both of these regulations establish that food and feed containing 0.9% or less adventitious or technically unavoidable biotech material do not require labeling or tracing. [Recommendation 2003/556/EC](#) reaffirms that measures for coexistence should be developed by Member States, and says that coexistence measures should not go beyond what is necessary in order to ensure that adventitious traces of biotech crops stay below the 0.9% labeling threshold.

Thus, coexistence concerns only the economic implications of biotech admixture, the measures to achieve sufficient segregation between biotech and non-biotech production, and the costs of such measures. The possibility of adventitious presence of biotech crops in non-biotech crops cannot be dismissed, and may have commercial implications for the farmers whose crops are affected. Consequently, suitable measures during cultivation, harvest, transport, storage, and processing may be necessary to ensure coexistence. [Recommendation 2003/556/EC](#) sets guidelines, general principles, and technical measures for the development of national strategies and best practices to ensure the coexistence of biotech crops with conventional and organic farming. This regulation reinforces that national coexistence measures cannot introduce requirements to protect the environment that go beyond the provisions laid down in Community legislation. Measures need to be proportionate to the aim of achieving coexistence. It is recognized that appropriate measures for coexistence are conditioned by factors that vary from one region to another, including climatic and soil conditions, the size and dispersion of fields, cropping patterns and crop rotations, etc. Thus, measures adopted or proposed by Member States need to be monitored with respect to their feasibility and efficiency and adapted on the basis of the future results of monitoring programs. To facilitate the exchange and coordination of information concerning coexistence of biotech, conventional, and organic crops, the EC has created COEX-NET, <http://www.coextra.org/default.html>.

In terms of coexistence legislation at the end of 2005, ten Member States (MSs) have drafts in the advanced stage, four have drafts they have notified to the Commission, and six have adopted legislation. While most legislation has been developed at the national level, some has been developed or being developed at the regional level. In terms of draft legislation, the Commission has received 20 proposals from seven MSs. In 10 cases, the Commission found the legislation to

create obstacles to the free movement of goods. In four cases, there were no objections. Two notifications were withdrawn, four notifications are still pending. While some measures were adopted by the MSs, they failed to notify the Commission. These measures are thus not enforceable against individuals when they are adopted at the national level without appropriate notification procedures according to the jurisprudence of the Court of Justice.

The EU currently only allows the commercial cultivation of two types of biotech corn, Bt176 and MON810. In Spain, cultivation of Bt-corn was 58,000 hectares (143,000 acres) in 2004, which was equivalent to about 12% of the Spanish area under corn. In other MSs, GM corn cultivation is limited to a few hundred hectares. Thus, the EU has little experience with biotech crops. The limited availability of biotech crops with approval for planting in the EU means that for many MSs, the development of national coexistence strategies and best practices relates to a hypothetical future scenario. For some MSs, particularly countries in which grain corn is not generally grown, like the UK, Finland, Slovenia, Estonia, and Malta, it is not surprising that progress on developing coexistence strategies has been limited.

While coexistence legislation is not harmonized throughout the EU, MSs have set out some rules in common. All MSs have competence in co-existence measures at the national level, with the exception of Austria, Belgium, Italy, and the UK, where measures lie at the regional level. All MSs have a national register providing information on biotech crop cultivation to the general public, although there are differences in the level of detail made publicly available. Generally, MSs have placed the obligation to implement biotech product segregation measures on the growers of biotech crops. In most cases, the national draft legislation allows neighboring farmers, on a voluntary basis, to decide not to segregate biotech and non-biotech production, which means that non-biotech production would have to be labeled as biotech. This is in line with the Commission recommendation that segregation measures should not be made mandatory if neighbors agree that segregation is not required. Most MSs also require biotech crop growers to inform neighboring farmers of their intention to grow biotech crops. No MS has yet proposed cross-border cooperation with neighboring countries as a way of guaranteeing the effectiveness of coexistence measures in border areas.

