

Communication from David Byrne to the Commission

Subject: Inscription in Common Catalogue of Seeds Registered in National Seed Catalogues

Introduction

17 GM maize varieties derived from MON 810 of Monsanto are inscribed in national catalogues of varieties of agricultural plant species : 6 are listed in France, 11 are listed in Spain.¹ The Member States have notified the Commission and the other Member States of the entries of these GM varieties into their catalogues. Their formal inscription was delayed pending the coming into force of the new GM traceability and labelling provisions.

Legal situation

MON 810 has been authorised under the relevant Community legislation for environmental release and for use in food and feed.

Directive 2002/53/EC (seeds directive) is the consolidated directive relating to criteria for inscription in national catalogues and common (EU) catalogue. The seeds directive provides that varieties are included in national catalogues only if they meet the Community criteria as regards distinctness, stability, uniformity and value for cultivation and use. It foresees that the common catalogue of varieties shall be compiled on the basis of the national catalogues of the Member States.

The directive requires that the Commission shall, on the basis of the information supplied by the Member States and as this is received, publish in the Official Journal of the European Communities, a list of all varieties of which seed and propagating material are not subject to any marketing restriction. Inscription in the common catalogue is therefore purely a marketing issue.

In addition, the seeds directive also provides that GM seed varieties shall only be accepted for inclusion in a national catalogue after having been authorised in accordance with the directives on environmental release of GM, i.e. 90/220/EEC (and as subsequently amended by Directive 2001/18 EC). This is the case for the 17 varieties derived from the GMO MON 810. In accordance with directive 2001/18/EC these approvals have to be renewed before 17 October 2006, during which time the authorisations remain valid.

Inscription in the common catalogue: an automatic procedure

As mentioned above, in accordance with the seeds directive the Commission has the responsibility to inscribe in the common catalogue (through publication in the OJ) any seeds properly inscribed in national catalogues. As the Legal Service point out in its note of 14 June 2004 (JUR(2004)30191) the Commission has no discretion in the execution of its functions once the varieties in question have been properly inscribed in a national seed catalogue. We have to publish.

¹ 15 other GM varieties are inscribed in national catalogues. 14 are derived from the GMO Bt 176 and 1 from the GMO T25. The company responsible for BT 176 is reviewing further technological developments relating to this seed and so has not to date submitted a monitoring plan under 2001/18 which would enable their listing in the common catalogue. The other company has decided not to market the seed in question (T25).

Given the restricted role for the Commission in relation to such inscriptions it was decided in 1972 to mandate the Secretary General (as being responsible for the OJ) to carry out the inscription in the common catalogue on the request of the Director General for Agriculture (now SANCO). This procedure is used regularly (average once a month) including recently the inscription of 5.000 varieties from the new Member States.

GM Seeds

The inscription of the MON 810 varieties is the first time GM seeds will be inscribed in the common catalogue. All the aforementioned provisions of seeds directive have been complied with, including prior authorisation in accordance with Community GM legislation. In addition, on a voluntary basis, in accordance with the provisions of directive 90/220 (and in anticipation of the requirements of directive 2001/18) Monsanto, the authorisation holder of MON 810, provided a monitoring plan which was positively evaluated by the Scientific Committee on Plants and approved by Member States in the Regulatory Committee under 90/220. The seeds are subject to the full traceability and labelling provisions of EU legislation.

Safeguard Measures

In addition, it should be noted that in accordance with the seeds directive any Member State may object to the marketing on their territory of any such GM variety if they consider there is a risk for human health, the environment or agronomic reasons. So far there has been no objection from a Member State. (Under directive 90/220 and subsequently 2001/18 Austria imposed a safeguard measure against MON 810. After their first justification was rejected for lack of scientific evidence their second justification is being examined by the European Food Safety Authority. Italy has imposed national measures against 4 GMOs including MON810 under the novel food regulation. The scientific justification submitted by the Italian authorities was rejected as not being relevant by the relevant EU Scientific Committee.)

Co-existence

The Commission has, in a recommendation to Member States (2003/556 EC), set out a framework for the application of co-existence measures between conventional and GM crops. The responsibility for managing coexistence measures lies with Member States.

Intentions signalled

Our intention to proceed with the inscription on the common catalogue has been signalled to Member States on a number of occasions in the Council² and between ourselves at interservice meetings. I have also mentioned this to colleagues during our discussions on GM and the issue is set out in the document we discussed at our meeting on 28 January³ this year.

² AG Council December 2002, January, February and at CRP in October 2003, (SEC 2003/1131).

³ SEC(2004)80/3

Decision Needed

In view of the fact that all the legislation necessary on the authorisation, approval, in particular traceability and labelling of GMOs, are now in place there is no reason to delay the inscription of these seeds in the common catalogue. Failure to undertake the inscription now would mean the 2005 growing season could be lost and leave the Commission vulnerable to a Court challenge for failure to act.

Procedure

During the discussions on this issue, the need to update the 1972 procedure through which seeds are placed in the common catalogue was raised. With this aim in mind the Commission is asked to note the intention to complete this revision as soon as possible⁴ which takes account of the changes in the organisation of the Commission services that have occurred in the meantime.

Conclusion

Accordingly, the Commission is asked to

- (i) note the inscription in the common catalogue of the 17 GM varieties of MON 810
- (ii) Note the intention to update the procedure to take account of current organisation of Commission services⁴ for the inscription of seeds in the common catalogue in accordance with Directive 2002/53/EC.

⁴ Interservice consultation is taking place on updating the procedure. Once finalised this will be submitted to a forthcoming meeting for approval.