

To Regulate Or Not To Regulate – NGTs Remain Highly Controversial



Anti-GMO demonstration in Brussels, Wednesday 29 November 2023. Photo: Hannes Lorenzen

In October, the ENVI draft report on New Genetic Technologies (NGTs) was published. While agricultural companies with a stake in gene editing will be highly pleased their demands finally might be met, a lot of other groups, organisations and individuals are fighting hard to uphold the ban on GMOs (genetically modified organisms) of any kind, no matter whether they were created using old or new modification techniques.

What would change? NGT plants in 'category 1' (which comprises 94% of all NGT plants, according to an estimate by the German Environment Ministry's Agency for Nature Protection, BfN) would be considered equivalent to conventionally bred plants. Category 1 plants would not need to undergo mandatory safety checks, they could be grown commercially in EU countries and only seeds would need to be labelled as NGTs.

Marianne Landzettel reports on the state of play on both sides of the Atlantic.

Frustration, fear and open letters

Not only (organic) farmers, but many in the food industry and in retail are up in arms. Retail and labelling

organisations including the European Non-GMO Industry association (ENGA) used the Anuga trade fair to make their frustration known. If ag companies producing NGT seeds and plants are not required to provide a verification process that allows for routine testing for NGTs, contamination cannot be proven. An Austrian producer of organic oils and fats, VFI Oils for Life said, it would be extremely costly to ensure that the whole chain of production remains NGT free. Brunhard Kehl from AöL, an association of organic food producers said: “In regard to NGTs the ‘polluter pays’ principle, the liability of the producer and the transparency that has to go with it are of central importance to guarantee a functioning market economy and the coexistence of different forms of production” (Unabhängige Bauernstimme, 2023 November edition, page 16).

In Germany, 139 organisations have asked the German agricultural minister, Cem Özdemir, in an **open letter** to oppose the EU Commission’s plans for deregulation. More than 70 academics and scientists have signed an **open letter** warning of the consequences of deregulating NGTs and asking for the proposal to be rejected.

The **draft report** from the European Parliament Committee on Environment, Public Health and Food Safety (ENVI) includes an amendment supported by the EPP group “which would permit the use of category 1 NGT plants in organic production” as well as an amendment to exclude labelling even in seeds. This is particularly worrying for organic producers. A statement by **IFOAM Organics Europe** says: “Using NGTs in food production can lead to unintended effects, has potential risks, and conflicts with the precautionary principle. Organic producers also want and must fulfil consumers’ expectations that no old or new GMOs are used in the organic production process. Guaranteeing the freedom of choice and the right of organic operators to produce without NGTs can only be effective if it is accompanied by the legal and technical means”.

The ENVI committee is scheduled to vote on 11 January 2024. Nearly 1200 amendments have been tabled here. The Parliament’s plenary vote is scheduled for later that month. The vote in the AGRI committee is scheduled already for 11 December and so is the last meeting of the Council of Agricultural ministers this year under the Spanish presidency. The Spanish government had made rushing the deregulation through the institutions a top priority. Whether the long list of reservations that have been tabled by more than 10 member states can be overcome by the Spanish “compromise proposal” remains to be seen. Contentious issues are the door opening function of NGTs for patents on plants, the loss of member states’ sovereign right to ban the cultivation of individual GMOs (both category 1 and 2), the lack of co-existence measures to protect non-GMO agriculture and food production, and also the loss of control by giving up labelling and traceability. In order to adopt a common position a qualified majority in favour is required. Abstentions would thus have the same effect as votes against the proposal.

In Britain, the NGT future has arrived

For some years now, it’s been the declared goal of the British government to make Britain a leading player regarding genetic modification and gene editing techniques, both in health care and in agriculture. With the passage of the Precision Breeding Act 2023 in March of this year, NGT plants, or PBOs, Precision Bred Organisms, as they are called in the UK, can be tested in field trials without a license. DEFRA (Department for Environment, Food & Rural Affairs) simply requests to be informed. Among the NGT plants that are being tested in field trials are an NGT wheat variety that allows consumers to burn their toast without

increasing their cancer risk (at high temperatures, acrylamide forms in starchy food, for example burnt toast; acrylamide is considered to be carcinogenic). Other field trials feature various tomatoes that have higher vitamin content or modified stems that make them easier to harvest, salads with fewer bitter compounds and blight resistant potatoes (conventionally bred varieties are available).

