ENSSER e.V. * Marienstr. 19/20 * 10117 Berlin * Germany

P +49 (0) 30 / 21234056
F +49 (0) 30 / 21234057
E office@ensser.org
W http://www.ensser.org

PRESS RELEASE
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EU, stop fooling yourself

'New' GM food: EU drops all protection of health, farmers and environment

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After three years of deliberation, the EU has still ignored scientific arguments and common sense and decided to abolish the risk assessment of so-called 'new' genetically modified plants and the labelling of the resulting food and feed. The basis of this decision is the old, obstinate but false idea that GM plants can be considered 'equivalent' to conventional plants with respect to their safety. ENSSER deplores the fact that the EU institutions have allowed themselves to be fooled by this delusion, which they saw through 25 years ago when creating the EU GMO legislation which is now partly put out of force. Examples from other countries show that legal action may repair this political mistake. GM and GM-free product lists used by consumers may also achieve this, as they did in 2001 in the EU itself.

On June 17, the European Parliament voted to accept the EU Council's proposal[i] for a Regulation on plants obtained by the so-called new genomic techniques (NGTs) and their food and feed products. NGTs are virtually all[ii] genetic modification techniques currently in use. The new Regulation takes the unprecedented leap of abolishing existing EU provisions for risk assessment, traceability and monitoring of most types of NGT crops, NGT trees and NGT wild plants, as well as for labelling of their food and feed products.

The EP vote was the final step in a long-drawn process that started in July 2023 with a proposal by the European Commission[iii] for this Regulation. The EP, in 2024, suggested many amendments to retain traceability, labelling and some form of risk monitoring and to protect farmers against seed patents, but suddenly dropped all these amendments in the final negotiations with the Council last December. The version of the Regulation now agreed is largely the same as that proposed by the Commission in 2023.

From the scientific point of view, no amendments could have changed the fundamental shortcomings of the proposal, which ENSSER outlined right at the start in 2023[iv]. The

basic idea on which the whole Regulation is built, is false: the idea that a GM (or NGT) plant can be safe because of how similar it is to a conventional plant. This is not even supported in the United States. The Regulation sets a number of criteria which, if met, would make an NGT plant legally "equivalent to a conventional plant" (sic) and therefore authorised for deliberate release into the environment and placing on the market without any of the restrictions of the EU GMO legislation covering risks to the environment and human health. The criteria for this "equivalence" exclusively consist of DNA characteristics: the plant's DNA must contain no more than twenty genetic modifications introduced by the NGTs, and these modifications must be of certain types, described in terms of DNA only. Exactly this approach was rejected by a Federal Court in the United States at the end of 2024[v].

Such "equivalence" is a delusion. The safety of a GM plant cannot be determined purely by DNA characteristics, but only by rigorous biological, molecular and ecological assessment of the whole plant in the outdoor conditions under which it will grow. It is the latest form of the deliberate delusion that GMO proponents brought into the world when they first started to develop GMOs for commercial purposes in the 1970s: they have always suggested and are still suggesting that a GMO is "equivalent" to the corresponding non-modified organism, meaning that the genetic modifications do not affect the safety of the organism. The purpose of this delusion was always to avoid risk regulation and public awareness of GM food. It is easy to see through the delusion if one realises that the parties who suggest that a GM plant is equivalent to a non-GM one, at the same time patent the GM plant, which means that it is an unprecedented, novel human invention.

This time, the GMO proponents base the delusion on a misrepresentation of a US National Academies conclusion that the potential harmful effects of GM plants overlap with the harmful effects of the most harmful plants that arise without genetic engineering. In 2016, the Academies reaffirmed the need to regulate GM plants to avoid them from causing unacceptable harm. They emphasised that conventional plants cannot be used as establishing acceptable risk.[vi]

Every technical development in GM since the 1970s has been used to claim that this time the safety was finally guaranteed - masking the fact that the outcome of genetic modification, by whatever technique it is carried out, can never be determined in advance. The GM process in itself always causes unintended changes in the DNA of an organism in addition to the intended ones, and the intended modifications may often affect other traits and biological aspects than those intended. As the late ENSSER member Ulrich Loening said[vii]: "Any gene manipulation, old or new methods, concentrates on the gene or few genes in question, and thereby fails to select for the many and mostly unknown factors that control how those genes function in vivo. In contrast, breeding necessarily and unavoidably selects for any controls and modulators alongside the breeding selection. Thus GMOs and NGTs can never be in any way

equivalent to breeding." Also, there is nothing 'new' about 'new genomic techniques' and their concept of gene targeting or gene editing: both the concept of gene editing and the use of it date back to the late 1970s, along with the use of transgenes[viii]. The risks of targeted techniques were recognised decades ago by previous lawmakers.

The EC, EU Council and EP (at least their qualified majorities) have allowed themselves once again to be misled by the industrial and pseudo-scientific lobby perpetrating this delusion. They fell for it in the 1990s when installing the first generation of GMO legislation, which was very permissive and included hardly any GM food labelling. They were corrected by consumer action demanding risk assessment and full labelling based on independent science, and installed good GMO legislation in 2001 and 2004. This legislation is now put out of force as far as GM plants are concerned.

While no amendments could have made this Regulation scientifically justified, one amendment could certainly have saved consumer choice, namely the requirement of food labelling. GM food labelling has, in the past 22 years, largely stopped the EU food industry from using GMO ingredients, since it has always been clear to them that the vast majority of consumers would not buy food labelled as GM. Consumers have not changed their mind, but will now be unable to distinguish GM from non-GM food. The EP's qualified majority has severely let down consumers by dropping its 2024 amendment requiring NGT food labelling.

Farmers can still distinguish NGT seeds, since these do have to be labelled as such under the new Regulation. On the other hand, the position of farmers is seriously harmed by a number of badly defined patent provisions in the new Regulation, added by the EU Council, as well as by the existing patent practice of the EU for seeds and plants. If this is not improved, we may see travesties of justice in the EU like that faced by canola farmer Percy Schmeiser in Canada ca. 25 years ago[ix].

ENSSER has warned for all this long before and after the EC proposal, by many public statements[x], letters to various governments (recently the Belgian, Polish and Greek governments) and individual contacts with members of the EP and EC. Now that politics has refused to listen to science, the baton must be passed to the courts of law and to consumer action. Both have been successful before in the field of GM food. In 2024, the Philippine Court of Appeal blocked the commercial propagation of GM rice and eggplant[xi]. In the same year the Supreme Court of Appeal of South Africa sent the authorisation of Monsanto's drought-tolerant GM maize back to the government for making the legally required environmental impact assessment[xii]. In both cases, the judges based their verdicts on exactly the same scientific arguments that hold in Europe and everywhere else - science knows no borders. ENSSER members provided expert testimony in both cases. In the UK and Brazil, legal action is being taken to challenge the governmental lack of precautionary regulation of GMOs in these countries.

Consumer action, in the EU, gave rise to our GMO legislation of 2001 and 2004, mentioned above. At the end of the 1990s, civil society organisations all over the EU had made lists of GM-free and suspected GM food products by brand, based on written declarations of the food manufacturers. Consumers based their food choice on these lists. This expression of consumer preference - also inspired by independent science - directly gave rise to the replacement of the earlier, permissive EU GMO legislation by better laws. Such product lists can and may well be made again now.

If the EU had followed the Precautionary Principle, which it is legally bound to do, it would not have repeated its mistake of the 1990s now. But one way or another, the consequences of ignoring the PP will in the end make us correct the mistake, as a multitude of examples in this and many other technologies has proven[xiii].

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[i] Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on plants obtained by certain new genomic techniques and their products, and amending Regulation (EU) 2017/625, https://data.consilium.europa.eu/doc/document/ST-17037-2025-INIT/en/pdf

[ii] New genomic techniques are defined as either targeted mutagenesis or cisgenesis or both. Targeted mutagenesis is genetic modification targeted to a particular location in the DNA. Targeted mutagenesis acts at unintended locations in the genome even while it acts with greater efficiency at the intended ones than untargeted mutagenesis; and no use of targeted mutagenesis prevents insertion of transgenes. Cisgenesis is genetic modification using DNA of the organism itself or a closely related organism, be it in a targeted way or not. Like targeted mutagenesis, cisgenesis very often involves unintended modifications in addition to the intended ones. Most (if not virtually all) current GM efforts fall under this description of NGTs. NGT plants, under this Regulation, must not contain transgenic DNA, i.e. DNA from an unrelated organism. However, cisgenesis is equally prone to errors and risks as transgenesis: the process of GM in a living organism unavoidably causes unintended changes in the DNA, irrespective of the origin of any external DNA used.

[iii] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on plants obtained by certain new genomic techniques and their food and feed, and amending Regulation (EU) 2017/625, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023PC0411

[iv] https://ensser.org/press_release/analysis-statement-by-ensser-on-the-eu-commissions-new-gm-proposal-here-for-annex-1-on-ngt-equivalence-criteria/
and https://ensser.org/publications/2023/statement-eu-commissions-proposal-on-new-gm-plants-no-science-no-safety/ (press release: https://ensser.org/press_release/new-gm-plants-eu-commission-has-lost-science-and-safety-from-sight/)

[v] United States District Court, Northern District of California, Order Re Summary Judgment, Case No. 21-cv-05695-JD, National Familiy Farm Coalition et al. vs Tom Vilsack et al., 2024

[vi] National Academies of Sciences, Engineering, and Medicine. Genetically engineered crops: Experiences and prospects. Washington, DC: The National Academies Press; 2016

[vii] Ulrich Loening, University of Edinburgh, in https://ensser.org/press_release/press-release-eu-parliament-disregards-science-by-endorsing-deregulation-of-new-gm-plants/ , 2024

[viii] Heinemann, J.A.; Paull, D.J.; Walker, S.; Kurenbach, B. Differentiated impacts of human interventions on nature: Scaling the conversation on regulation of gene technologies. Elem Sci Anth 2021;9:00086. 10.1525/elementa.2021.00086.

[ix] https://rightlivelihood.org/the-change-makers/find-a-laureate/percy-and-louise-schmeiser/

[x] See note 4, and:
https://ensser.org/publications/ensser-letter-to-belgian-governments-regarding-ngmt-deregulation/
https://ensser.org/press_release/press-release-eu-parliament-disregards-science-by-endorsing-deregulation-of-new-gm-plants/
https://ensser.org/publications/2023/ensser-position-statement-on-crispr-cas-gene-editing/
https://ensser.org/press_release/press-release-a-distortion-of-science-and-a-danger-to-public-and-environmental-safety/
https://ensser.org/publications/ngmt-statement/

https://ensser.org/publications/statement-no-scientific-consensus-on-gmo-safety/

[xi] https://elaw.org/philippines-court-blocks-commercial-gmos

[xii] https://acbio.org.za/gm-biosafety/groundbreaking-judgment-of-the-supreme-court-of-appeal-in-acb-vs-monsanto-bayer/ and https://acbio.org.za/gm-biosafety/huge-constitutional-court-victory-for-the-african-centre-for-biodiversity-and-gmo-decision-making/

[xiii] D. Gee (ed.), Late lessons from early warnings: science, precaution, innovation. European Environment Agency, 2013, https://www.eea.europa.eu/en/analysis/publications/late-lessons-2