



## Working for organic farming in Europe

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International Federation of  
Organic Agriculture Movements –  
EU Regional Group

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Mr. Juha Korkeaoja  
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Dear Minister,

### **Regarding Presidency note 13240/06 on the prohibition of GMOs in organic farming**

I am writing to forward you our comments and suggestions concerning Presidency note 13240/06 on the prohibition of GMOs in organic farming. As you know, this topic is very crucial for the whole organic sector. We again offer our input and assistance in all ways that could be helpful to achieve what we all want for this proposed new regulation.

#### **Introduction**

The prohibition of GMO use in organic farming is crucial to maintaining consumer trust in organic products. It is therefore extremely important that the provisions on the matter in the new organic regulation do not create uncertainty about the commitment of the European Union to preserving the non-GMO status of the sector.

As the primary representative of the organic sector in Europe, we have had a constructive dialogue about this with Member States. We want to underline that the present draft in most respects reflect a consensus between governments and the sector about how to handle the GMO issues. This letter will only highlight the points where we still disagree with the draft GMO provisions as worded in the Presidency note, and suggest alternative solutions for the consideration of the Council.

In text proposals, new text is underlined, deleted text is struck through.

#### **Article 2 (p)**

The purpose of this provision is to establish the meaning of the term "GMO". Until now, there has been a consensus to define it by reference to the standard EU definition, which is generally used in GMO-related legislation. All drafts have used a simple reference to the definition in Directive 2001/18/EC.

Therefore, we were quite surprised to find in this note an entirely new amendment to this definition, which to our knowledge has not been discussed before, and apparently also has gone unnoticed by several Member States. It consists of an added subclause which narrows the definition down to GMOs "within the scope of application" of 2001/18.

This means, to begin with, that the term "GMO" would have a different meaning in the new organic regulation than in all other EU legislation – including 2001/18 itself. Already for reasons of clarity and legal certainty, this would be extremely unfortunate.

But the amendment would also seriously change the effect of all GMO provisions in the regulation. The scope of application of 2001/18 is limited to GMOs which

are released to the environment. Consequently, if "GMO" for the purpose of the organic regulation would mean "GMO which falls within the scope of application of 2001/18", none of the GMO provisions in the new regulation would cover GMOs in contained production systems, or products produced from or by contained GMOs.

By way of example, the main prohibition in Art 4 (a) (iiia) would have the meaning "Exclude the use of GMOs which fall within the scope of application of 2001/18 and products produced from or by GMOs which fall within the scope of application of 2001/18". In other words, the prohibition would only apply to released GMOs and their products.

Likewise, the amendment would alter the meaning of the other GMO-related definitions in Art 2. For example, the concept "produced by GMOs" as defined in art 2 (r) would mean "derived by using a GMO which falls within the scope of application of 2001/18 as the last living organism in the production process". With this change, the definition no longer covers any of the food and feed additives, enzymes, vitamins and processing aids which were intended to be covered, because those are produced by contained GMOs, which do not fall within the scope of application of 2001/18.

This amendment alters the intended effect of the whole document in an unacceptable way. The simple solution is to delete the added subclause. Alternatively – to remove every possibility of misinterpretation – the entire text of Art 2 (2) in 2001/18/EC could be copied into Art 2 (p).

Text proposal:

#### Article 2 Definitions

p) 'genetically modified organism (GMO)' means an organism as defined in Article 2 (2) of Directive 2001/18/EC ~~and which falls within the scope of application of such Directive.~~

#### **Article 7aa.1**

The purpose of this provision is to specify to which uses the prohibition in Art 4 (a) (iiia) applies. We find the listing acceptable, but the wording does not make it entirely clear that the prohibition applies both to products which consist of GMOs and products which contain GMOs – which, we believe, is the intention of Member States. As it stands, the text could be interpreted to mean that only products which consist entirely of GMOs or GMO products would be prohibited, but not the use of GMO-derived ingredients in processed products.

The easiest way of clarifying this is to use the formula "as or in", following the model of Directive 2001/18 and other GMO-related legislation.

Text proposal:

#### Article 7aa Prohibition on the use of GMOs

1. GMOs and products produced from or by GMOs shall not be used as or in food, feed, processing aids, plant protection products, fertilisers, soil conditioners, seeds, vegetative propagating material, micro-organisms and animals in organic production.

### **Article 7aa.2 and 7aa.3**

The purpose of these two provisions is to provide guidance for the practical implementation of the prohibition on the use of GMOs. As we have already noted in previous submissions, we do not find it appropriate to include detailed provisions about implementation in the main regulation text. This contradicts the intention to keep the main text clear, simple and focused on principles. We can also note that no similar implementation provisions are included for any other subject matter.

Regarding the content of the provisions, we have serious objections to 7aa.2. By prescribing that operators may rely on the lack of GMO labels as sufficient evidence of non-GMO status, it severely restricts the options normally available to control bodies in checking compliance with production rules.

The general principle underlying the organic control system is that "the nature and frequency of the controls shall be determined on the basis of an analysis of the risk of breach of its provisions" (Art 22.2). This is a principle we strongly support. Risk-based control is also the conceptual basis of the newly revised food safety legislation in the EU.

In our understanding, the present wording of 7aa.2 would remove the right of control bodies to request other forms of evidence from operators than the absence of GMO labels, even if there was reason to suspect a high risk of GMO contamination. The only exception mentioned is when there is already information available showing that the non-labelled status of a product is incorrect.

This means that the control of non-GMO status could not be risk-based and that many of the relevant implementation rules now contained in Annex III to regulation 2092/91 can not be followed (points 6 and 9 in particular). Consequently, we must conclude that the present wording of 7aa.2 is not compatible with the fundamental principle of the control system, as expressed in Art 22.2.

The practical effect is that the control of the GMO prohibition in high-risk situations would be considerably less stringent than that of other production rules in comparable situations. This would be damaging to the credibility of organic products as a non-GMO alternative, and very possibly to the credibility of the EU regulation as a whole.

Regarding 7aa.3, our objection is merely that it unnecessarily prescribes a specific control method, which may in some circumstances be inappropriate and cause needless costs for operators without leading to more effective control. Risk-based control must mean both that high-risk cases are very closely monitored, and that production chains with a low-risk record can benefit by less cumbersome controls. Experiences from various Member States indicate that there may be a need for implementation rules regarding this. We will be happy to provide drafting suggestions at a future date.

In line with our previous submissions, we recommend that 7aa.2 and 7aa.3 are deleted in their entirety. Should Member States not be prepared to do so, the paragraphs need to be amended so that they no longer interfere with a proper implementation of a risk-based control system, and to remove the conflict with the provisions of Art 22 and the implementation rules presently in Annex III. We give two alternative text proposals. In both alternatives, we see a possible need for further provisions in the implementation rules.

Text proposal, alternative 1:

Article 7aa Prohibition on the use of GMOs

2. [delete]

3. [delete]

Text proposal, alternative 2:

Article 7aa Prohibition on the use of GMOs

2. For the purpose of the prohibition referred to in paragraph 1, control bodies will determine the nature and frequency of controls in accordance with Article 22. Concerning ~~concerning~~ GMOs or products produced from GMOs for food and feed, operators may normally rely on the labels accompanying a product or any other accompanying document, affixed or provided pursuant to Directive of the European Parliament and of the Council 2001/18/EC, Regulation of the European Parliament and the Council 1829/2003 or Regulation of the European Parliament and the Council 1830/2003. ~~Operators~~ Unless they have reason to suspect irregularities, operators may assume that no GMOs or products produced from GMOs have been used in the manufacture of purchased food and feed products when the latter are not labelled, or accompanied by a document, pursuant to this legislation, ~~unless they have obtained other information providing the labelling of the products in question not being in conformity with this legislation.~~

3. [delete]

#### **Article 7aa.4**


The purpose of this provision is to enable the Commission to decide on implementing rules for the prohibition on the use of GMOs. This is unnecessary, as there is already a general enabling clause in Art 32 (a) which covers the whole of title III.

Text proposal

Article 7aa Prohibition on the use of GMOs

4. [delete]

Yours sincerely



Francis Blake  
President

cc Mrs Mariann Fischer Boel, Commissioner for Agriculture  
European Parliament Agriculture and Environmental Committees  
Standing Committee on Organic Farming and permanent  
representation of Member States in Brussels