

## A NEW STRATEGY ON GM ISSUES

### Current situation

Since spring 2010, there has been some political progress on GM issues, including QM support for the technical solution for feed, and more timeliness in processing of import approval dossiers. There has been little progress on most issues.

1. Nationalisation/cultivation. Despite extensive efforts of the EC and 4 Presidencies, most notably the Danish, the nationalisation proposal has not progressed due to a blocking minority.
2. Technical solution for food. MS are split on the proposal the Commission announced for 2012.
3. Product voting. There has been no major improvement in voting patterns. Germany has moved from positive to abstention on product votes to protest lack of progress on GM issues. The backlog of products in the EU approval system (import and cultivation) continues to grow.
4. Illegal safeguard measures. The ECJ ruled in fall 2011 re. France that safeguard measures must be based on real evidence and in late summer 2012, EFSA opinions on 3 illegal measures stated that no new science was produced to justify these. Yet, the EC has not taken (political or legal) action against the illegal measures.
5. Technical of GM in seeds. There has been no proposal, despite a growing number of costly incidents and despite diverging unilateral national thresholds which are disrupting the internal market in seeds. There is a unanimous Member State request for a proposal (Dec. 2008).

### The present strategy is not working

Since 2010 the Commission has applied a “one step at a time” approach on GM issues: first the nationalisation proposal, then the feed technical solution, then food inclusion and thereafter AP in seed. This approach has had limited success. Some Member States have shown political flexibility, others have blocked progress for political reasons and others have problems with parts of proposals.

This political stalemate is likely to continue.

### Growing political, legal and trade urgency

There is increasing global pressure on the trade front. This is because there is more GM cultivation, in more countries by more farmers. More entities are commercialising GM traits. More global commodity trade containing more GM products is leading to more trade incidents with more negative impacts requiring more government crisis management. There is a growing gap between approval times in major markets.

There is increasing legal and political pressure on import and trade-related issues. Commodity exporting nations and some Member States voice more and more concern about the impact of the slow product approvals process combined with the zero-tolerance approach. Legal uncertainty for operators is increasing; there is pressure to pursue options under existing rulings (WTO) or to seek relief through other routes.

On the cultivation issue, there is growing legal urgency. The ECJ clarified that safeguard clauses are only compatible with EU law if they have a legitimate basis, which has serious legal implications for all safeguard clauses, but also for the failure of the EC to act against these. While the cultivation proposal was an attempt to address this, no proposal has as yet been made to address the issue of admixture of GM seeds into conventional seed batches, which is a growing problem.

### New strategic approach needed- a “package deal” approach

A new strategic approach to achieve political progress on all issues is needed - a “package deal” approach. More support from Member States should be reached by tying issues together so that progress on some issues is contingent on agreement from Member States in other areas. In so doing, the Member States are encouraged to show more flexibility in one area, to gain progress in another area that is of more interest to them.

The underlying assumption is that many Member States want to achieve progress, but some are interested in maintaining the current stand-still. Identifying each MS’s political motivation and political needs is the starting point to identifying

what kind of a wider political package could be acceptable. There will be little movement unless there is more pressure to compromise. Pressure can be asserted by the EC in the following ways:

1. The EC should move products for import and cultivation to the vote in Committee - i.e. simply implementing the legislation as foreseen. If no QM appears then the EC should approve rapidly thereafter. Currently the EC does not process products and is therefore not abiding by EU law.
2. The EC should take action against MS with illegal bans. There are legal and political options. The ECJ ruling requires France to lift the safeguard clause, and places pressure on the EC to make France and other MS do so. Lack of action by the EC makes it increasingly vulnerable. The EC should point out to MS that it is under legal pressure from the WTO case to show that it operates a functioning approval system.
3. The EC should point out to MS that it is under legal pressure for failure to act in moving products to the vote (General Court in Strasbourg). Ruling expected in coming months.
4. The EC should point that in order to prevent further breakdown of the single market in seeds (because of divergent thresholds tolerance levels in many MS), it is required to act to set a threshold.

#### What could a package look like?

1. An amended nationalisation proposal which:
  - says that the proposal will only come into force when an AP in seed threshold is agreed
  - with reworked wording saying an MS can only use phase 2 if a company rejected phase 1
2. A technical solution for seed to be launched and agreed by xx.
3. All of the above only to be proposed on the condition that:
  - MS do not vote against the technical solution for food
  - MS do not vote against cultivation products if they can use phase 1 or 2 under the new nationalisation proposal
4. Statement by the EC that they intend to implement the legislation and resolve the wider GM deadlock: move products for cultivation to the vote, act against illegal safeguard clauses.

The starting point is the latest version of the cultivation proposal (9 March 2012) which has the support of some 20 MS, but needs the support of two out of three MS with 29 votes to progress.

