

Commissioner John Dalli's GM-Crop Non-Coexistence Proposals



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Summary

The new Commissioner for the Health and Consumers Directorate General (DG SANCO) at the European Commission, Mr. John Dalli has proposed (13 July, 2010) to give EU Member States the right to choose whether to cultivate GM-crops, on all or part of their territory, using political and socio-economic reasons as the sole justification. This is in contradiction with EC Directive 2001/18/EC, which consequently would need to be amended. In contrast, the scientific recommendations remain the domain of the European Food Safety Authority (EFSA). In exchange, Mr. Dalli hopes that Member states may be more favorably inclined to approve EFSA recommendations for imported GM-crops upon which European meat and poultry farmers depend. The initial reactions from all stakeholders, whether Member States, the biotechnology companies, European and US farmer associations, or the anti-GMO NGOs have been uniformly negative; though obviously not for the same reasons. In this article an attempt is made to analyze the motivations of the stakeholders, including those of Mr. Dalli and the European Commission.

Mr. Dalli's GMO Cultivation Proposals

In November 2009 the new Commissioner responsible for Health and Consumers Directorate General (DG SANCO) at the European Commission was designated as Mr. John Dalli, an accountant, turned politician, and until recently Minister for Social Policy in Malta. Mr. Dalli inherited numerous thorny issues at DG-SANCO, not the least being the divisive problem of genetically modified (GM) crops, for which his prior experience demonstrates no qualifications ⁽¹⁾.

During the past 12 years, the EC has authorized the cultivation of only two GM crops (Monsanto MON810 [1999] for animal feed, and the BASF Amflora potato [2010] for paper making). Several EU Member States (Austria, Italy, France, Germany Luxembourg, Greece and Hungary) have refused to permit the cultivation of MON810, in defiance of EC Directive 2001/18/EC which, among other things, covers the deliberate release of GMOs in the environment (field trials and cultivation), in the absence of specific containment measures. The Amflora cultivation request was made in 1996 and took 13 years to be authorized by the EC. Despite the fact that the Amflora potato has only recently been authorized, Luxembourg Austria and Hungary have already stated that they will not permit its cultivation.

Few EU Member States cultivate GM crops; the vast majority being grown in Spain, with much smaller amounts in the Czech Republic, Portugal, Romania, Poland, and Slovakia. France and Germany previously grew GM maize (MON810) but have since banned its cultivation for political reasons. Romania was a previously major cultivator of GM soybeans,

but had to renounce this upon joining the EU and, like the rest of Europe, now imports GM-soybeans from South America.

A great variety of GM crops are already being developed and cultivated elsewhere in the world (particularly North and South America) and, in several cases, applications have been made for their cultivations in the EC. However, these initiatives are systematically blocked by Member States, even though European Food Safety Authority (EFSA) recommendations reveal no health or environmental safety issues. In reality, following a positive EFSA recommendation, the decision to authorize GMO cultivation passes to the Council of Agricultural Ministers. This body invariably fails to reach a qualified majority and the decision then legally passes to the EC which then invariably endorse the EFSA recommendation. Much time is intentionally lost and the previous EC Commissioner of Agriculture Mariann Fischer Boel stated that 'the political decision is being knocked around like a ball in a slow-motion tennis match'. This non-scientific political deadlock was responsible for the 13 years 'needed' for the approval of the BASF Amflora potato. The same blockage is seen with many GM crops that could potentially be imported for food and feed, despite the fact that the EU is totally dependent on GM soybean, and partly on corn gluten feed, imports. This situation is, however, not the subject of the present opinion and has been discussed elsewhere^(2, 3, 4).

Under Directive 2001/18/EC^(3, 4) GM crops with a positive EFSA recommendation and authorized by the EC may be cultivated in all Member States, which may prohibit their cultivation only on valid scientific grounds, by invoking the safeguard clause. Several Member States (Austria, Italy, France, Germany Luxembourg, Greece and Hungary) have attempted to invoke the safeguard clause, but none have been successful since none have succeeded in providing new scientifically valid information not already considered by EFSA.

This was the situation inherited by the new DG-SANCO Commissioner Mr. John Dalli in early 2010. In attempt to break the deadlock he has made new proposals which were outlined on the 13th July 2010.^(5, 6, 7, 8) Mr. Dalli proposes that EU Member States be free to decide whether or not they wish to cultivate GM-crops on all or part of their territory. This is contrary to Directive 2001/18/EC^(3, 4, 9), and thus would be illegal, and consequently Mr. Dalli also proposes to modify Directive 2001/18/EC. In any case, it corresponds to the new reality since several Member States (Austria, Italy, France, Germany Luxembourg, Greece and Hungary) have already (illegally and without scientific justification) decided not to permit cultivation of authorized GM-crops (MON810). The Island of Madeira applied to be a GMO-free zone in November 2009 (prior to Mr. Dalli's proposals) and this has supposedly been accepted since the time for objections has now expired.

