

Supplying Raw Materials for GM-free Animal Products

*Understanding the detailed buyer needs
when serving European feed compounders
producing for "GM-free" claims*

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by Jochen Koester – TraceConsult, Geneva

Ever since the implementation of the EU "GMO labeling" Regulation (EC) No. 1829/2003 EU law has left operators unsure of how to make positive claims such as "GM-free" or "non-GM" on consumer products. Only a small number of EU Member States have legislation in place that strictly regulate such claims.

Austria and Germany are two of these countries who recently decided to facilitate the way their legislations had regulated how food manufacturers can make claims indicating to private consumers that a given product is made without involving genetically modified organisms (GMOs). In order to make such claims, particularly on animal products, retailers and brand owners in Germany, the larger of the two countries, must be able to rely on the specifications of their raw material supply chains. Market observation reveals that feed millers, distributors and importers of raw materials, such as soy meal, still encounter difficulties in understanding what criteria in raw materials are really needed to support an intended "GM-free" claim on a final consumer product.

The following article focuses on the German situation, but in a broader way it helps understand also the respective issues in Austria and in other EU countries.

1st May 2008 is the date from when it became significantly easier for German manufacturers to make a "GM-free" claim, particularly regarding animal products. (The only German term that may legally be used is "ohne Gentechnik", which means "without biotechnology".) After pioneering brand owners and retail chains decided to make use of this new legal opportunity, the need for accurate implementation has also reached the raw materials trade as well as the animal nutrition industry, albeit with a delay that was to be expected.

Early observations show that in some aspects, the German statutes and the declarations of local authorities often do not quite provide industry experts with sufficient security; security in the sense of what is required to support, for instance, poultry or dairy products with a "GM-free" claim to the private consumer.

Old historical issues were revived by the possibility to make a "GM-free" claim on animal products provided the animals were not raised on feed labeled under EU Regulation (EC) No.

1829/2003. According to this regulation, compound feed products do not have to be labeled if the GM content is below 0.9 % and, as an **additional** prerequisite, provided this content could be demonstrated to be either adventitious or technically unavoidable. The judgment whether this prerequisite is actually met in a given case (and whether the "GM-free" claim of the animal product was actually justified) provokes strong feelings of uncertainty in some industry circles.

Guidance is offered here by a document of SCoFAH, the EU Commission's Standing Committee on the Food Chain and Animal Health which states in item 7 (Miscellaneous) of the Summary Record of its meeting held on 16 June 2008:

Implementation of the labelling rules with respect to the requirement of technically and unavoidable presence of GM material

[W]hen operators have taken contractual precautions in order to strictly limit the risks of the presence of GM material, i.e. by an identity preservation scheme, the possible presence of such material should be considered as adventitious or technically unavoidable and products have not to be labelled in accordance with Articles 13 and 25 [EU Regulation (EC) No. 1829/2003, JK] if this presence is below 0.9 %. This approach is valid for both products produced in the EU or imported from third countries.

Lawyers find this wording has sufficient clarity but for decision makers in the respective industries this is not necessarily the case. If then one local authority's interpretation varies from that of another it becomes challenging for any practitioner to reach reliable decisions independently that are both convincing and unambiguous.

Interpretation recently provided by the German Federal Ministry of Agriculture (BMELV) is particularly helpful, especially because it leads to the following step-by-step explanation. (The BMELV emphasizes that among Member States national interpretations rarely differ. What may differ is the stringency of monitoring and enforcement between Member States)

In an assumed hypothetical case that a feed manufacturer supplies a product enabling a "GM-free" claim on the final animal product the feed manufacturer will have to determine to what maximum GMO content he has to abide by.

1. At the very beginning it must be stated that **GMO content** in animal feed of up to 0.9% is without any consequences for animal production – but **only with certain prerequisites.**
2. In the event GM contamination of the feed product can be demonstrated to be

"adventitious" or "technically unavoidable" the animal product may still be marketed with a "GM-free" claim.

