



Preliminary Remark

As one of the three Supporters of the Non-GMO Soy event in Münster, **VLOG**, the German industry **Association Food without Genetic Engineering**, is delighted to offer the legal essentials and prerequisites for a **commercially sensible dealing with Non-GMO soybean meal** in this download document after the conference.

Delegates to the conference and other interested parties have the opportunity to choose between this English version and one in German. The two slightly differ in content.

BRAZILIAN NON-GMO SOY EVENT - PROMOTED BY SUPPLIERS - FOR BUYERS

**THE STRENGTH OF SUPPLY AND THE REAL
FACTS ABOUT AVAILABILITY AND TRENDS**

8 April 2014
Münster/W., Germany

Non-GMO Soy: The Legal Environment

There were several triggers that caused the large majority of providers of Brazilian Non-GMO soy to invite its European clientele to an event in early April 2014 that would help clarify or correct several assertions that have recently been made by industry sources. This includes a statement by the German poultry industry published in mid- February 2014 by ZDG, the German Poultry Association. The Association complains that *in the interpretation of EC Regulation No. 1829/2003 there is no legal certainty. Its members see themselves as vulnerable in terms of feedstuffs legislation, particularly as there is now systematic contamination of soy cargoes with GMO soy.*

False information will not gain in truth even through constant repetition. Therefore, the event organizers (see the company logos at the end of this document) have asked VLOG to offer the opportunity to conference participants and to industry representatives after the meeting, to assure themselves of a legal situation that has been fully clear for many years, thereby preventing new uncertainties among market participants.

(1) Before entering into production of Non-GMO soy it seems prudent to **get things straight regarding some of the reasons for such a step:**

- Elimination of the legal obligation to label raw materials or products according to EU Regulation (EC) No 1829/2003 as "genetically modified"
- Increased intrinsic value, as buyers usually have to pay a premium
- Pressure from consumer organizations
- Actual consumer preference (communicated by brand owners and the major retailers)
- One's own ethical convictions

- Creating the opportunity for the downstream production chain to make claims, e.g. "GMO-free" or "Ohne Gentechnik", in compliance with respective national regulations
- Meeting customer requirements, i.e. of the major retailers

(2) For the European market there are essentially two areas of regulation that determine the **labeling of goods in connection with genetic modification**:

- ❑ The **labeling** ("contains GMOs") is **mandatory** in all EU Member States in accordance with EU Regulation (EC) No. 1829/2003, which entered into force in April 2004, i.e. exactly ten years ago (hereinafter referred to as Reg. 1829/2003). In the production chain of animal products, however, this mandatory labeling ends at the level of the animal feed. Dairy products, meat, eggs, etc. are exempt from GMO labeling – a situation which has given rise to complaints from consumer protection organizations.
- ❑ **Voluntary claims** (e.g., "GMO-free", "Ohne Gentechnik" etc.) in accordance with national regulations in some Member States such as Germany and Austria – and where operators consider it economically advantageous and legally feasible.

(3) The EU labeling regulation that governs the **compulsory declaration** of GMOs came into force in 2004. The oldest national provision regulating **voluntary labeling** of GMO-free products has existed in Austria since 1998. In Germany, the EC Genetic Engineering Implementation Act (EGGenTDurchfG), in its relevant version, has been in force since June 2008.

Ever since then, certain market players, primarily from Germany, have routinely complained about these regulations – or, more precisely, about their alleged lack of legal clarity. The statements of the ZDG of 18 and 21 February 2014 show this once again.

Therefore, the present document provides a "seamless" version of the interpretation chain, permitting also the legal layman to apply the regulations and, on that basis to make strategic corporate decisions. Last but not least, given the substantial premium paid for Non-GMO raw materials, a solid legal basis is required in addition to a clear business analysis.

(4) By presenting the possible options both the European Commission and the German Federal Government have repeatedly **published documents and explanations** that allow practitioners from the sectors concerned to apply the regulations in question. The interpretation and explanation given below does not only reflect the German position; it is also that of Austrian government officials and of Ministries of Agriculture of other EU Member States.

- a) Contrary to a still widespread industry opinion it is firmly established that in order to avoid a **compulsory labeling requirement as "genetically modified"** according to Article 25 of Reg. 1829/2003, in soybean meal it is not sufficient if the affected batch was properly analyzed by an approved laboratory as "below 0.9% GMO content". Rather, the following requirements must be met in order for a batch to be deemed as not requiring labeling according to the regulation:
 - i. The batch must contain **no genetically modified material**. This may have been determined with one of the following results:
 - ❑ The result of PCR analysis has no GM soy DNA - **or** ...
 - ❑ The analysis result shows traces of GM soy DNA, which are below the "limit of quantification" of 0.1 % generally agreed on among the authorities in the EU Member States and also among the local authorities in the German *Länder* - **or** ...