The problem is that Directive 2001/18/EC cannot easily be changed and this would likely take 2 years of legal process. It is probable that an eventual decision by the European Court of Justice may be needed to establish whether Mr. Dalli's proposals permitting GM-free zones fall within the legal definition of co-existence under Directive 2001/18/EC. Since, Mr. Dalli in a hurry for a 'quick fix', he further proposes to accomplish this by permitting countries to determine their own co-existence rules based political and socio-economic grounds (though not on scientific grounds since these are already covered by EFSA recommendations). He thus wishes to legalize the presently illegal 'right' of EU Member States to prevent GM-crop cultivation. Mr. Dalli proposes to replace the Recommendation 2003/556/ guidelines⁽¹⁰⁾ on co-existence by his new more permissive Guidelines⁽⁶⁾, which effectively allow Member States to do as they please.

This again is nothing very new, since member states already determine their own co-existence rules under what is known as the principle of subsidiarity. For example, in Sweden the separation distance for GM- and non-GM maize is 25m, but in tiny Luxembourg it is 800 m⁽¹¹⁾. Thus, a country wishing to exclude GM-crops simply needs to increase the separation distance between GM and non-GM-crops so that growing GM-crops becomes totally impractical. Manipulation of isolation distances may be justified by as a way of maintaining the threshold of adventitious presence at a given level. Thus a very large separation distance would correspond to a desire to have GM-free crops, though it is clear that this also jeopardizes farmers' freedom of choice to grow GM crops. If this proves insufficient then GMO cultivation may be further discouraged by implementation of liability and redress legislation, under EC recommendation (2003/556/EC), whereby GM-crop cultivating farmers are liable for economic losses suffered by their non-GMO neighbours. By imposing very strict liability and redress legislation, countries, such as Austria, can further discourage planting of GM-crops.

In addition, some Member States have already implemented GM-threshold lower than the 0.9% operating in the EU. While, under EC Regulations (1829/2003 and 1831/2003), food and feed must be labeled 'GMO' only if the level exceeds 0.9%, some EU countries (such as Germany and France) also wish to legalize a GMO-free label; so that food and feed would have 3 possible labels (a "contains-GMO label", a "GMO-free label", and no label whatsoever, corresponding to some point in-between 0% and 0.9%). National modification of GMO labeling thresholds conflicts with the notion of a EU single market, since a country that prohibits GM cultivation in order to reach an unattainably low threshold will not then permit GMO import from EU countries with a higher threshold.

As a counterpart, to permitting Member States to exclude GM-crops, Mr. Dalli hopes that they will agree to be more permissive in approving new GM-crop imports, following EFSA recommendations, and thus unblock the present deadlock where Member States are always unable to reach a qualified majority. Obtaining agreement on GM-crop imports is crucial to the EU, since the European meat and poultry farmers are completely depend on imported soybeans, which are almost entirely GM. New GM-crops are continuously being developed and cultivated in North and South America and the EU zero-tolerance regulations do not permit even trace co-mingling in shipments approved GM-crops^(2, 3, 4). However, Mr. Dalli's hope seems, a priori, without foundation, since Member States are unlikely be pro-GM-crops in Brussels, while banning them in their own countries.

Finally, Mr. Dalli's proposals erode the role of EFSA which will continue to evaluate, on a scientific basis, the health and environmental safety of GM-crops for import into the EC, but its scientific advice will no longer be needed at a national level where decisions on cultivation will be taken on political and socio-economic grounds (see also the comments of Europabio below).

The Stakeholders' Response to Mr. Dalli's Proposals

Mr. Dalli's proposals, made public on the 13 July 2010, have met with complete disapproval from all stakeholders, whether Member States, biotechnology companies, European and US farmer associations, or the anti-GMO NGOs; though, obviously, not for the same reasons.

The German Chancellor Angela Merkel has stated that these proposals represent 'the first step at dismantling the EU's single market', referring to the proposed possibility of Member States to determine their own GMO thresholds by manipulating separation distances. It is clear that such Member States, having prevented GM-crop cultivation in their own countries, could not

thereafter simply import GM-food and feed from other EU GM-crop cultivating countries where the GM-crop labeling threshold is 0.9%.

This concern was echoed in a letter sent to the Belgian Presidency, by EU farm group Copacogeca, and the Food and Drink Industry Confederation CIAA. “The new approach on GM cultivation sets a dangerous legal precedent, jeopardising the internal market for authorised products”.

M. Jean-Louis Borloo, the French Minister of Ecology, has also condemned the proposals as unacceptable since ‘they do not address the need to improve the authorization process (by EFSA)’. This is an obvious truth since Mr. Dalli’s proposals do not have the objective of modifying the science-based EFSA health and safety evaluations. However, it should be remembered that M. Borloo disbanded the French biosafety committees (CGG and CGB), possibly since their advice did not correspond to his own anti-GMO sentiments. He then installed a new pair of Committees (collectively called the Haut Conseil des Biotechnologies) which he may have hoped would be more amenable to his viewpoint. EFSA, on the other hand, was created as an independent scientific authority and has repeatedly refused demands (of various Member States including France) to condemn the Monsanto GM-maize MON810 as unsafe. As a consequence, these same Member States have called for a ‘reform’ of EFSA in order to better control its activities.