3. In order to produce evidence to support this, an operator must **"have taken contractual precautions in order to strictly limit the risks of the presence of GM material"**. "Strictly limiting a risk", however, is equivalent to excluding it; this view is also explicitly supported by the BMELV. This means that the contract or frame agreement based on which an operator procures his raw materials must state by what measures any GM content is excluded at the supplier's level. Consequently, an operator must have reached an agreement with his supplier on how to limit any GM content according to German (and EU) regulations. The example used by the SCoFAH for such a regime is the establishment of an IP system (= identity preservation). Such systems are central to prevent GM contamination at the raw materials processor and in the logistics chain.
4. According to the wording of the German "GM-free" regulation and the opinion of the BMELV, **"strictly limit"** means **no GMO contamination.** Therefore, a contract must at first stipulate the supply of material free of GMOs at 0.0%. However, scientifically speaking, the detection of 0.0% is not possible and as a result today the term "max. 0.1%" prevails in the EU and also in the international commodity trade because authorities generally accept this limit as the analytical detection limit of quantification.
5. Both European as well as German legislators are aware that even with extreme care adventitious contamination with GMOs cannot always be avoided. In such cases, where a "waterproof and GM-free" system among contractual partners that have made an effort from the beginning to remain GM-

free does show an **adventitious or technically unavoidable** contamination it is considered **harmless** up to a **threshold of 0.9%**. And the BMELV has confirmed that a chicken raised on such material **may still receive a “GM-free” claim**. By the same token, the animal nutrition product will of course not require labeling according to EU Regulation (EC) No. 1829/2003.

6. According to the BMELV, **adventitious** can mean, for instance, that despite the existence of a raw materials system aiming for GM-free processing accidental contamination may be detected. The **repeated occurrence of such accidents** is possible or even an optimized IP system may not be able to exclude entirely technically unavoidable contamination. But the intention of the **initial system** must demonstrably **aim for a total absence of GMOs**. Batch-related certification programs offered in the market are a welcome tool to achieve this objective. It is important to note that the mere indication that running such an IP system is “difficult” will not validate a claim for technical unavoidability. Brazil alone processes and confidently ships several million tonnes annually of soy products through established and mature IP systems to Europe – all GM-free at below detection limit.

The BMELV is in regular communication with the monitoring authorities of the German *Länder* (states) to ensure uniform interpretation of laws and regulations issued by the Federal Government as well as direct EU Regulations. It should be desirable that the interpretation and implementation of respective regulations would be facilitated more for commercial operators through clearer and more detailed communication. It is, after all, feed mills and distributors who import raw materials with a potential GM content from overseas and it is up to them to influence their contractual partners

abroad to implement certain principles and procedures.

Terms coined by the trade such as “hard IP” or “soft IP” are neither useful nor helpful and, more often than not, misleading. It would, in light of the above, be preferable that supply contracts guarantee “max. 0.1% GMO content” or even “GM-free at detection limit”. Currently, in contracts with that kind of guarantee, a buyer retains the right to reject shipments with higher GMO contaminations. The proposed clause would eliminate this right of rejection up to a certain threshold (e.g., 0.5% or even the maximum possible 0.9%), **provided the contamination occurred adventitiously**. – The introduction of such a contractual clause should cause many industry operators to manage the entire non-GM issue in a much more relaxed fashion and possibly even lead to slightly lower non-GMO premia that reflect the lower rejection risk.¹

In closing, and to help eliminate an industry urban legend, a remark should be included that the entire issue of “zero tolerance” of GMOs has got nothing to do with the topics dealt with above. The tolerance issue is about a zero percent acceptance based on EU regulations addressing GMO varieties that have not been approved in the EU.

The author may be contacted at jk@traceconsult.ch

¹ The author is available for discussion of such a commercial contract clause to be included in raw materials contracts.