A main difference between the various national approaches is the way in which liability in the case of economic damage from adventitious presence of biotech in other crops is handled. Some MSs have chosen specific legislation for this situation. In Denmark and the Netherlands, liability is fault-based, which means that farmers growing biotech crops can only be made liable if they have not complied with legal requirements for biotech crop cultivation. In Austria, Germany, and Poland, economic damage incurred by neighboring farmers which results from biotech crop cultivation has to be compensated by the biotech crop grower regardless of whether fault can be proven. Some MSs--Denmark, Hungary, the Netherlands, and Portugal--are considering the implementation of a compensation scheme to cover economic damage from biotech admixture, financed by a levy on the cultivation of biotech crops. Other MSs--some Austrian regions (Länder) and Luxembourg--encourage or require biotech crop growers to take out third party insurance to cover economic damage from biotech admixture. The system of third party insurance isn't well developed because there is limited knowledge on the frequency of economic damage from biotech admixture. In the case of no specific legislation for biotech admixture cases, national civil liability codes apply. MSs also differ on the level of segregation they aim to achieve. Some aim to ensure that EC labeling thresholds are not exceeded, some make no clear

reference to which levels of biotech admixture are tolerated, and some set target levels which are below the EC labeling thresholds.

Specifics at the Member State Level:

- **Austria**
 - Specific coexistence legislation adopted in 6 Lander (regions)
 - Includes liability legislation: economic damage incurred by neighboring farmers which results from biotech crop cultivation has to be compensated by the biotech crop grower regardless of whether fault can be proven
 - Farmer must follow an approval procedure and receive authorization in order to cultivate of biotech crops
 - Farmer must inform neighbors if growing biotech crops
 - EC notified of draft legislation at federal level and from 8 Lander
 - Proposes to prohibit or restrict GM crop cultivation in protected or ecologically sensitive regions for reasons of environmental protection
 - Actual cultivation of biotech crops has been insignificant
 - Upper Austria derogated from the harmonized rules laid down in Directive 2001/18/EC; Commission rejected this; Commission's decision was upheld in Court of First Instance; December 2005, Upper Austria and Republic of Austria appealed to the Court of Justice
- **Belgium**
 - Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008
- **Cyprus**
- **Czech Republic**
 - Notified provisional coexistence measures for biotech corn cultivation for 2005 in the context of its rural development program
 - Coexistence requirements for corn cultivation, including isolation distances and record keeping, were a condition for complementary national direct payments.
 - Technical segregation measures for oilseed rape, corn, beet, and potatoes have been adopted
 - Cultivates only a few hundred hectares of biotech corn
- **Germany**
 - Specific coexistence legislation adopted
 - Includes liability legislation: economic damage incurred by neighboring farmers which results from biotech crop cultivation has to be compensated by the biotech crop grower regardless of whether fault can be proven
 - Biotech crop growers must be able to prove appropriate knowledge for biotech crop cultivation
 - Restricts biotech crop cultivation in protected or ecologically sensitive regions for reasons of environmental protection
 - Cultivates only a few hundred hectares of biotech corn
- **Denmark**
 - Specific coexistence legislation adopted

- Includes legislation for the case of economic damage resulting from biotech admixture in non-biotech crops as a result of neighboring biotech crop cultivation: liability is fault-based, which means that farmers growing biotech crops can only be made liable if they have not complied with legal requirements for biotech crop cultivation
 - Makes training for all handlers of biotech crops compulsory
 - Farmers wishing to grow biotech crops must obtain a license
 - Farmers must inform neighbors if growing biotech crops
 - Technical segregation measures for oilseed rape, corn, beet, and potatoes have been adopted
 - Has a compensation scheme for economic damage resulting from biotech crop admixture, which is financed by a levy on biotech crop cultivation
 - Cultivates only a few hundred hectares of biotech corn
- **Estonia**
 - Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008.
 - Farmers must inform neighbors if growing biotech crops
- **Greece**
 - Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008.
- **Spain**
 - Draft legislation on coexistence is in advanced stage
 - Proposes compulsory training courses for biotech crop growers or all operators dealing with biotech crops
 - Has grown Bt-Corn commercially since 1998, coexistence measures based on voluntary industry guidelines on crop stewardship
 - Farmer must inform neighbors if growing biotech crops
 - In 2004, 58,000 hectares of Bt-Corn in production - about 12% of Spain's total corn production
 - Commercial cultivation of biotech corn has taken place under the general civil liability legislation, in the absence of specific rules for liability related to coexistence
 - Monitoring programs show that under Spanish agricultural conditions, Bt-Corn cultivation has not led to significant negative economic consequences for non-biotech crop growers. Few cases of adventitious presence of biotech corn were reported between 1998 and 2004. In 2004, in the course of the cultivation of biotech corn on 58,000 hectares, 3 cases of assumed adventitious presence of biotech corn in organic corn harvests were investigated, in two cases biotech presence was not confirmed, in one, it could be demonstrated that the farmer had used seeds with a high content of biotech corn.
- **Finland**
 - Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008.
 - Farmers must inform neighbors if growing biotech crops

