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## PRESS RELEASE

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### **EUROPEAN GM CROP CO-EXISTENCE RECOMMENDATIONS LEGALLY FLAWED**

As European Commissioners gather to debate the future of Genetically Modified (GM) crops and food tomorrow (22 March), environment and consumer representatives have exposed an EC Recommendation, guiding member states on GM crops, as legally and fundamentally flawed. The NGOs are calling for the Recommendation to be withdrawn and are calling for an urgent meeting to discuss its legal status and content.

Paul Lasok QC, a leading European Lawyer, was asked by Which? (the UK consumers' association), Friends of the Earth, The Soil Association, Greenpeace, the Five Year Freeze Campaign and GeneWatch UK to advise on the EC Recommendation on the growing of GM crops alongside non GM and organic crops (co-existence) [1].

The Recommendation says that co-existence measures should not go further than to keep GM contamination of non-GM and organic crops below the threshold set down in European GM labelling legislation (currently 0.9 per cent). It also says that measures should ignore environmental concerns and be limited to economic issues. If member states put in place measures, like separation distances, based on this guidance, widespread GM contamination of crops and food is likely to occur.

However, the legal opinion [2], presented to the EC Commissioners for Agriculture, Environment and Consumers, condemns the EC position as "*fundamentally flawed*" and criticizes the UK Government for following this approach, which has no basis in community legislation and is legally incorrect. The opinion concludes:

*"...the Recommendation is based on a fundamental misunderstanding of the relevant legal provisions, and risks advising Member States to adopt coexistence measures that are incompatible with the aims of the legislation or which would result in preventing, in practice, the use of the "organic" label and the reliance on the GM labelling exemption."*

Friends of the Earth's GM campaigner, Clare Oxborrow said:

*"This legal opinion destroys the European Commission's position on GM crop co-existence with non-GM crops. Countries around Europe are already putting in place laws to control contamination from GM crops, but they are being misguided by flawed advice."*

*There is a growing movement for GM free areas in Europe, and consumer demand for GM free food remains as strong as ever. The Commission must now ditch its misleading guidance and replace it with tough, EU-wide laws that will truly protect our choice for GM-free food, our health and the environment from the threat of GM crops."*

Sue Davies, Chief Policy Officer, Which? said:

*"The EC's Recommendation on coexistence takes GM contamination of up to 0.9 per cent as its starting point and therefore restricts people's ability to have meaningful choice between GM, non GM and organic crops. The legal advice offered today suggests that the European Commission and member states should be aiming to minimize contamination when establishing rules for how GM crops should be grown."*

Peter Melchett, Policy Director of The Soil Association said:

*"One reason consumers choose organic food is to avoid eating GM products, yet the European Commission is trying, we believe illegally, to impose rules that could mean almost one in every hundred mouthfuls of organic food was actually GM food, with no requirement to tell people what they are really eating."*

Sarah North GM Campaigner for Greenpeace said:

*"The European Commission may have to go back to the drawing board with GM crops now. If their assumptions about how to stop contamination between GM and normal crops are wrong, then it follows that subsequent decisions to allow some GM crops to be grown in Europe and proposals for permissible levels of GM contamination of regular seeds may also be flawed. Our legal opinion could stop the Commission disregarding their own legislation and forcing GM crops into Europe on a remiss premise."*

At today's meeting in Brussels, European Commissioners will discuss GMO policy, current applications for the import of GM food and feed and the national bans on GMOs in Austria, France, Greece and Italy.

Contacts:	Peter Melchett (Soil Association)	07740 951066
	Sarah North (Greenpeace)	0207 865 8163
	Coman Kenny (Which?)	0207 770 7567
	Clare Oxborrow (Friends of the Earth)	0207 566 1716
	Sue Mayer (GeneWatch UK)	07930 308807
	Pete Riley (GM Freeze)	07903 341065

**Notes to editors:**

1. European Commission Recommendation on "guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified with conventional and organic farming" 23<sup>rd</sup> July 2003

2. Advice - In the matter of Coexistence, traceability and labeling of GMOs. K.P.E. Lasok QC and Rebecca Haynes, Monkton Chambers, 21 January 2005 available at 11am Monday 21<sup>st</sup> March on

[http://www.foe.co.uk/campaigns/real\\_food/resource/media.html](http://www.foe.co.uk/campaigns/real_food/resource/media.html)

**Paul Lasok** is one of the English Bar's most pre-eminent practitioners in European Law, having practised in the field since 1979. His diverse European practice covers all manner of areas including, in particular: agriculture,

trade law and environmental issues. Notably, he led the team for Greenpeace that successfully got the European Commission to examine the granting of aid to British Energy. This was a landmark case in the field of State aid and the environment.

**Rebecca Haynes** is a barrister practising in European Community law and judicial review with a particular focus and specialism in environmental issues. She has acted for and advised extensively both governmental and non-governmental bodies in relation to diverse issues ranging from State aid, WTO and trade law to freedom of information, habitats conservation and GM.

### **Summary of Advice of Paul Lasok in relation to Coexistence, Traceability and Labelling March 2005**

#### **Co-existence**

European legislation gives Member States the power to introduce co-existence measures<sup>1</sup>. The power is very broadly described, allowing member states to take “*appropriate measures to avoid the unintended presence of GMOs in other products*”.

In July 2003 the European Commission issued a ‘Recommendation’<sup>2</sup> which gave the Commission’s views on how member states should use that power. Although not having force of law the Recommendation is important because it sets out the Commission’s thinking and because it is being relied on by Member States throughout Europe, including the UK, in drawing up their co-existence strategies. The Recommendation tried significantly to narrow the power given to Member States. In particular, the Commission stated that:

1. Member States are **not allowed to take into account environmental and human health matters in preparing their co-existence measures**. The only issues allowed to be dealt with in coexistence measures are ‘economic issues’. This is because the Commission believes that environmental and health matters are already fully addressed during the consent process for each crop;
2. Member States are **not allowed to make their co-existence measures stricter than is necessary to keep contamination below 0.9%**. This is because 0.9% is the level of contamination at which products must be labelled as containing GMOs.

**Paul Lasok QC** looked at the arguments and concluded that:

The Recommendation is ‘**fundamentally flawed**’ (para. 55) and that the approaches of the Commission (and the UK Government in following the Recommendation) have

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<sup>1</sup> Art. 26a of Directive 2001/18

<sup>2</sup> 2003/556/EC dated 23 July 2003, *Commission Recommendation on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming*

**'no basis in Community legislation and are wrong in law'** (para. 20). In particular:

- a. The labelling thresholds (0.9%) are **'legally irrelevant'** to deciding how to implement co-existence measures (para. 25, 26).
- b. The objectives of coexistence must not be restricted to 'economic issues' only. **Member States must have regard to the aims of protecting human health and the environment** in adopting any coexistence measures. (para. 38)
- c. Any co-existence measures that were based on the labelling threshold of 0.9% would make it extremely difficult for operators to avoid labelling their products as containing GMOs even where their products contained GMOs at less than 0.9%. (para. 42-45)
- d. The Organic Regulation provides that, in order to be labelled or referred to as organic, a product must not contain GMOs in any quantity. **If co-existence measures were to operate to a "baseline norm" (such as the 0.9% labelling thresholds) there is a very real risk that the "organic" label could become defunct**" (para 52).