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Non-Biotech Labeling Rules in Place and Proposed Rules on Coexistence

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Report Highlights:

France has recently published two new regulations concerning agricultural biotechnology. The first was published in the Official Journal defining "non-biotech" labeling, and the second creates new rules for the "coexistence" of cultivation of biotech crops near conventional crops. The labeling regulations apply only to products produced in France, but not to imported products. The decree setting rules for biotech coexistence appears to apply surprisingly little constraints on farmers.

General Information:

Rules Published on “Non-Biotech” Labeling

Under the Regulations 1829/2003 and 1830/2003 on biotech traceability and labeling, the European policy set standards for positive (sourced from biotech), but not for negative labeling (not sourced from biotech). Each Member State can however put in place specific national requirements for biotech-free labeling. France implemented the 1829/2003 and 1830/2003 Regulations in April 2004. The Fraud Control Office of the Ministry of Economy, Finance and Industry (DGCCRF) is the authority enforcing compliance with the regulation (see [report FR4062](#), Implementation of NF/NF and T&L Regulations in France, dated August 2004) and sets general rules for negative labeling.

Since then, there have been several voluntary initiatives put in place by the food industry and supermarket chains using “biotech-free” labeling, including mainly Carrefour-branded products, and the Loué free range poultry industry. In both cases, animal products concerned are sourced from animals fed on less than 0.9 percent biotech feed. However, these represent minor market shares in the total French food market. The Government of France has worked for several years on national rules for non-biotech labeling, so that it would inform rather than disorient consumers, when based on specific rules for all products, as part of the implementation of the national biotech law of 2008 (see [report FR8008](#), GOF Action on Biotech – One Year Overview, dated June 2008).

More than two years after the High Council for Biotechnology (HCB) released its recommendation of the definition of “GMO-free” labeling (see [report FR9032](#), dated November 2009), a [decree](#) number 2012-128 relative to voluntary “GMO-free” labeling was published in France’s Official Journal dated January 31, 2012. This decree describes the requirements for “GMO-free” labeling for products produced in France, but does not apply to imported products from the European Union or from the Economic European Area. Nothing in the decree mentions application to imported products from the rest of the world.

In the decree, the threshold of 0.1 percent was used for plant products under which they can be labeled as “GMO-free.” For animal products, two thresholds are set in the decree: 0.1 percent and 0.9 percent, to be indicated on the label, under which “fed without GMOs” or “Sourced from animals fed without GMOs” can be labeled. For apiculture products, the decree stipulates that there shouldn’t be biotech plants closer to the apiary than three kilometers. “GMO-free” labeling is not permitted to catch the attention of consumers more than the regular list of ingredients. (see translation of the decree in Annex).

Proposed Rules on Biotech Coexistence

There are no EU-wide regulation or standards for biotech and non-biotech coexistence. However, a number of national initiatives have been implemented in a number of Member States. In France, when biotech corn was produced before the ban in 2008, coexistence rules were set voluntarily by farmers in collaboration with the

Technical Institute for Crops (Arvalis-Institut du Végétal) and the seed providers (see [report FR6037](#), Significant Increase in GM Corn Planting in 2006, dated July 2006). Since the national ban on MON810 corn initiated in 2008, the Government took the position that no new cultivation of biotech crops will be possible in France until coexistence rules are set nationally. Again, a decree on coexistence would be part of the implementation of the 2008 biotech law.

The [recommendations of the HCB](#) released in December 2011 considered the 0.9 percent threshold is technically viable and favored a zoning approach of biotech cultivation to meet coexistence requirement. HCB considered that zones of biotech production could be organized by the various stakeholders (including farmers, seed producers and other economic operators) under the supervision of the public authorities, and with an optimum size depending on landscape and farms structure.

The Minister of Agriculture proposed a [coexistence decree](#) to be published in the Official Journal and recently notified the European authorities. The decree does not take HCB's recommendations in terms of zoning. However, it indicates isolation distances for each biotech specie cultivated (50 meters for corn, 5 meters for potato and soybeans, and zero for sugarbeet) between biotech and non biotech plots. The decree also includes conditions of harvesting, transportation, storing and drying conditions of biotech crops, stipulating that the equipment using biotech material must be cleaned and separated from the equipment for non biotech. Finally, the decree lists the information that needs to be documented by farmers growing biotech crops and kept for five years (location of the plot, crop specie, planting and harvesting dates, isolation techniques, area harvested, quantities harvested, and cleaning methodology).

There is a lot of uncertainty on whether and when the coexistence decree will be published in the Official Journal. On one hand, opponents to biotechnology oppose the feasibility of coexistence and claim biotech crop cultivation would make non-biotech cultivation impossible. On the other hand, biotech proponents consider the decree would pave the way to biotech crop production. This is of particular interest under the current conditions when the national ban on MON810 Bt corn has been lifted since November 2011 (see [report FR9087](#), France Lifts Bt Corn Ban – Louder Voices in Favor of Ag Innovation), and some farmers have shown interest in growing it this year. This issue remains political more than science-based, and the presidential and legislative elections of next spring during the planting season for corn will only exacerbate discussions around agricultural biotechnology. The HCB's socio-economic committee is currently facing serious dysfunction as several of its members (representing farmers and the food industry) resigned, denouncing the impossible dialogue among members of the socio-economic committee.

