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Use of voluntary "gmo free" marketing claim on food and feed

These guidelines are designed for food business operators and food control authorities. The guidelines have been prepared in the GMO Cooperation Group of Finnish Food Safety Authority Evira. Evira has not been conferred legislative competence in this matter and cannot therefore issue binding regulations. The interpretations presented in these Guidelines constitute the views of the authority in charge of food and feed control on how legislative regulations on food and feed should be applied. Issues pertaining to the application of legislative regulations are in the last instance settled by a court of law. Should the European Commission issue guidelines pertaining to this matter, Evira will specify these guidelines accordingly.

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PREFACE

The mandatory labelling of food products does not in all respects meet the information needs and expectations of consumers. For this reason, food products bear a multitude of marketing claims based on voluntary systems, particularly as regards origin and the production mode, in addition to mandatory labelling based on legislation.

Genetically modified (gm) food and feed are provided for in Regulations adopted in the European Community, and in the Common Market, products move freely across borders. In legislation providing for genetically modified food and feed, the principle is to ensure that consumers are informed and have a choice. This has been implemented by specifying GMO information mandatory in product labelling or presentation in connection with marketing. The consumer and user of feed can be certain that if there is no indication of genetic modification in the labelling, the food or feed product is not genetically modified.

Voluntary marketing claims stating that gene technology has not been utilised in the production of the food or feed, or that the product does not contain genetically modified ingredients are not specifically prohibited in regulations. At present, EU has not specified common criteria for "gmo free", "the animal has been fed with gmo free feed" or corresponding marketing claims. For this reason, some EU member countries have drawn up their own national guidelines for the use of "gmo free" marketing claims, and such claims are already in use, in fact. In order to harmonise the practices of the member countries, EU should define common criteria binding to all member countries for voluntary "gmo free" or equivalent marketing claims. Finnish Food Safety Authority Evira has considered it necessary to prepare for Finnish operators guidelines for the use of voluntary "gmo free" marketing claims on food and feed products.

LEGISLATION

Legislation on labelling of genetically modified food and feed:

- Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed
- Regulation (EC) No. 1830/2003 of the European Parliament and of the Council concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms
- Decree 1084/2004 of the Ministry of Trade and Industry on food labelling / Regulation (EU) No 1169/2011 of the European Parliament and of the

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Council on the provision of food information to consumers (both in force during the transition period)

- Food Act 23/2006
- Feed Act 86/2008
- Commission Regulation (EU) No 619/2011 laying down the methods of sampling and analysis for the official control of feed as regards presence of genetically modified material for which an authorisation procedure is pending or the authorisation of which has expired

Pursuant to Regulation (EC) No 1829/2003, only genetically modified ingredients authorised in the EU may be used in the manufacture of food or feed, and they shall be indicated in the labelling of the product. No indication is required on products, which contain genetically modified ingredients in a proportion no higher than 0.9 per cent of the food or feed ingredients considered individually, provided that the presence of the genetically modified ingredient is adventitious or technically unavoidable (Articles 12 and 24). Genetically modified ingredients that have not been authorised in EU may not be used in the Community.

The Regulation is not applied to food and feed produced "with" genetically modified organisms. The determining criterion is whether or not material derived from the genetically modified source material is present in the food or in the feed. Eating genetically modified feed does not make the animal, its meat or any other product genetically modified, because the genes contained in the feed are broken up in the digestive system of the animal. Thus, products obtained from animals fed with genetically modified feed or treated with genetically modified medicines will not be subject to the licensing and labelling requirements referred to in the Regulation ((EC) No 1829/2003, introductory paragraph 16). In other words, under valid legislation, food products of animal origin with no indication of genetic modification may have been produced using either regular or genetically modified feed.

Pursuant to the Food Act (23/2006, Section 9), the information given about food must not mislead the consumer with respect to the properties, composition, nature, identifiability, amount, preservability, origin, or the manufacturing or production method of the food or any other corresponding factor. Labelling provisions stipulate that no properties may be attributed to a food product, which it does not possess or with respect to which it does not differ from other corresponding food products (Labelling Decree 1084/2004, Section 4, which implements Labelling Directive 2003/13/EC Article 2(1a) / (EU) No. 1169/2011 Article 7). The same provisions are applied to voluntary labelling.

MARKETING CLAIMS

Marketing claims shall be clear and explicit and may not mislead the consumer. In these guidelines, claims "gmo free" and "the animal has been fed with gmo free feed" are used as examples. However, also some other kind of marketing claims may be used, such as pictures or symbols. From the viewpoint of the consumer, it would be best if just one harmonised wording or symbol were to be established in use throughout EU.

