

## Summary of Advice of Paul Lasok in relation to Coexistence, Traceability and Labelling March 2005

### Co-existence

European legislation gives Member States the power to introduce co-existence measures<sup>1</sup>. The power is very broadly described, allowing member states to take “*appropriate measures to avoid the unintended presence of GMOs in other products*”.

In July 2003 the European Commission issued a ‘Recommendation’<sup>2</sup> which gave the Commission’s views on how member states should use that power. Although not having force of law the Recommendation is important because it sets out the Commission’s thinking and because it is being relied on by Member States throughout Europe, including the UK, in drawing up their co-existence strategies. The Recommendation tried significantly to narrow the power given to Member States. In particular, the Commission stated that:

1. Member States are **not allowed to take into account environmental and human health matters in preparing their co-existence measures**. The only issues allowed to be dealt with in coexistence measures are ‘economic issues’. This is because the Commission believes that environmental and health matters are already fully addressed during the consent process for each crop;
2. Member States are **not allowed to make their co-existence measures stricter than is necessary to keep contamination below 0.9%**. This is because 0.9% is the level of contamination at which products must be labelled as containing GMOs.

**Paul Lasok QC** looked at the arguments and concluded that:

The Recommendation is ‘**fundamentally flawed**’ (para. 55) and that the approaches of the Commission (and the UK Government in following the Recommendation) have ‘**no basis in Community legislation and are wrong in law**’ (para. 20). In particular:

- a. The labelling thresholds (0.9%) are ‘**legally irrelevant**’ to deciding how to implement co-existence measures (para. 25, 26).
- b. The objectives of coexistence must not be restricted to ‘economic issues’ only. **Member States must have regard to the aims of protecting human health and the environment** in adopting any coexistence measures. (para. 38)
- c. Any co-existence measures that were based on the labelling threshold of 0.9% would make it extremely difficult for operators to avoid labelling their products as containing GMOs even where their products contained GMOs at less than 0.9%. (para. 42-45)
- d. The Organic Regulation provides that, in order to be labelled or referred to as organic, a product must not contain GMOs in any quantity. **If co-existence measures were to operate to a “baseline norm” (such as the 0.9% labelling thresholds) there is a very real risk that the “organic” label could become defunct**” (para 52).

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<sup>1</sup> Art. 26a of Directive 2001/18

<sup>2</sup> 2003/556/EC dated 23 July 2003, *Commission Recommendation on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming*