

# nature biotechnology

## Kicking the can

**European politicians' decision to kick the can of genetically modified (GM) crop approvals down to national governments may accelerate adoption in the short term, but foreshadows legal battles down the road.**

Given a choice between illogicality and illegality in its policy on genetically modified organisms (GMOs), the European Union (EU) has opted, not unsurprisingly, to capitulate to the lawyers. In the face of potential fines from the European Court and litigation from seed companies frustrated by foot-dragging and deadlock in European product authorizations, on January 13, the elected members of the European Parliament voted by an overwhelming majority to sanction the ability of member states to ban GM crops. Although devolution of decision making down to the national level could free GM technology from the shackles of intense anti-GM lobbying at the heart of Europe, in all likelihood it will expose these products and the countries that cultivate them for lengthy legal battles in the long term.

The last *de facto* ban in the EU on GM crop authorizations (from 1998 to 2004) was ruled illegal by the World Trade Organization in 2006, prompting recommencement of the authorization process. Although the floodgates were never exactly open for approvals, in recent years the flow of authorizations has ceased completely. Since late 2013, the European Commission has failed to adopt any authorization decisions made by the European Food and Safety Authority (EFSA) for GM crops. This is because the final step in the approval process requires the collective sanction of national politicians in the Council of Ministers. Given the polemics with Europe's member states, some national politicians in the Council prefer not to ratify approvals because they are sympathetic to countries that already have bans on GM crops—bans that would be rendered illegal by an EU authorization. According to the trade body EuropaBio, as of January 1, the political stalemate has stalled 18 GM products OK'd by the EFSA.

In 2013, the European Court ruled that these delays to GMO decisions were unjustified, ordering the EU to pay the legal costs of the plaintiff in the case, Pioneer Hi-Bred. Last October, EuropaBio, together with bodies representing the food and feed industry, escalated their complaints about delays in GMO approvals to the European Ombudsman, accusing the Commission of "maladministration." For the Commission, whose entire *raison d'être* is the design and administration of legal measures, accusations of illegality and maladministration were reputational poison.

Thus, the European Parliament decision is a decision of pragmatism. European politicians could no longer afford to dally over GM crop authorizations. And they have done what politicians do: punt the decision down the line. Of course, that is not how they explained their action. According to the Parliament, "It appears appropriate to grant Member States, in accordance with the principle of subsidiarity, more freedom to decide whether or not they wish to cultivate GMO crops on their territory."

Will the change accelerate approvals? Yes and no.

According to EuropaBio, 18 GM products have already been approved by the EFSA. So those may trickle through now that EU authorization doesn't cause political embarrassment by delegitimizing national bans.

For all other GM products undergoing an EFSA safety assessment (2–5 years), European member states who don't want GMOs in their country can now request that the market authorization does not apply to them. And even after an authorization, they can exempt themselves from it. Their arguments no longer have to take into account science (even controversial science like that of Séralini), as was previously the case. It is now perfectly valid to oppose the planting of GMOs on grounds related to agricultural policy (e.g., "Our nation is 'GM-free'"), or town and country planning, land use, socioeconomic impact, coexistence (of GM, non-GM and organic crops) or even something as vague as "public policy" (e.g., "It's our policy not to have GMOs, so now we don't have to").

This will have repercussions for countries that decide to cultivate GM crops which border countries that don't. And in Europe, neighboring countries can end up on opposite sides of the discussion: for example, France bans GMOs, whereas its neighbor Spain cultivates 80% of Europe's one approved GM crop. With more GM products entering cultivation in science-friendly jurisdictions, the possibility of cross-border outcrossing/admixture of GM seed from one state to another is an increasing possibility. Seeds don't respect national borders, boundaries, walls or barbed wire.

There are agreed upon technical solutions to reducing unwanted GM pollen by means of buffer zones between GM crops and 'conventional' or 'organic' crops. But as in most areas of European policy when it comes to GM crops, fearful administrators prefer bigger buffer zones than the science recommends. Luxembourg, for instance, insists on an 800-meter zone between GM and non-GM corn and a massive 6 kilometers between GM rapeseed and organic rapeseed. If the nations around Luxembourg decided they liked GM crops (currently they don't), most of that tiny country would be a buffer zone.

This is not an idle concern. The EU is a collection of small countries composed often of even smaller historical and geographical parts: 16 Lander in Germany, 22 metropolitan regions in France, three linguistically diverse bits of Belgium, 17 autonomous communities in Spain, four countries in the UK and so forth. And subsidiarity, the very European principle invoked to hand back decisions on GMOs to the member states, also applies to subnational divisions. Wales and parts of Scotland have declared themselves GMO-free; so have the communities of Asturias and the Basque Country in Spain; so has most of former West Germany (but not the former East Germany) and most, but not all, of Italy.

At best, the latest European retrogressive initiative will appease some politicians. At worst, it will not only make national bans on GMOs more likely by removing the need for science-based justification but also increase litigation. As for letting the GMO genie out of the bottle, it simply uses subsidiarity to punt the dispute into the long grass of regional, rather than continental, squabbling. **15**