A delegation of Spanish, Romanian, and Portuguese farmers and farming associations called for: “science-based decision making; and better access to the genetically modified (GM) crops, food, and feed that have been approved as safe by the EFSA”; and “workable co-existence measures that do not discriminate against farmers growing GM crops”.

Friends of the Earth stated that “While the Commission seems to be offering countries the right to implement national bans, in reality the proposal intends to do the opposite – opening Europe’s fields to GM-crops. The Commission continues to fail to protect Europe’s food and feed from contamination by GM-crops and we urge member states to reject this deal”. Greenpeace has stated that the new proposal “will not give Member States any new rights but will open the door to new cultures of GMOs, to transborder contaminations, to distortions of competition and to the disappearance of biological agriculture in entire regions of Europe”. These opinions are in line with the vague, unscientific, unsubstantiated statements usually given by the anti-GMO NGOs, who, in reality, more are concerned that devolving decision-making on GM-crops will make it more difficult to block their development.

Europabio (European Association of Bioindustries) said that it is disappointed that the proposal disables rather than enables the application of beneficial and rigorously tested agricultural biotech products and technologies. Europabio strongly believes that for the proposal to be workable it must be science-based, proportionate in its recommendations and non-discriminatory to those farmers that wish to choose to grow the crops that work best for them. Without due respect for these fundamental principles, the resulting policy will be detrimental to the overall sustainability and success of the European agricultural sector as a whole. Specifically the Europabio concerns⁽¹²⁾ are that the proposal:

- “1. Threatens to undermine the legally established 0.9% labelling threshold by permitting the use of a range of alternate thresholds. This may trigger legal disputes involving authorities and operators (including farmers, buyers, producers).
2. Enables abuse of co-existence measures for the sake of denying existence of certain products or technologies.
3. Runs contrary to the EU internal market principles, by allowing a proliferation of different national or regional restrictions and conditions.

4. Undermines the scientific basis and the credibility of EFSA's assessments.

5. Makes it more difficult for Member States to allow farmers to choose which products to grow by creating legal uncertainty.

6. Creates a precedent that would imply that other sectors, and other nations, could use non-scientific reasons to reject the approval of products despite a positive safety assessment by the EU scientific authorities (EFSA).

In order for Europe to move forward, industry calls for a clear legal framework in which innovative, beneficial, approved and safe products can be made available to those that wish to grow or buy them."

A spokesperson from BayerCropScience, said that he supported "the aim of placing all Member States in the position to make their decisions on the cultivation of GMOs", but at the same time criticized the Dalli plan "to alter the existing legal framework and with it the possibility of long-lasting conflicts".

A spokesman from Syngenta said that "Our concern is that the proposal potentially adds more complexity and unpredictability into the process, and we doubt whether this will speed up the approvals process".

US Trade Department stated that the US could be prepared to challenge the new rules if adopted by the EU. It agreed with Chancellor Merkel's view that the proposals would undermine the EU bloc's internal market, and they would leave the EU and its member states open to challenges in the World Trade Organisation (WTO). It should be remembered that the EU lost the 1996 WTO ruling brought against it by the USA, Canada and Argentina, and that since this time the USA has given the EU several extensions to enable it to comply with the ruling. Once the power to bar GM-crops passes to the Member States, these latter could be then directly targeted individually, instead of indirectly via the EC. Such a move is supported by the American Farm Bureau Federation, which urged the U.S. Administration to begin steps towards imposing sanctions on the EU. The American Farm Bureau complained that the EU still has not complied with a 2006 World Trade Organization (WTO) ruling against the EU's "de facto moratorium" on approving new varieties of GM foods and crops. "U.S. agriculture has suffered substantial damage from the EU's failure to abide by its WTO commitments and this damage will continue to grow as long as the EU does not comply with the WTO ruling,"

UK National Farmers Union stated that "This decision sends a clear signal to the rest of the world that the EU lacks interest in innovation and new technologies for a competitive agriculture industry and that it does not use evidence and science in its decision-making".

Curiously, there seems to have been no comment, either positive or negative, from EFSA which is a major stakeholder. A search of the EFSA website reveals only one mention of Mr. Dalli, concerning his visit to EFSA.

A meeting of representatives of Member States is foreseen to discuss Mr. Dalli's proposals. However, it is already clear that these will meet with severe opposition from all stakeholders. One conclusion is perhaps that Mr. Dalli's qualifications as an accountant have not permitted him to become an expert in GMO regulation during his short 6 months in office.

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