ANNEX: DECREE ON NON-BIOTECH LABELING

The decree was signed by the Prime Minister as well as the four Ministers involved in the enforcement of the decree: the Minister of Economy, Finance and Industry; the Minister of Agriculture, Food, Fisheries, Rural Affairs and Land Management; the Minister of Ecology, Sustainable Development, Transportation, and

Housing; and the Junior Minister to the Minister of Economy, Finance and Industry in charge of Trade, Craft, Small and Medium Size Enterprises, Tourism, Services, Profession, and Consumption.

The decree contains three main sections:

Chapter 1 - Plant Ingredients:

“GMO-free” labeling is only for non-genetically modified ingredients and ingredients obtained from raw materials containing a maximum of 0.1 percent genetically modified organisms, provided this presence is adventitious and technically inevitable. This labeling cannot be used for ingredients sourced from plants where no genetically modified specie has been approved to be marketed in the European Union.

Chapter 2 – Ingredients from Breeding Animals:

- “Fed without GMOs (<0.1%)” labeling is for unprocessed ingredients from breeding animals except eggs and milk from animals exclusively fed on raw materials containing a maximum of 0.1 percent genetically modified organisms, provided this presence is adventitious and technically inevitable.
- “Sourced from animals fed without GMOs (<0.1%)” labeling is for processed ingredients, eggs and milk from breeding animals fed exclusively on raw materials containing a maximum of 0.1 percent genetically modified organisms provided this presence is adventitious and technically inevitable.
- “Fed without GMOs (<0.9%)” labeling is for unprocessed ingredients sourced from breeding animals except eggs and milk from animals exclusively fed on feed not subject to the labeling requirements of the EU Regulation 1829/2003.
- “Sourced from animals fed without GMOs (<0.9%)” labeling is for processed ingredients, eggs and milk from breeding animals exclusively fed on feed not subject to the labeling requirements of the EU Regulation 1829/2003.
- For animal ingredients in organic agriculture, this labeling can be put provided it is completed with the wording “in conformity with the regulation relative to organic production.”

Chapter 3 – Apiculture products:

“GMO-free within a 3-kilometer radius” labeling is for ingredients sourced from apiaries around which sources of nectar and pollen are from non-genetically modified plants within a three-kilometer distance; from apiaries where complementary feed for bees meet “GMO-free” labeling requirements listed in chapter 1; and are not under the labeling requirements of the 1829/2003 EU Regulation.

Chapter 4 – Common Provisions

- Publicity, labeling and presentation of foods with labeling defined in this decree cannot indicate particular organoleptic, nutritional, health benefits, or environmental benefits only because these are “non-GMO.”
- If they are produced from or with the help of genetically modified organisms, the following substances cannot be used in the processing of ingredients labeled with “non-GMO” for plant ingredients, “Fed without GMOs (<0.1%)” and “Sourced from animals fed without GMOs (<0.1%)” for ingredients from breeding animals, and “GMO-free within a 3-kilometer radius:” processing aids, medium additives or flavors, and any other substance not subject to labeling requirements, unless no non-genetically modified substance is available on the market.

- For pre-packaged food products, labels indicated in chapters 1, 2 and 3 belong to the list of ingredients, under current regulation, immediately after the name of the concerned ingredient, or in a footnote below the list. Label is set in the size, color, and font that do not differ from these of the list of ingredients.
- When current regulation doesn't set a list of ingredients, labels indicated in chapters 1, 2 and 3 appear after the indication of the concerned ingredient, in the same size, color and font.
- For non pre-packaged food products, labels indicated in chapters 1, 2 and 3 are put in indelible and apparent characters, after the indication of the concerned ingredient, on a label placed on each good or lot of goods.
- When a food product is composed of several ingredients, labels in chapters 1, 2 and 3 can be also included in the principal field of vision of the packaging or of the non prepackaged food product (in letters not bigger than these in the sales name), provided that:
 - Labels are put after the concerned ingredient if the latter represents at least 95 percent of the total weight of the food product;
 - Other ingredients are not subject to current labeling requirements of the 1829/2003 EU Requirement;
 - Ingredients from breeding animals meet the conditions set in chapter 2.
- Animals used to produce ingredients detailed in chapter 2 can come from farms where there are other animals fed with other practices, provided that they are in separate units, that feed is stocked separately, and that they are different animal species.
- Systems and procedures justifying the labeling conformity of food products or animal feed used are at the disposition of the Government people in charge of monitoring for five years.
- Products legally produced or commercialized in another Member State of the European Union or in Turkey, or legally produce in another State part of the European Economic Area Agreement are not subject to the decree's requirements, but can be imported or marketed in France with a "GMO-free" label or a similar indication.
- This decree will come into force on July 1, 2012.