- **France**
 - Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008.
 - Cultivates only a few hundred hectares of biotech corn
- **Hungary**
 - EC notified of national draft legislation
 - Proposes compulsory training courses for biotech crop growers or all operators dealing with biotech crops
 - Proposes to prohibit or restrict GM crop cultivation in protected or ecologically sensitive regions for reasons of environmental protection
 - Farmers wishing to grow biotech crops must obtain a license
 - Farmers must inform neighbors if growing biotech crops
- **Ireland**
- **Italy**
 - Adopted a framework law transferring competence for coexistence, which the Italian Constitutional Court has ruled as unconstitutional because it intrudes into areas of Regional authority. Constitutional judges have decreed that the Regions have the exclusive competency to legislate matters of coexistence.
 - Some Italian regions have taken measures concerning biotech crops: generally these measures involve a ban of biotech crops, are at odds with Community legislation, and therefore cannot be considered legitimate coexistence measures
- **Latvia**
 - Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008.
 - Proposes compulsory training courses for biotech crop growers or all operators dealing with biotech crops
 - Proposes to prohibit or restrict GM crop cultivation in protected or ecologically sensitive regions for reasons of environmental protection
 - Farmer must follow an approval procedure and receive authorization in order to cultivate biotech crops
- **Luxembourg**
 - EC notified of national draft legislation
 - Makes it possible to define regions where the cultivation of certain types of biotech crops would not be allowed, if this is the only way that coexistence can be achieved
 - Proposes to prohibit or restrict GM crop cultivation in protected or ecologically sensitive regions for reasons of environmental protection
- **Lithuania**
 - Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008.
 - Proposes compulsory training courses for biotech crop growers or all operators dealing with biotech crops
 - Proposes to prohibit or restrict GM crop cultivation in protected or ecologically sensitive regions for reasons of environmental protection

- **Malta**
- **Netherlands**
 - Guidelines endorsed by all stakeholders have been developed in the form of a code of good practice, which is to be backed up by legislation
 - Proposes compulsory training courses for biotech crop growers or all operators dealing with biotech crops
 - Liability for economic damage is fault-based, which means that farmers growing biotech crops can only be made liable if they have not complied with legal requirements for biotech crop cultivation
 - Farmers must inform neighbors if growing biotech crops
- **Poland**
 - Draft of coexistence legislation in advanced stage
 - Includes liability legislation: economic damage incurred by neighboring farmers which results from biotech crop cultivation has to be compensated by the biotech crop grower regardless of whether fault can be proven
 - Proposes to prohibit or restrict GM crop cultivation in protected or ecologically sensitive regions for reasons of environmental protection
 - Farmer must inform neighbors if growing biotech crops
- **Portugal**
 - Specific coexistence legislation adopted
 - Makes it possible to define regions where the cultivation of certain types of biotech crops would not be allowed, if this is the only way that coexistence can be achieved
 - Farmer must inform neighbors if growing biotech crops
 - Biotech crop growers and all operators dealing with biotech crops must take training courses
 - Technical segregation measures for oilseed rape, corn, beet, and potatoes have been adopted
 - Cultivates only a few hundred hectares of biotech corn
- **Sweden**
 - Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008.
- **Slovenia**
 - Restricted farmers from using biotech crops as part of its rural development program for 2004-2006; Commission informed Slovenia that this went against Regulation 1257/1999 and it was changed
- **Slovakia**
 - Draft of coexistence legislation is in advanced stage
 - Proposes compulsory training courses for biotech crop growers or all operators dealing with biotech crops
 - Proposes to prohibit or restrict GM crop cultivation in protected or ecologically sensitive regions for reasons of environmental protection
 - Farmers wishing to grow biotech crops have to obtain a license
- **UK**

- Preparing draft legislation on coexistence, which is currently in a review and consultation phase. Intention to produce strategies/best practice guidelines by 2008.