To get <u>UK</u> support	<ol style="list-style-type: none"> <li>1. In the nationalisation proposal, linkage between phase 1 and 2</li> <li>2. Other language changes in nationalisation proposal, including more science-based reassurance</li> <li>3. Reassurance of more approvals = "<i>enabled rather than disabled</i>"</li> <li>4. Agreement to above if EC moves with the TS in food</li> </ol>
To get <u>German</u> support	<ol style="list-style-type: none"> <li>1. In the cultivation proposal, insert a clause that this legislation will only come into force once the TS in seeds regulation has passed (or some other comparable assurance).</li> <li>2. In the cultivation proposal, reassurances on Federal v. Lander concerns.</li> <li>3. Launch a regulation for a TS in seeds.</li> <li>4. Other: non-legislative (complete new Honey Dir., latitude in GM-free labelling interpretations).</li> </ol>
To get <u>French</u> support	<ol style="list-style-type: none"> <li>1. Pass the Implementing Regulation - minus controversial parts for which there is no QM support.</li> <li>2. Launch regulation for AP of GM in seeds as requested in Dec 2008 Council conclusions.</li> <li>3. Show EC has met all conditions set down in 2008 Council conclusions.</li> <li>4. State that EC will issue public statement, following the ECJ ruling, that French farmers are free to grow approved GM maize on French territory.</li> </ol>
To get <u>the EC</u> to move on this basis	<ol style="list-style-type: none"> <li>1. A group of 3-4 MS (including 2 large) to convince Commissioner that this is the way to break the current deadlock. Commissioner to ask president for support.</li> <li>2. Agreement that large MS do not oppose the technical solution for food.</li> <li>3. Agreement that MS will not vote against cultivation products if they can use phase 1 or 2 opt-outs.</li> </ol>



## Observations

These changes appear acceptable to many MS - most are rather flexible on the exact mechanism of the cultivation proposal and all have expressed a desire for an AP level. Even if some MS object, the votes gained with UK and German support compensate for any lost votes.

Action against the Member States that have illegal safeguard clauses becomes unnecessary once the nationalisation proposal is passed. The only product concerned is MON810 (the potato is discontinued), whose renewal is pending and when it is renewed, the existing safeguard clauses are automatically nullified. During the renewal vote the rules of the new nationalisation proposal (phase 1 and 2) would apply, so the MS with safeguard clauses would not have to re-instate their safeguard clause, but could make use of phase 1 or 2 to opt-out.

In order for it to be easier for some MS to accept the above package, privately the EC could agree some non-legislative actions to address issues of particular importance to them. On labelling, it could commit that it would not object if the German federal government passes a recommendation that points of sale may voluntarily label products GM free if their consumers request this. Together with the honey issue, this is a particular point of concern to the German government.

Member State Positions					
	Vote	Cultivation Proposal	Technical solution - Food	Technical solution - Seed No proposal yet	GMFF Implementing Reg.
Germany	29	Opposes current proposal	Ag. min. opposed (overruleable)	Applies strict zero tolerance	Position unclear – likely to support
United Kingdom	29	Wants to end deadlock but with reciprocal work WTO and SM	Supports	Applies 0.5%	Want case by case approach
Italy	29	Increasingly sceptical	No clear indication/ negative signals	Applies 0.05 %	Likely support
France	29	Refuses to discuss	No clear indication	Want national threshold 0.1	Likely support
Spain	27	Wants to end deadlock	Supports	Applies 0.5%	Will support
Poland	27	Wants to be able to ban cultivation	Opposes	?	Wants strengthened RA
Romania	14	Wants to end deadlock	Supports	Applies 0.5%/ 0.3%	Will support
Netherlands	13	Wants to end deadlock	Supports	Applies 0.5%/ 0.3%	Want case by case approach
Belgium	12	Opposes current proposal		?	Want case by case rat studies
Czech Rep.	12	Increasingly sceptical		?	Will support
Portugal	12				?
Greece	12	Wants to be able to ban cultivation	Opposes	Applies 0.5%	Want rat studies for stocks
Hungary	12	Wants to be able to ban cultivation	No clear indication	Strict zero tolerance	Want rat studies for stocks
Sweden	10	Want progress			Want case by case rat studies
Bulgaria	10	Wants to be able to ban cultivation	No clear indication	Applies 0.5% threshold	Will support
Austria	10	Wants to be able to ban cultivation	Previously supportive	Applies 0.1%	Will support
Denmark	7	Supportive			Not happy, but likely to support
Ireland	7				Will support
Finland	7	Supportive			Will support
Lithuania	7	Supportive			?
Latvia	7	Supportive			Will support
Slovakia	7	Supportive			?
Estonia	4	Supportive			Will support
Cyprus	4	Supportive			?
Luxemburg	4	Supportive			?
Slovenia	4	Supportive			Will support
Malta	3	Supportive			Will support
OVERALL		In favour (20 MS – 198 votes) Against (5 MS – 106 votes) Unclear (2 MS – 41 votes) <b>No QM – need at least 2 large MS</b>	In favour (15 MS – 174 votes) Against (7 MS – 90 votes) Unclear (5 MS – 90 votes) <b>No QM – need movement from at least 2 large MS and a number of smaller MS</b>	Too early to tell	Likely qualified majority in favour. Unlikely if Germany and/or Italy vote against.

