

Voluntary Non-GMO/ GMO-Free Labelling claims

Regulatory developments in European member States

*2nd international non-GMO soy summit
7-9 october 2008, Brussels*

Distinction must be made between :

- “**Positive**” Labelling (= negative obligation) : indicates the **presence** of GMOs (concerns primarily feed producers)
ex: product made from GM maize / containing GM soy, etc.

- “**Negative**” Labelling (= positive “claim”): indicates the **absence** of GMO (concern primarily cattle breeders)
ex: “Non-GMO”, “guaranteed without GMO”, “GMO-Free”, etc.

European regulation concerning positive labelling (= mandatory labelling)

Applicable regulatory provisions:

- Regulation n° 1829/2003 : GM food and feed
- Regulation n° 1830/2003 : Traceability and labelling of GMOs

Others:

- Commission Report on the implementation of Regulation n° 1829/2003 of the 25th oct. 2006
- Regulation n° 1831/2003 on feed additives
- Regulation n° 834/2007 on organic production and labelling of organic products

LABELLING RULES

Regulation n° 1830/2003

- Article 4 : products **consisting or containing GMOs**:
 - mandatory indication that the product contains GMOs or consists in GMOs.
 - EXCEPT if GMOs < 0,9 %
- Article 5: products elaborated **from GMOs** :
 - mandatory indication that each raw material or feed additive produced from GMOs
 - EXCEPT if GMOs < 0,9 %

But WATCH OUT !

The exemption of labelling obligations when the proportion of GMOs don't exceed 0,9% apply ONLY if this presence of GMOs is « **adventitious or technically unavoidable** ».

⇒ unexpected presence + adoption of “adequate” measures in order to avoid GMOs’ presence.

Moreover :

- Quantification ingredient per ingredient
- Mention « may contain GMOs » : not compatible with Regulations n° 1829 and 1830.

european regulation concerning negative labelling (= positive claims)

In the texts: **NOTHING** formally. Several indications though...

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- ▶ Two difficulties to be solved :
 - the issue of the threshold of adventitious or technically unavoidable presence of GMOs
 - the use of feed additives and technological auxiliaries produced **with the help of GMOs**

Feed additives and technological auxiliaries produced **with the help of GMOs**

- ▶ Article 15-1 and « Whereas » (16) of Regulation n° 1829/2003 expressly exclude them from its scope and, therefore, from mandatory labelling.
- ▶ Analysis confirmed by Commission Report of 25th oct. 2006 on the implementation of Regulation n° 1829/2003. (§ 10.6 conclusions – p.25)
 - These products are, however, subject of sanitary controls settled by Regulation n° 1831/2003 concerning feed additives, in particular.

► The THRESHOLD :

Important indication in Commission report of 25th oct. 2006 on the implementation of Regulation n° 1829/2003:

- § 11. CLARIFICATIONS RELATED TO SOME ASPECTS OF THE LABELLING PROVISION OF THE REGULATION

GM free labelling scheme (p. 28)

“2) Food products that can be genetically modified or not: Such food can be placed on the market without a GM label provided that they contain less than 0,9 % of GM material and that the presence of GM material is unintentional and technically unavoidable. **For these foods, a GM free labelling can not be excluded a priori.**”

Negative Labelling (= positive claims) in member States

In GERMANY

The law of the 1st of april of 2008

« Gesetz zur Änderung des Gentechnikgesetzes... »

- ▶ Adopted on the 1st of april of 2008
- ▶ Articles 2 et 3, concerning « GMO-Free » labelling (« Ohne Gentechnik ») came into force the 30th of may of 2008

THE CONTENT OF THE LAW

Article 2 § 3a:

- (1) ▶ « Ohne Gentechnik » (without biotechnology) is the only mention allowed
 - (2) ▶ no possible use of products or ingredients submitted to a mandatory labelling on ground of Regulations 1829/2003 and 1830/2003 (products consisting or containing GMOs or products made from GMOs)
 - (3) ▶ no possible use of products or ingredients included in the scope of Regulation n° 1829/2003, but exempted from labelling obligations (not exceeding the 0,9% threshold of adventitious or technically unavoidable presence of GMOs)
 - (4) ▶ as far as animal products or ingredients made out of animal products are concerned, the animals may not be fed with products requiring mandatory labelling.
 - (5) ▶ additives and technological auxiliaries, if obtained with the help of GMOs: authorization delivered by the European Commission on ground of Regulation n° 834/2007 (on organic agriculture) is needed.
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- ▶ burden of proof of non-GMO content on economic operators
 - ▶ no restriction for veterinary medicines obtained with the help of GMOs

6. Table of periods within which animals must not be fed with GMOs before transformation in foodstuff

Nr.	Race	Period
1	Horse family and steer for production of meat	12 months and, in any case, less than $\frac{3}{4}$ of their life
2	Small ruminants	6 months
3	Pigs	4 months
4	Milk producers animals	3 months
5	Poultry for production of meat	10 weeks
6	Poultry for production of eggs	6 weeks



“Bei Wiesenhof hat Gentechnik keine Chance”



In AUSTRIA:

Richtlinie zur Definition der “Gentechnikfreien Produktion” von Lebensmitteln und deren Kennzeichnung

- ▶ Adopted the 6th of dec. of 2007
- ▶ Entered into force 3 months later : the 6 of march of 2008

The CONTENT of the law

- ▶ All kinds of claims are admitted (bred without GMO, GMO-Free, without GMOs...)
- ▶ Principle: no use of GMOs, nor in foodstuff, nor in feed, nor in additives or technological auxiliaries, nor in seeds, nor in manure, etc. EXCEPT in veterinary medicines.
- ▶ To determine the presence of GMOs, operators may rely on mandatory labelling (threshold of 0,9%)
- ▶ Operators must require the one from the others “confirmations” of the absence of GMOs.
- ▶ branches of production with or without GMOs, at all stages, must be separated
- ▶ strong risk assessment focused on the presence of GMOs upstream from agricultural production (seeds)
- ▶ concerning stock breeding and aquaculture, the principle is one of a feed with no GMO from the birth. BUT there is exceptions and transitory provisions:
 - horse family and steer: 12 months before marketing
 - pigs : total period of fattening
 - milk producers animals : 2 weeks
 - poultry for production of eggs : 6 weeks
 - aquaculture: total period of fattening

These exceptions will only be valid during the 5 years succeeding the entry into force of the law.

- ▶ special procedure (authorization of the “Codexkommission”) is fixed for the use of additives, technological auxiliaries, aromas, enzymes, etc. obtained with the help of GMOs.

In FRANCE

Information Note n° 2004-113 issued by DGCCRF

- ▶ The presence of all trace of GMO must be excluded. The threshold to be applied is then the limit of detection at analysis and not the limit of quantification or even the threshold of adventitious presence of 0,9%.
- ▶ No GMO, product derived from GMO or product obtained with the help of GMO (amino acids, vitamins, enzymes...) must have been used at some stage of elaboration of the product or other.
 - ⇒ Very restrictive doctrine, that forbids, in practice, any sort of non-GMO claim.

BUT the **law voted on the 22nd of may of 2008** has invalidated these provisions:

Article 1st (very controversial)

- GMOs may be cultivated, marketed or used only if respecting the environment and the public health, agricultural structures, local ecosystems and chains of production and retail bearing the “non-GMO” qualification, in all transparency. The definition of “non-GMO” refers necessarily to european definition. Awaiting for a definition at a european level, the corresponding threshold will be fixed by regulatory way, on advice of the High Counsel of Biotechnologies, specie per specie,

In the other member States ...

Except in the Netherlands, there is no specific legal provisions on the issue.

→ It is then the interpretation of the European Commission, as it appear in its report of 2006, that should be applied : 0,9% threshold.

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