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PRODUCT CATEGORIES

Genetically modified foods can be divided into three categories depending on the production mode:

1. Food and feed products that can contain genetically modified ingredients authorised in EU (e.g. soy, maize or rapeseed)

The "gm free", "the animal has been fed with gmo free feed" or corresponding marketing claims may only be used, if the food or feed product does not contain any genetically modified ingredients. The level of the gm ingredient is in this case 0% (= detection limit), although the current Labelling Regulation permits the presence of genetically modified ingredients in a proportion no higher than 0.9 per cent of the food or feed ingredients considered individually, provided that the presence of the gm ingredients is adventitious or technically unavoidable. Even minute levels of a gm ingredient in the product will be considered misleading in the sense of Section 9 of Food Act 23/2006 and Sections 14 and 15 of Feed Act 86/2008. Only properties with respect to which the product differs from other corresponding products may be attributed to food and feed products. Operators who use the "gmo free" or corresponding marketing claims on their food or feed product shall provide batch-specific analysis results to demonstrate that the product contains no genetically modified ingredients.

2. Food and feed products that contain ingredients of which no genetically modified species authorised in EU exists (e.g. rice, oats, papaya, carrot or blueberry)

Pursuant to Section 9 of Food Act 23/2006 and Sections 14 and 15 of Feed Act 86/2008, the use of the "gm free" or corresponding marketing claims is misleading on a product, which contains no ingredient that could be made from a genetically modified organism authorised in EU. For this reason, "gmo free" or corresponding claims are not permitted on such products.

3. Foodstuffs of animal origin (e.g. meat, milk, egg or farmed fish) – requirements for feed

The voluntary "gmo free", "produced without gene technology", or corresponding marketing claims may only be used on foodstuffs of animal origin, when the animal has been fed with regular feed throughout its life cycle. Such feed may contain no more than 0.9% of genetically modified ingredients. The use of additives produced by genetically modified organisms as well as vitamins designed for use in feed, and veterinary medicines is also permitted. However, consumers and users of feed must not be misled by giving the impression that genetically modified ingredients are automatically used in the manufacture of other corresponding products, which do not bear the "gmo free" claim. Operators who use the "the animal has been fed with gmo free feed" or corresponding marketing claims on their feed product shall verify that the feed contains no gm ingredients at all (= 0%) (cf. Section 1).

"Gmo free" or corresponding marketing claims may not be used on foodstuffs of wild animal origin.

Food and feed products that contain several of the product categories listed above (e.g. convenience food or spiced meat product or feed mixture)

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Operators can use the "gmo free" or corresponding marketing claims on products that consist of several different ingredients provided each ingredient of the product fulfils the criteria defined in these guidelines.

Organic food and feed products

Operators may use the "gmo free" or corresponding marketing claims on organically produced food and feed products provided the criteria defined in these guidelines are met.

IN-HOUSE CONTROL OBLIGATIONS OF OPERATORS AND REGULATORY CONTROL

A voluntary marketing claim regarding the production mode shall be based on a functioning in-house control system. The operator is responsible for ensuring that the information provided about the food or feed is truthful and adequate. The control of the composition and labelling of genetically modified food and feed is based on the control of the operator's in-house control. Control focuses on verifying the correctness of mandatory labelling and on ensuring that information is available to the consumer.

Operators who use the "gmo free" or corresponding marketing claims on their food or feed product shall verify by means of analyses that the level of the gm ingredient in the product is 0% (= detection limit). A representative sample shall be analysed in an accredited laboratory using validated methods. The operator shall be able to provide batch-specific analysis results, if requested to do so by the authority.

The operator shall ensure that the traceability and segregation of "gmo free" feed has been verified and appropriate records are available of them. In order to avoid concerns, it is advisable that the required quality of feed ("gmo free" nature of feed) is based on written agreements covering the entire production chain, including e.g. the feed manufacturer, the primary production operator, the slaughterhouse and the meat establishment. Evira is not a party to these agreements and does not deliver opinions on agreements or breaches of agreements between operators.

Operators who use the "gmo free" or corresponding marketing claims on food products of animal origin shall similarly ensure that written agreements covering the entire chain are in place. The operator shall further verify that the ingredients of the product can be traced over the entire chain. Regulatory control is based on documentary control, because analyses of food products of animal origin cannot verify whether the animal has eaten genetically modified feed or not.

Control action is taken, if violations are suspected or detected. If misleading "gmo free" or corresponding marketing claims are found in control, their use is forbidden.

Sources:

Publications of the Ministry of Trade and Industry 31/2007, Working Group memorandum on how consumers are provided information about the production mode and origin of foodstuffs.

Revisions over previous version (10017/1, 1.3.2010):

- Heading changed.

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- Chapter on legislation updated.
- Specific labelling requirements for poultry and eggs removed due to the Ministry of Agriculture and Forestry's new interpretation of the application of legislation (25.10.2013).
- Revisions of content and structure.