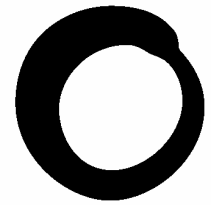


Briefing Note



**Friends of
the Earth**

Liability and GM crops

GM is a powerful new technology. It is being introduced into the UK and across Europe at great speed as a result of intense commercial pressureⁱ. Although the biotechnology industry is keen to get GM crops on the market, it is not so happy to flag up the uncertainties, nor is it prepared to take responsibility for harm that might arise from GM. Currently there is no legislation to require biotech companies to pay compensation or clear up any damage caused by their crops. If GM food and crops are as safe as the industry says they are, then why won't it accept liability for any damage caused?

Potential risks

In the past, new technologies including pesticides such as DDT, lindane etc were introduced before their risks had been fully evaluated. Subsequently they were shown to have dramatic impacts on human health and the environment. GM is a technology with significant levels of risk that are yet to be fully understood. GMO pollution is unlike other kinds of pollution in that it is self-replicating. Thus if harm is caused it may be very difficult to 'clean up'.

Risks include the long and short term impacts on:

- Other crops and species through cross-pollination
- Ecosystems as a result of long term damage to predator populations or resistance in weeds
- Human and animal health from potential formation of new toxins
- Socio-economic factors such as crop failures or loss of land value

In the absence of a liability regime it will be the victims who will pay for harm caused by GMOs, while the biotechnology companies profit from their products and off load the risks and costs of clean up on to others.

Consumers

If GM foods are found to be harmful to health, consumers will find it difficult to seek compensation or to claim for the costs of any healthcare required.

Farmers and Beekeepers

If GM crops cross-pollinate with organic or conventional crops on neighbouring farms, the lack of a liability regime will force farmers to fight it out in court. NFU Mutual has refused to insure farmers against economic or environmental harm from GM cropsⁱⁱ and so they are unable to protect themselves. Beekeepers whose honey becomes contaminated when bees forage on GM crops also have no redress.

GM Polluters are not paying

GM pollution is already occurring across the world showing the vulnerability of farmers and food producers to contamination.

- North American farmer Tom Wiley landed a contract to supply Japan with non-GM soya. On delivery it was discovered that the beans were contaminated up to 1.37 per cent with GM material. The contract was

cancelled at a loss of up to \$10,000 to the farmer, without compensationⁱⁱⁱ.

- In spring 2000 the seed company Advanta discovered that batches of seeds of their non-GM oilseed rape were contaminated with Monsanto's GM oilseed rape which was not authorised for cultivation in the EU. Over 5,000 hectares of contaminated seed were grown in four EU countries. Farmers could not sell their crops or were forced to destroy them. Neither Advanta nor Monsanto were held legally liable.

The liability 'gap'

Currently, under EU law biotech companies would avoid liability for harm caused. The proposed EU Environmental Liability Directive^{iv} will fail to deliver satisfactory liability for GMOs. It will only provide a 'general framework' which will ignore the unique nature of GM pollution and restrict liability for biodiversity damage to a small number of protected habitats. Crucially for GM, in order to protect technological innovation it will exempt companies from damage that could not be predicted, according to 'best science', at the time of release.

International law offers no immediate solution for the liability 'gap' in EU law. Although the Cartagena Protocol on Biosafety includes an international liability and redress regime for transboundary movements of GMOs it is still a long way from implementation.

The polluter pays

The principle that the 'the polluter should pay' is part of EU law and is generally thought to be fair and effective at preventing damage. Friends of the Earth wants to see the introduction of a liability regime specific to GMOs before GM crops are commercialised in the UK. Such a regime would broadly^v:

- Provide incentives for companies to minimise the risks attached to the product from the outset
- Ensure that the costs attached to risks are borne internally by the industry and not externally by society
- Require companies to have sufficient insurance cover to deal with all possible risks
- Provide compensation for victims and for the environment for damage caused, even when such damage is discovered long after it was caused
- Require companies to pay into a compensation fund to cover harm where blame can not be apportioned to individual companies
- Allow parties along the supply chain to be able to pass liability claims directly to the company which introduced the food or crop on to the market

In the absence of an adequate EU regime, Friends of the Earth believes that the UK Government should introduce national liability legislation before the commercial growing of GM crops in the UK. Although Environment Minister Michael Meacher has indicated that this should happen^{vi}, there has so far been no indication that the Government will do so.

ⁱ Elliot Morley MP, Minister for the Environment, Aug 16 2002. *To-day, BBC Radio 4.*

ⁱⁱ Friends of the Earth, 17th Feb 2000. *Top Insurer Says No To Gm Pollution Cover.*

ⁱⁱⁱ Soil Association, Sept 2002. *Seeds of Doubt: N. American farmers' experience of GM crops.* Soil Association, Bristol.

^{iv} Directive on Environmental Liability (COM(2002) 21)

^v For a more details see Alan Simpson MP's *Genetically Modified Food and Producer Liability Bill (2000).*

^{vi} Michael Meacher, 9 April 2001 House of Commons Hansard col 379W

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