

From: Christine Heine
To: euro-ombudsman@europarl.eu.int
Sent: Friday, March 18, 2005 10:04 PM
Subject: Complaint about EU Commission

Dear Ombudsman,

I had sent a complaint today to you, using the electronic complaints form. However the message in my email program sent to you was just empty, so I try again this way:

my name: Christine Raab-Heine
on behalf of: CLEAN (Cavan Leitrim Environmental Awareness Network) Ltd
Greagh House
Kilmore
Dowra
Co. Leitrim
Ireland
email: chheine@iolfree.ie

We became aware of the matters concerned during the last 5 months.

An email with the same content as the following complaint, except of 5(c) and 6, was sent to the Commission President and nearly all Commissioners on 22nd of February. A receipt was received from the Cabinet Office of Commissioner Kroes saying that the email will be registered as normal courier. No other reply was received from the Commission, which is against their code of conduct to reply within 15 working days.

Issues and matters of complaint:

COMPLAINT AGAINST THE EUROPEAN COMMISSION,

A. THAT EXISTING EU REGULATIONS, DIRECTIVES AND POLICIES IN RESPECT OF GMOS ARE INCONSISTENT AND VIOLATE THE EUROPEAN PRINCIPLES OF EQUALITY, COMPETITIVENESS, TRANSPARENCY, PROPORTIONALITY, INFORMED CONSUMERS' CHOICE, ACCESS TO INFORMATION AND PUBLIC PARTICIPATION.

FURTHER

B. THAT EXISTING EU REGULATIONS, DIRECTIVES AND POLICIES IN RESPECT OF GMOS ARE NOT IN COMPLIANCE WITH THE TREATY ESTABLISHING THE EUROPEAN UNION, FOR THE FOLLOWING REASONS:

1. a) Existing EU Directives, regulations and policies accept the extinction of conventional livestock farming by not safeguarding the freedom of choice that livestock farmers have, to farm conventionally. No provision is made within the EU regulatory framework, that compound animal feeds not containing GMOs are made available in sufficient quantities within the EU. Nearly all compound animal feeds available, apart from scarce organic feeds, contain GMOs. This forces livestock farmers to use GMOs and violates against the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on 'Life sciences and biotechnology — A strategy for Europe', and in particular Action 17 thereof:

"The Commission will take initiative to develop, in partnership with Member States, farmers and other private operators, research and pilot projects to clarify the need, and possible options, for agronomic and other **measures to ensure the viability of conventional and organic farming** and their sustainable co-existence with genetically modified crops.

Moreover, the Commission recognises the importance of safeguarding the existing genetic resources in agriculture. It will launch a new action programme for the conservation, characterisation, collection and utilisation of genetic resources in agriculture in the Community."

There is further violation against the Commission Recommendation of 23 July 2003 on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming (2003/556/EC), which says:

“(1) No form of agriculture, be it conventional, organic or agriculture using genetically modified organisms (GMOs), should be excluded in the European Union.

(2) The ability to maintain different agricultural production systems is a prerequisite for providing a high degree of consumer choice.”

The Commission also violates against the principle of freedom of choice for economic operators, as described in the above quoted Communication.

This situation will worsen, if the EU approves further GMOs.

1. b) Labels on compound animal feeds do not have to tell the actual percentage of GMO content. This is against the principle of transparency.
1. c) The EU Commission has further failed in ensuring that livestock farmers are appropriately and well informed about the GMO content of compound feeds. The fact that many farmers, who are main stakeholders in the food chain, neither know about the GMO content of these feeds nor are educated to know and understand GM technology, means that they are not allowed to make informed choices.
2. Existing labelling regulations allowing only for labelling “organic” and “produced with/containing GMOs”, not allowing for labelling “GMfree”, “non GM” or “conventional” do not allow conventional farmers and other parties in the food chain to promote their products as conventional or non GM. Conventional farmers and producers are thereby disadvantaged regarding promotion of their products and competitiveness.
3. Labelling requirements do not extend to animal products like meat, milk, eggs and others. They do not allow consumers to make choices they would wish to make. With other products consumers can make choices for various reasons, not only health and safety reasons, but out of lifestyle, ethical and many other considerations. With existing regulations consumers are not given such choices in respect of animal products and GMOs. This is despite of the fact that it is well known, that the majority of consumers are concerned about GMOs and want such information.

For the same reason it is a flaw in the EU regulatory framework, that other products that may or may not be of GM origin, for example cotton fibres, yarns and textiles, do not have to be clearly labelled.
4. With the existing regulations, and in respect of food other than animal products, an undue heavy burden is put on the consumer to check small text on food labels, in order to find out about the GM content of the food he/she buys. This violates against the principle of proportionality. A clear “GM free”, “non GM” or “conventional” label is necessary to properly inform consumers.
5. a) GMOs are approved after scientific risk assessment of risks to health and environment. Citizens can make comments in the risk assessment process (but, as I understand, not in all cases and at all stages), and are then excluded from the approval process. Citizens may have valid reasons to trust or mistrust the results of scientific risk assessments. They also will have other non-scientific concerns and considerations, which are equally important to them, and possibly to society. However, they are not given opportunity to voice any of these concerns in the approval process. This is undemocratic, and contrary to Principle 10 of the Rio Declaration, as well as the Aarhus Convention.
5. b) The technological language of notifications is such that they can be comprehended by certain scientists and technologists, but not by the ordinary citizen (nor politician). Unless this is changed and notifications are translated into language that ordinary citizens, and stakeholders like farmers (and politicians), can understand, this is a violation against the principles of equality, transparency, access to information and public participation. (See for example notification B/DE/04/160 at www.gmoinfo.jrc.it)

5. c) Assessment reports in respect of notifications for GMOs show, that public comments from residents of an EU member state other than that to which the notification was made, are not considered by the relevant authority of the notified member state. See for example assessment reports for C/NL/04/02 and C/NL/04/01, available at www.gmoinfo.jrc.it. This is contrary to the Aarhus Convention, and not acceptable in the current situation, where a GMO product, once approved, is deemed to be authorised in all member states, regardless of where it was first notified. Directive 2001/18/EC further gives no clear indications for the manner in which comments of the public should be handled.
6. Articles 22 and 23 of Directive 2001/18/EC are unduly restrictive and thereby contrary to Article 30 of The Treaty Establishing the European Community (and Article III-154 of the Treaty Establishing a Constitution for Europe), in that acceptable reasons for restricting or banning products by a member state are in respect of GMOs reduced to scientific risk considerations only, and are further only possible in respect of a singular GMO, whereas Article 30 (Article III-154) of the Treaty(s) would give scope for a general restriction or a ban of GMOs by a member state for a variety of valid reasons:

Article 22 of Directive 2001/18/EC
Free circulation:

Without prejudice to Article 23, Member States may not prohibit, restrict or impede the placing on the market of GMOs, as or in products, which comply with the requirements of this Directive.

Article 23 of Directive 2001/18/EC
Safeguard clause:

1. Where a Member State, as a result of new or additional information made available since the date of the consent and affecting the environmental risk assessment or reassessment of existing information on the basis of new or additional scientific knowledge, has detailed grounds for considering that a GMO as or in a product which has been properly notified and has received written consent under this Directive constitutes a risk to human health or the environment, that Member State may provisionally restrict or prohibit the use and/or sale of that GMO as or in a product on its territory. The Member State shall ensure that in the event of a severe risk, emergency measures, such as suspension or termination of the placing on the market, shall be applied, including information to the public. The Member State shall immediately inform the Commission and the other Member States of actions taken under this Article and give reasons for its decision, supplying its review of the environmental risk assessment, indicating whether and how the conditions of the consent should be amended or the consent should be terminated, and, where appropriate, the new or additional information on which its decision is based.
2. A decision shall be taken on the matter within 60 days in accordance with the procedure laid down in Article 30(2). For the purpose of calculating the 60 day period, any period of time during which the Commission is awaiting further information which it may have requested from the notifier or is seeking the opinion of the Scientific Committee(s) which has/have been consulted shall not be taken into account. The period of time during which the Commission is awaiting the opinion of the Scientific Committee(s) consulted shall not exceed 60 days. Likewise, the period of time the Council takes to act in accordance with the procedure laid down in Article 30(2) shall not be taken into account.”
(Directive 2001/18/EC)

Article 30 of The Treaty Establishing the European Community:

The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”

Article III-153 of the Treaty Establishing a Constitution for Europe:

Quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between Member States.

Article III-154 of the Treaty Establishing a Constitution for Europe:

Article III-153 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States."

(Treaty Establishing a Constitution for Europe
Official Journal of the European Union, C 310, Volume 47, 16.12.2004.)

7. Up to now we have accepted the paradigm on which the existing regulatory framework regarding GMOs is based. However, there is a more principal complaint to be made:

Article 32 of the Treaty Establishing the European Community defines agricultural products as products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. Annex I contains a comprehensive list of such products.

Transgenic events and GM crops are not mentioned in the whole of Articles 32 to 38 on agriculture, nor in the Annex, and rightly so, because, even if they can be "grown" or "reared" they are not products of the soil, of stockfarming and of fisheries or products of first stage processing, but are products of biotechnology in the first instance, and wouldn't exist without having been invented and produced in the laboratory by biotech industry, not agriculture.

This is acknowledged by the fact that notification by developers of such GM events and following risk assessments seek to prove that GMOs are substantially equivalent to conventional plants and agricultural products bred and used conventionally. To declare something as equivalent to something else acknowledges that it is not the same.

This is further the justification of certain practices regarding patents, royalties and policies by biotech companies, seeking to protect their inventions and products, such as for example the fact that GM growers are not allowed to save their seeds.

The fact that the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on 'Life sciences and biotechnology — A strategy for Europe' was deemed necessary, also implies this.

It follows then that growing of GM crops or rearing of GM animals is something different to agriculture, is therefore not "agriculture using GMOs", and has to be regulated under a different paradigm. Existing regulations are therefore misplaced, wrongly interfere with and put undue and unjustified pressure on agriculture, and should be replaced.

If a clear distinction between paradigms is not made **now**, and if one considers further developments such as attempts to produce spiders' silk in genetically modified potatoes (or goats), agriculture will be silently allowed to die. (Please see above mentioned notification)

Should this complaint be accepted and be further processed, we consider that any growing and further approval of GMOs in the EU should be postponed until the outcome of this procedure.

Yours sincerely

Christine Raab-Heine

on behalf of CLEAN (Cavan Leitrim Environmental Awareness Network) Ltd
Greagh House, Kilmore, Dowra, Co. Leitrim, Ireland

What we want to achieve:

We wish to achieve that no further GMOs are allowed to be grown or be approved in the EU, as long as the described contradictions, and insufficiencies are not examined, investigated and cleared, including the question of whether regions and member states would have a right to restrict or ban GMOs, and including the question of a distinction between agriculture and biotechnology.

The matter is not before and has not been settled by a Court.

We allow this complaint to be made public.

We agree that our complaint may be passed on to another authority (European or national), if the European Ombudsman decides that he is not entitled to deal with it.