At present, NGT crops cannot be grown commercially because the risk assessment guidelines have yet to be finalised. In November, the regulatory body, the Food Standards Agency (FSA) launched a consultation on their proposal. A number of organisations and individuals have raised concerns in an **open letter**: “The two-tiered system proposed by the FSA will allow the majority of PBOs to enter the marketplace without a formal application process, without labelling or assessment and without end-to-end traceability. It shifts the responsibility and liability for traceability and avoidance of PBO contamination away from regulatory authorities and onto businesses and other stakeholders”.

Lessons from Canada

In May, the Canadian government introduced new regulations: gene edited seeds don't have to be labelled and the requirements for health and safety assessments are less stringent. The new rules have organic farmers extremely worried. Canadian organic standards do not allow farmers to use gene edited seeds or feed. Even if farmers do so accidentally they lose their certification. According to the online publication **Modern Farmer**, organic farmers therefore ask seed traders to sign an affidavit, assuring them that they are getting non-NGT seeds. But since gene edited seeds don't need to be labelled anymore, it is possible that even the seed distributor doesn't know whether seeds have been modified. Currently, only very few NGT vegetable and soy varieties are being sold in Canada, but that may change soon. Modern Farmer quotes Ian Affleck, vice president of biotechnology for CropLife Canada, a trade association representing developers and distributors of plant science innovations and plant biotechnology: “In Canada, a few vegetable seeds could enter the marketplace in time for the 2024 growing season, with grain following a couple of years later.”

In the US, tort lawyers are on standby

In the US, NGT plants were deregulated in 2018. In 2020, USDA (US Department of Agriculture) specified that testing is only needed when the plants are considered to present a risk; the assessment is made by the company that produces the plant. The FDA (Food and Drug Administration) is responsible for food safety and does test the genome of genetically modified animals. **Some NGT meat has been cleared to go into the food chain.**

Relying on data provided by the companies, the EPA (Environmental Protection Agency) issues 'experimental use permits' for often very large field trials of GMO and NGT crops.

According to Jaydee Hanson, lawyer at the Center for Food Safety (CFS), at present only NGT tomatoes and salad are grown commercially and neither are widely available. The National Organic Standards Board still bans the use of genetically altered plants and seeds but farmers face the same conundrum as their Canadian colleagues: what if a buyer rejects their crop because it was found to be contaminated? That's the case tort lawyers are waiting for, Hanson told me. By declaring it 'confidential business information' companies have far-reaching powers to keep information about ingredients, procedures and production

methods out of the public domain. That's over once a company gets sued and the case goes to trial. Through 'discovery', a process unique to US law, lawyers can request and get access to a lot of information, including internal company emails, procedures and protocols. In **The Monsanto Papers** investigative journalist Carey Gillam describes in detail how in the glyphosate trial the plaintiff's lawyers were able to bring Monsanto's dirty secrets to light at trial.

In an in-person interview in October 2017, CFS legal director George Kimbrell told me that in the US, legislative change in regard to GMOs and pesticides was most likely to happen through the courts: "The problem here in the United States is that we have a dysfunctional legislative process and so most of the laws I use are 40 to 50 years old. They were never intended to legislate genetically modified organisms or modern pesticide issues. Basically, you are squeezing blood from statutory stones. You are trying to use square pegs in round holes. And you do the best you can. Those are the levers until we have a new age of progressive legislation. There is not a framework yet in place that would be similar to the precautionary principle that you see in European law."

A principle that will be gone if the EU Commission proposal on NGTs becomes law.

More on NGTs