

# 7th Conference of the European GMO- free Regions Network

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## Update on coexistence in Italy and outlines of control procedures

The coexistence is linked up with the farmers' possibility of choosing between conventional, organic and genetically modified production. The art. 26bis of the Directive 2001/18/EC calls on Member States to adopt appropriate national measures on coexistence in order to avoid the unintended presence of genetically modified organisms in other products. However, according to art. 22 of that Directive, Member States cannot forbid, restrict or prevent from putting GMOs authorized by the EU on the market. It is, therefore, a matter of maintaining different agricultural production systems, as a pre-requisite for ensuring consumers' freedom of choice.

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## Update on coexistence in Italy

- Coexistence is a compound issue because most of the crops is not realized in confinement conditions and production chains are not usually separated;
  - The extant legislation (Regulation (EC) 1830/2003 on traceability and labeling of genetically modified organisms (GMOs) and Regulation (EC) 1829/2003 on genetically modified food and feed) provides that the presence of products containing, consisting of and/ or are coming from GMOs, must be indicated and verifiable at all production and marketing stages. The adventitious or technically unavoidable presence of GMOs in agricultural products, food and feed should not be given on the label if the material from GMOs is less than 0,9% of the total quantity of ingredient in the case of authorized GMOs, and less than 0,5%, in the case of unauthorized GMOs. It has not been established yet a threshold for seeds;
  - Environmental, legal and economic consequences of contamination between production chains which have to remain separate may affect economy of a region. In this context, regions are called to lay down the law with respect to coexistence.
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## Exscursus up to date on coexistence

- The Law Decree Nr. 279 of 22 November 2004, following the Commission Recommendation 2003/556/EC of 23 July 2003 – turned into law with Act No. 5 of 28 January, with amendments, contained “Urgent provisions to ensure co-existence among the forms of transgenic, conventional and biological agriculture“;
  - However, the Constitutional Court’s ruling of 17 March 2006, n. 116 declared the constitutional illegitimacy of that Act in relation to the art. 3, 4, 6, paragraphs 1 and 7, resulting in constitutional illegitimacy of the art. 5, paragraphs 3 and 4, 6, paragraph 2, and 8;
  - In the light of this ruling was issued the Mi.PAAF circular No 269, 31 March 2006, which aimed to provide clarification following the above Constitutional Court’s ruling of 17 March 2006, n. 116.
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- However, the above-mentioned ruling, by maintaining in force the art. 1 and 2 of the Law Decree nr. 279/2004 turned into Law nr 5/2005 (Annex 2) has defended the overall goals of the Act, following the Commission Recommendation 2003/556/EC of 23 July 2003 (art.1) and the principle of coexistence (art.2); in fact, on the 3<sup>rd</sup> paragraph of that article it is so stated "*the implementation of the rules of coexistence should ensure that farmers, operators of the industry and consumers, the real choice between products (conventional, transgenic and biological) and therefore transgenic crops are practiced within separate chains of production, regarding conventional and organic crops.*" On the strength of this ruling, the basic principle, according to which transgenic crops should be practiced without their carrying out affecting performance of others, is prevented and therefore, as far as their cultivation is concerned, propedeuticity of the rules of coexistence's existence is reaffirmed.

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- What was negative to constitutional principles was the invasion, by the State, of the Regions and Autonomous Provinces' legislative competence regarding agricultural production, whereas in national legislation those procedures, that they must respect in order to ensure the application of the coexistence principle on its territory, are determined. In this way, the Supreme Court's ruling has reaffirmed the regional competence regarding the implementation of coexistence plan between conventional, organic and transgenic agriculture.
  - Being Regions' competence to create its own rules, in the circular of 31 March 2006 the need to identify shared solutions concerning the management of adjacent areas, e.g.. By agreements or arrangements with the State-Regions, has been underlined.
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- The guidelines emerge as a common basis to allow, in the respect of the various regional administrations' decisions, the balanced regional rules' implementation of coexistence on national territory, limiting possible conflicts or problems arising in particular from the management of border areas.
  - For this reason, a political endorsement of the contents through a specific agreement in the State-Regions Conference will be required.
  - Subsequently, these guidelines have been notified to the European Commission according to the EC Directive 34/1998, which provides for an information procedure regarding technical rules and regulations.
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- With regard to precautionary measures, the guidelines sketchily provide corporation measures and territorial precautionary measures.
  - The first ones basically concern the separation of areas dedicated to different farming systems (conventional, organic and genetically modified), the conservation and use of seeds, farming operations, production, transportation, storage, processing, packaging, preservation of the product, marketing and registration systems for operations traceability.
  - The other ones are related to the definition of areas of exclusion (for the cultivation of GM products) and management of border areas. In particular, the areas subject to a system of organic and integrated farming can not be cultivated with genetically modified plants. Regions and Autonomous Provinces may establish a minimum separation distance of GM crop from sedentary bee farms registered by the competent authorities. Specific closed areas will also be established, by local authorities, where the cultivation of generically modified plants is prohibited. Moreover, while respecting the separation distances, in the border areas amongst regions, anyone cultivates genetically modified plants has to respect the more restrictive distance among those indicated by bordering governments.
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## Main issues discussed in the guidelines