- The analysis shows a value between 0.1 % and 0.9 % **and** the operator can demonstrate that this presence, according to Article 24 (2) of Reg. 1829/2003, is "adventitious" or "technically unavoidable".

So the tolerance threshold of 0.9 % is a type of "buffer" solution that can be applied when the actual absence of genetically modified material (i.e. lying below the limit of quantification of 0.1 %) is no longer the case. In such events, the EU legislator provides the criteria "adventitious" or "technically unavoidable". To prevent any uncertainty, given the importance of these two terms, an EU body, the **Standing Committee on the Food Chain and Animal Health (SCoFAH)**, has provided a detailed explanation in item 7 of the minutes of its meeting of 16 June 2008:

“When operators have **taken contractual precautions** in order to **strictly limit the risks of the presence of GM material, i.e. by an identity preservation scheme**, the possible presence of such material should be considered as **adventitious** or **technically unavoidable** and products have not to be labelled in accordance with Articles 13 and 25 [EU Reg. (EC) No. 1829/2003] **if this presence is below 0.9 %**. This approach is valid for both products produced in the EU or imported from third countries.”

- ii. Part of the "**contractual precaution**" which serves to "strictly limit (...) the presence of GM material" is also to agree in the corresponding contracts that "**no GMOs**" or "**GMO-free**" is **one of the contractual specifications**. In awareness of the legal situation, the supplier and his customer, from the feed industry, for example, can still agree on an additional condition that the purchaser waives his rights to reject the goods on the basis of defects up to a tolerance threshold of 0.9% GMO content. For given the prerequisites described here the existence of an IP system would render such a contamination of up to 0.9% just "adventitious"; it would be harmless and of no legal consequence.
- iii. In addition to the purpose of demonstrating the **type of contamination** between 0.1 % and 0.9 % comes still a further requirement, namely that of an **existing system of identity preservation (IP)** in the previous supply chain. As by far the most cost-effective method for this purpose, the batch-related certification with consistently documented traceability has proven itself in almost all origin markets. Batches thus certified and with the relevant documentation, which must be presented on demand, are readily available in the commodity market.

b) Companies wishing to make use of national GMO-free claim schemes may do so on a voluntary basis. Several EU Member States, among them Austria, France and Germany, have such legislation in place and it all refers to at least some aspect of EU Reg. 1829/2003. Operators who want to comply with the possibilities provided by the German EGGenTDurchfG, commonly dubbed as the "Ohne Gentechnik" Act, only have to meet the legal provisions. After all, Germany is the EU's biggest economy. The product only has to meet the requirements of § 3a EGGenTDurchfG and may be labeled only with the words "Ohne Gentechnik" (≈ GMO-free). However, the vast majority of market players involved opt for the use of the official seal provided by the German Ministry of Agriculture and apply for the appropriate user license from the VLOG, which is authorized exclusively for this purpose.

As for the raw soybean meal, it is merely important to ensure that the batches used meet the requirements of § 3a , i.e. that they are not labeled based on EU Reg. 1829/2003.

As already explained above under item (4) a), batch-related Non-GMO certification based on 0.1% meets these criteria, so that such raw materials can be used regularly in an "Ohne Gentechnik" production chain.

(5) The easiest way for operators interested in "GMO-free" production of claimable consumer products is to **have their products certified against the VLOG's "Ohne Gentechnik" Standard** by a certification body approved by VLOG. This standard is available for download free of charge in its current (German) version on www.ohnegentechnik.org/standard. An English language version is presently in preparation. A list of certification bodies approved by the VLOG is also available on the VLOG homepage: www.ohnegentechnik.org/links.

(6) Such certification entitles operators also to apply for a **user license** for the **official "Ohne GenTechnik" seal**. The license can be applied for at the VLOG who has been given the exclusive right to issue them by the German Federal Ministry of Agriculture. The application form is available at www.ohnegentechnik.org/antrag.

(7) Also listed on www.ohnegentechnik.org/links under "Recht" are some German law firms which, inter alia, specialize in the legal issues around the production of and making claims regarding GMO-free products. VLOG has access to additional sources of legal advice in this area and will be happy to provide references. Simply address your inquiry to info@ohnegentechnik.org.

Information compiled by **TraceConsult™**

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