

Submission of the International Federation of Organic Agriculture Movements (IFOAM) on Article 27 of the Cartagena Protocol on Biosafety, with respect to approaches, options and issues on liability and redress for damage resulting from Living Modified Organisms (LMOs). This submission is made in response to the invitation from the first meeting of the Ad Hoc Open-Ended Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol on Biosafety (BSLR WG-1), for submissions in respect of the annex of its report.

In this submission, the terms genetically modified organisms (GMOs) and living modified organisms (LMOs) are used interchangeably.

The submitter

1. The International Federation of Organic Agriculture Movements (IFOAM) unites 700 member organizations active in organic agriculture, from more than 100 countries around the world. Members of IFOAM are organizations throughout the whole production chain in organic agriculture; producers, processors, traders, handlers, researchers, extensionists, consultants and consumers.

Organic agriculture

2. Organic agriculture includes all agricultural systems that promote environmentally, socially and economically sound production of food and fibers. By respecting the natural capacity of plants, animals and the landscape, it aims to optimize quality in all aspects of agriculture and the environment. Organic agriculture dramatically reduces external inputs by refraining from the use of synthetic fertilizers and pesticides, genetically modified organisms and pharmaceuticals. Pests and diseases are controlled with naturally occurring means and substances according to both traditional as well as modern scientific knowledge.
3. The act of genetic engineering and the use of genetically modified organisms (GMOs) consequently, are not compatible with the principles and practices of organic agriculture.

Standards and certification

4. In the IFOAM basic standards for organic agriculture, as well as in public regulations and legislation on organic agriculture the use of genetically modified organisms throughout the whole production chain is prohibited. At the international level, the Codex Alimentarius guidelines for the production, processing, marketing and labeling of organically produced foods also prohibit the use of genetically modified organisms. The Codex Alimentarius Commission is the joint FAO/WHO agency that regulates international food safety and is a standard setting body for food safety that is recognized by the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS).

5. Certification of organic producers and labeling of products is based on a process approach. Throughout the production process practitioners must have followed organic practices and refrained from forbidden substances in order for the end product to be labeled as organic and for production units to be certified.

Organic production systems

6. Organic agriculture is based on living and healthy soil. The interconnectivity of soil organisms, healthy plant and animal production and healthy food is acknowledged within the organic agricultural and food systems.

7. Organic agriculture depends on local biological diversity for it's functioning as a living agro ecological system. In designing systems that enable the natural balances to work - therewith preventing as much as possible pests and diseases and therewith making the use of synthetic, chemical pesticides redundant - organic farmers rely on functional biological diversity in and around the farming system.

8. Organic agriculture depends of locally and regionally adapted varieties of plants and animals, fitting to the local conditions on which organic farmers depend.

9. In order to safeguard their production environment, organic farmers (as well as conventional farmers) increasingly organize themselves in 'GMO free zones': areas wherein the producers themselves declare not to use nor tolerate GMOs; actions, which might be tolerated or even supported by (local and regional) governments, depending on the legal and political situation.

Labeling of GMOs

10. Public standards for the labeling of GMOs include threshold levels under which the presence of GMOs in the product will not trigger labeling, as long as the presence is adventitious (accidental and technically unavoidable), and above which products need to be labeled as containing GMOs. As consumers expect organically produced products to not contain GMOs, any public threshold level for GMO labeling consequently means an implicit threshold level for presence of GMOs in organically produced products.

Labeling of organic products

11. Private standards on organic agriculture in general have zero or lower tolerance than regulatory threshold levels for the presence of gmo's; meaning organic products with GMO presence within regulatory levels may be unable to use private market organic labels.

Damage to organic agriculture

12. Given the above, the following will cause damage to organic agricultural and production systems and organic products in the context of article 27 of the Cartagena Protocol on Biosafety. The list is not exhaustive, as other forms of damage, given other circumstances, can occur.
 - a. Any unwanted spread of GMOs, either via wind, human, insect, animal or other (uncontrollable) means of transport.
 - b. Any decrease or changes in soil activity due to alien gene constructs in the soils that the organic farmers are caring for and depending on.
 - c. Any decrease in ecological complexity of local and regional biological diversity following unwanted spread

or out crossing of GMOs creating amongst others, so called 'super weeds'.

- d. Any disturbance of functional biological diversity, e.g. pest regulation functions and nutrient recycling, following the spread of unwanted pollution of organisms
- e. Any decrease in varieties and variety choice in the market for organic farmers as a consequence of the introduction of GMOs, through seed contamination.
- f. Any presence of GMOs in organic products making the labeling of the products as organic impossible, despite the fact that the organic producers throughout the production chain have followed the organic production method.
- g. Any cost of testing and other protective measures to stop contamination from GMOs from affecting organic production systems.
- h. Any damage to the image of organic agriculture and organic products following unwanted contamination of GMOs.
- i. Any loss of future possibilities to produce organic products caused by any damage as listed here.
- j. Any loss of organic markets.

In these cases damage is done to conservation, to the environment, to human health, local communities, to the income of organic practitioners, and to food security. These aspects are interconnected: a farmer experiencing damage to the functional biodiversity in her production system and soil, experiences consequently damage to traditional knowledge, loss and damage of property and therewith of income and future income.

Valuation of damage

13. As stated under 12 damage is as interconnected as the different aspects of organic production systems. Loss of nature and biological diversity and functional biological diversity is incurable. Direct and indirect damage to property, income and production possibilities could be valued, for example loss of income through loss of organic markets. Prevention of damage ultimately implies a total ban

on GMOs, a measure that could turn out to be cheaper in all aspects than any possible redress for damage.

Liability

14. Liable for any damage caused by genetic pollution are the owners of the LMOs. Ownership of natural resources, including seed, is not compatible with the principles of organic agriculture - at the same time however those who consider themselves to be owners of LMOs should be kept liable for any damage caused by their produce. Liability therefore should be considered very strict. It is the duty of owners of LMOs to instruct users (i.e. farmers, producers) of their produce in such a manner as to cause no damage. If these instructions fail, or cannot be secured, it is still the owner (rather than the user) who is to be kept liable for any damage caused. To be able to identify the owner of an LMO the LMOs as such should be identifiable in the field; a precondition that can only be fulfilled through mandatory identification and PCR tests delivered with the release of the LMO by the owner.

Settlements of claims

15. Settlement of claims is to be done directly by the owner of the GMO and, where possible with the person, cooperative or company experiencing the damage directly.

16. Any indirect damage, or damage to nature and biological diversity is to be settled by the owner of the GMO and

- a. Active nature conservation bodies in the area
- b. Representatives of communities depending on the natural resources of the area
- c. Representatives of GMO free zones
- d. Local and regional governments
- e. Representatives of local and indigenous communities
- f. Etc

17. IFOAM urges the Secretariat of the Convention on Biological Diversity to bring this submission forward to the second meeting of the Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress.

Bonn, Germany, November 8th 2005