3.1. Table 1 – Status of co-existence measures in advanced stages of development by the end of 2005

Adopted legislation	Notified draft legislation	Non-notified drafts
AT (federal level and Lower Austria, Burgenland, Salzburg, Carinthia, Tyrol, Vienna), CZ (temporary rules for 2005), DK, DE, IT (Federal Framework Law), PT	AT (Styria, Upper Austria), CZ, HU, LU	BE, EE, ES, FI, LV, LT, NL, PL, SE, SK

○ Source: http://europa.eu.int/comm/agriculture/coexistence/sec313_en.pdf

ANNEX: OVERVIEW OF NATIONAL COEXISTENCE MEASURES

	AT ^a	BE	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	SE	SI	SK	UK	
Coexistence legislation:																										
Adopted	x				x	x								x ^b							x					
Drafts notified under Directive 98/34/EC	x			x								x				x										
Drafts in advanced stage		x					x		x	x					x		x			x	x		x		x	
Specific liability provisions in relation to coexistence, including compensation schemes or insurance requirements:																										
Adopted	x				x	x																				
Drafts in advanced stage or notified												x			x	x				x	x	x				
Crop specific field measures:																										
Adopted						x																x				
Drafts in advanced stage or notified				x					x			x			x	x	x			x	x		x			x

Source: http://europa.eu.int/comm/agriculture/coexistence/com104_en.pdf

Table 2 – Summary of Farm Measures

Measure	Included by	Excluded by
National register providing information on GM crop cultivation to the general public	All. Where specified, this register is open to the public. However, certain differences exist with respect to the degree of detail made available to the public	None
Compulsory training	DK (for all handlers), ES, FI (option), HU, LV, LT, NL, PT, SK	Austrian Länder, CZ, LU, PL
Licensing of grower	DK, HU, SK	Austrian Länder, CZ, DE, LU, NL, PL, PT, ES
Approval procedure for each field*	AT: all Länder except Tyrol, Upper Austria, HU, LV, SK	CZ, DK, DE, LU, LT, NL, PL, PT, ES
Notification procedure for each field*	AT: Tyrol, Upper Austria	
Duty of grower to inform neighbours	AT: all Länder except Salzburg, DK, EE, ES, FI, HU, NL, PL, PT	CZ, DE, LU, AT: Salzburg
Record keeping	CZ, DE, DK, ES, HU, IT, NL, PL, PT	AT, LU

* Approval procedure for each field means that cultivation of GM crops is not allowed prior to receiving authorization by a local authority following an application. In the case of a notification procedure cultivation of GM crops is allowed unless a local authority prohibits this within a specified time period.

Source: http://europa.eu.int/comm/agriculture/coexistence/sec313_en.pdf

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Related reports from FAS Offices in the EU:

Report Number	Post	Title	Date Released
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GM5041	Germany	Three Bt Corn Seed Varieties Registered	December 19, 2005
FR5088	France	Despite Obstacles French Corn Growers Will Plant Biotech Corn	December 14, 2005
FR5084	France	Exploring Coexistence	December 1, 2005
AU5022	Austria	European Court of Justice Rules Against Upper Austria's GMO-free Zones	October 19, 2005
PO5021	Portugal	Coexistence Update	September 26, 2005
FR5061	France	French Corn Growers Show Strong Support for Biotech Crops	September 15, 2005
DA5010	Denmark	Denmark Expected to Vote for Approval of GM Corn Event	September 16, 2005
FR5060	France	500 to 1,000 ha of GM corn in France in 2005	September 13, 2005
GR5021	Greece	Biotechnology	July 20, 2005
DA5007	Denmark	Biotechnology Annual	August 16, 2005
LO5006	Slovakia	Biotechnology Annual	July 14, 2005

PL5014	Poland	Biotechnology Annual	July 14, 2005
EZ5010	Czech Republic	Biotechnology Annual	July 7, 2005
PO5017	Portugal	Biotechnology Annual	August 4, 2005
IT5026	Italy	Biotechnology Annual	July 18, 2005
AU5012	Austria	Biotechnology Annual	July 12, 2005
E35044	EU-25	Recent Biotech Developments in the EU	March 3, 2005
E35026	EU-25	Twenty EU Regions Defend Right to Ban Biotech Production	February 10, 2005
IT5003	Italy	Italy's Coexistence Law – English Text	February 2, 2005
AU4032	Austria	Austria Liberalizes Biotech Law, but Barriers for Biotech Crops Remain	December 2, 2004
SP4028	Spain	Coexistence/November 2004	November 16, 2004

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