

Testbiotech e. V. | Frohschammerstraße 14 | 80807 München

The European Ombudsman
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France

1.June 2013

COMPLAINT ABOUT MALADMINISTRATION

1

First name: Christoph
Surname: Then

On behalf of Testbiotech e.V.,

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2

Against which European Union (EU) institution or body do you wish to complain?

The European Commission, DG Sanco

3

What is the decision or matter about which you complain? When did you become aware of it?

The complaint is about the Commission because it has taken no action to prevent the import of the genetically engineered maize "SmartStax" into the EU even though this type of maize does not have an authorisation for food and feed.

In December 2012, after we became aware of increasing amounts of maize imports from the US into the EU, we informed the Commission

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of the likelihood of SmartStax being among these imports. We were further aware of reports of the large-scale cultivation of SmartStax in the US and asked the Commission to take action against the import of this product into the EU. At the same time, we informed the Commission that there is currently no adequate method available to detect this product in maize imports and therefore the Member States and the maize importer were unable to protect themselves against imports of SmartStax (see attachments). We also approached private laboratories to see if they could provide us with suitable detection methods. However, we were informed that current methods only allow for single events and cannot be considered effective enough to detect SmartStax which is a stacked event.

4

What do you consider that the EU institution or body has done wrong?

Instead of taking action to prevent SmartStax entering the market, the EU Commission simply wrote a letter to Testbiotech in February 2013 saying that Member States would be responsible for carrying out sampling and the detection of SmartStax. The Commission claims that there are adequate methods of testing available.

In response to the letter from the Commission, Testbiotech asked the authorities in Germany about how they intended to detect SmartStax. The authorities in Schleswig Holstein confirmed in a letter that no adequate method of detection is available. Testbiotech sent a second letter dated 11 March to the Commission restating its concerns. In a reply dated 8 May, the Commission reiterated its previous arguments that effective methods for testing were available.

We therefore conclude that the Commission is willing to tolerate illegal imports of SmartStax although it has never been authorised for food and feed. Further, the Commission is not acting in accordance with current EU regulations that require traceability of genetically engineered plants put on the market – several stacked events have already been authorised without establishing effective systems (based on documentary and/ or analytical methods).

5

What, in your view, should the institution or body do to put things right?

The Commission should have informed the Member States about the problem and asked them to stop maize imports from the US until such time as they can be shown to be free of SmartStax.

Further, the Commission should have started initiatives to sort out the legal problems surrounding so-called stacked events (which are a combination of genetically engineered traits such as SmartStax). These

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crops are very difficult to trace and identify through analytical methods once they are on the market because they cannot be distinguished from the parental plants which were used to produce them. This problem is also relevant in cases where stacked events have already been authorised. It must be addressed by establishing effective systems for traceability based on documentary and/ or analytical methods.

6

Have you already contacted the EU institution or body concerned in order to obtain redress?

Yes. See attached communication with the Commission.

7

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

We informed the Commission in December 2012 but no action has been taken since then. We think the matter is urgent.

8

Has the object of your complaint already been settled by a court or is it pending before a court?

No

9

Please select one of the following two options after having read the information in the box below:

Please treat my complaint publicly

10

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

Date and signature: 1.6.2013,
Christoph Then



Attachments:

- Testbiotech Briefing on SmartStax and letter to the Commission 19.12.2012
- Answers from the Commission 18.2. and 8.5. 2013
- Letter from Testbiotech (and attachment) 11.3. 2013

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