### Voluntary agreements to establish GMO-free areas

- With regard to this issue, there are some doubts concerning the choice of the municipal level as a basis to approve the voluntary agreement. Moreover, the involvement of Municipalities seems to be necessary as to reflecting the need to restore the voluntary agreements on an appropriate scale and to have an institutional body competent to grant them and ensure compliance, including the fact that the areas included in the agreement will be the areas of exclusion for GMP. Please note that , for the agreement, a 5-years validity period is proposed. After this period more options may be located in order to continue the agreement.
  - In Europe, the only experiences come from Portugal where, however, a less detailed framework is known as and the effectiveness of the agreements is still unknown.
  - It is important to avoid that the "referendum" base stops the free enterprise. For example, there are some concerns regarding the fact that some maize growers with small areas and with other sources of income may prevent the cultivation of GM maize to some others, less numerous and with more extensive areas, that from the corn cultivation get the main source of income
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## Notification of the Guidelines

- With regard to the notification, provided that this is essential to give effect to the arranged rules (whatever they are), there are two ways:
  - each Region/Autonomous Province notifies its rule with independently and not coordinately with the other administrations;
  - It is proceeded with notification of a detailed common framework that will serve as the basis for the preparation of the single regional rules.
  
  - In the first case, each regional administration would have greater autonomy but, in contrast, many bargaining tables would be open that could make the comparison less easy and be disadvantageous to those administration which need to proceed less rapidly.
  - The second option would provide a joint bargaining of the proposed actions and allow all the administrations to be involved at the same time;
  - As far as the Ministry of Agriculture is concerned, there is a tendency towards a notification of the guidelines at EU level and the, for those regional regulations meeting the guidelines requirements, a new notification could be avoided and, therefore, they would have a fairly smooth path.
  - In any case,, the measures definitively pre-arranged with the European Commission, should be the binding basis on the regional laws.
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### Taxes and Fees Introduction

- Initially, taxes and fees and issue was considered to be treated with a national legislative measure, as tax issues is a an exclusive competence of the State.
  - There have been some doubts. In the original agreement proposal, regulations regarding tariffs were supposed to be regulated by a national law, according to the art. 117, par. 2 lett.3) of the Constitution which provides, besides that, the State's exclusive jurisdiction over tax system.
  - The Autonomous Province of Trento raised some objections, shared by the Bar of the Autonomous Province of Bolzano.
  - Specifically, the above-mentioned ruling specified that the tariff, unlike the fee, is a consideration and not a tax because it pays for services; therefore, there is a synallagmatic relationship between performance and benefit and is not attributable to income taxes.
  - Consequently, on this basis, deletion of the view referring to the art. 117 par. 2 letter. 3) of the Constitution was proposed and, according to that, regions can then regulate their rates independently, with the only requirement to comply with minimum criteria set in the State-Regions Conference.
  - With regard to tariffs, creation of an economic disadvantage for those who cultivate GMP must be avoided, as it would be in contrast to the Law 5/2005 provisions. The Ministry of Environment proposed that tariffs, intended to endow the Fund of compensation for damages to farmers not linked to third party's liability, are commensurate with the real economic damage that coming from the difference in price between conventional and transgenic products.
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## Authorization Procedure

- It should carefully be checked the compatibility of the authorization procedure provided by the guidelines with that of art. 1, par. 2 of the legislative decree 212/2001, which considers the prior authorization through the enactment of a Minister for Agricultural, Food and Forestry's specific decree, joint with the Minister for the Environment and the Ministry of Labor, Health and Welfare. In that sense, it will be important to proceed by avoiding any duplication and overlapping.
  - Finally, the Ministry of Environment has stated that it is not advisable that, unless rules of coexistence are respected, production of genetically modified plants (GMP), should be destroyed and disposed in those circumstances in which this production, coming from authorized species, is not harmful to humans or environment. The destruction of a commodity is possible only if dangerous, otherwise it is a waste of food resources as well as being a damage to the environment. A financial penalty seems to be enough.
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# Conclusions reached by the Environment Council of EU at the meeting on December, 4<sup>th</sup> 2008

- Regarding the analysis carried out, the conclusions reached by the Environment Council at the meeting on December, 4<sup>th</sup> 2008 may be of interest. In this occasion, the Environment Council adopted a document prepared by the “ad hoc working group on GMOs“, during the second half of 2008.
  - The final document addresses various aspects related to the use of GMOs both in the risk assessment and farming stage.
  - The relevant aspects of the first stage, ie the risk assessment stage related to the deliberate release of GMOs, lead to the legitimization of social and economic factors as relevant to the risk assessment itself. In this direction, the need for an exchange of information between Member Countries is provided in order to assess the implications of social and economic factors in evaluating the risk / benefit.
  - The same document states that, during the risk assessment stage, there is a strengthening of the EFSA Experts Group and a more careful assessment of long-term effects related to the use of authorized GMOs.
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- In the GMO marketing and production stage, the Environment Council has identified, as key points, the need to set the thresholds for labeling regarding the adventitious presence of GM seeds in batches of GM seeds and the identification of sensitive and/or protected areas where it is possible to exclude the cultivation of GM plants. Regarding this latter aspect, some voluntary agreements are provided, among economic operators acting within those areas.
  - Otherwise, as far as thresholds for the labeling of conventional seeds are concerned, a further study will be required as seeds, being means of production, are not the final product but raw materials in the production process. Thanks to this feature, it is difficult to calculate a level of labeling that can comply with the presence of adventitious or technically unavoidable.
  - The rationale behind each argument on seeds should start from this consideration: if we use seeds where the presence of GMOs has been revealed, next step (further seeds production or food and / or feed production) will necessarily imply a presence of GMOs in the product obtained. The only threshold that can satisfy this need is the threshold inherent in the analytical audit system adopted. This prediction is coherent with the position of EU document which states that "*these thresholds should be set at the lowest practicable level, proportionate and practicable for all economic operators, able to ensure freedom of choice for producers and consumers of conventional, biological and GM products*".
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## Controls Procedures

- From the controls viewpoint, in order to determine the presence of GM seeds in conventional seeds batches produced, it should be noticed, firstly, that until now authorizations to cultivate of GM varieties on the national territory have not been granted. Therefore, the possibility of contamination from other GM varieties grown on the national territory can be excluded. However, it cannot be excluded that contamination is present in the seed used for sowing owing to the fact that many seeds batches moving in the Community territory are of foreign origin and especially coming from countries where the cultivation of GM products does not is subject to the same restrictive conditions adopted in Italy.
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- There are two indicators to prevent and investigate the phenomenon.
  - On the one hand the above Law Decree nr 212/2001 provides that *“On tags, labels and any document accompanying the seed products, the indication of the presence of genetically modified varieties can be ignored only if the product is found to be completely free of genetically modified varieties. In all other cases, the percentage of seeds coming from genetically modified varieties must be specified, except for fractions less than 1 percent, being however required the following wording “Contains seeds derived from genetically modified varieties in less than 1 percent”.*
  - On the other hand, from 2003, a controls campaign has been carried out aiming at checking the presence of adventitious GM seed in conventional seed lots. The National Board of Seed Elected (ENSE), the Customs Agency, the Inspectorate for foodstuff’s quality control, phytosanitary services.
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- All these bodies, carrying out their functions, have been responsible for taking samples and their analysis for the presence of GM seeds. In the event that the controls are positive, it is proceeded to report to the court and to block the contaminated lot. The methods used are, for sampling, the official method while, for analysis, (in the absence of official methods) it has been employed the methodology identified within EU and suitable for the purpose.
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- This has not left out further controls on the presence of GM seeds in conventional seed lots.

The control plans, began in 2003, are continuing.

At this stage a special project has been approved which, among other things, refers to ENSE in order to conduct maize seed and soy production in view of the next 2008-2009 sowing campaign. At the same time, the latest agreements with the Inspectorate for Quality Control Products Food have been defining in order to set the control campaign according to the protocol established in recent years.

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## Monitoring results GMO 2004-2008

Soia	Anno 2004	Anno 2005	Anno 2006	Anno 2007	Anno 2008
COLLECTED SAMPLES	172	229	553	413	358
QUANTITY CONSIGNMENTS SAMPLED (KG)	2.660.934,8	4.641.334,7	11.086.398,9	8.097.506,9	7.067.282,0
ANALISED SAMPLES	170	216	553	413	358
IRREGULAR SAMPLES *	3	10	14	24	14
PERCENTAGE OF IREGULARITY	1,8%	4,6%	2,5%	5,8%	3,9%

Mais	Anno 2004	Anno 2005	Anno 2006	Anno 2007	Anno 2008
COLLECTED SAMPLES	803	1564	2564	2170	2197
QUANTITY CONSIGNMENTS SAMPLED (KG)	11.493.679	31.776.114	33.466.337	24.900.456	22.898.393
ANALISED SAMPLES	803	1564	2564	2170	2197
IRREGULAR SAMPLES *	27	55	34	32	28
PERCENTAGE OF IREGULARITY	3,4%	3,5%	1,3%	1,5%	1,3%

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- A comparison between the results of the control activity related to 2008 and 2004, 2005, 2006 and 2007 (charts above) shows how the total quantity of sampled maize in 2008, amounting to 22,898t, is less than that of the previous year (- 8% compared to 2007), but it is interesting to note that the percentage of positive samples (28 out of 2,197) is slightly decreased compared to all previous seeding campaigns.
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**Thank you for your attention!**

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