

Consultation on amendments to Retained EU Law 1829/2003 and 619/2011 and extension to the tolerance period for traces of withdrawn GM oilseed rape products Ms1×Rf1, Ms1×Rf2 and Topas 19/2

Summary of stakeholder responses

[12 October 2022]

Introduction

This consultation was issued on 20 September 2022 and closed on 4 October 2022.

The consultation was to seek views on the proposed amendment concerning reinstating and correcting deficiencies in powers in retained EU Law (REUL) that are provided for in Regulation (EC) 1829/2003, and the granting of an extension to the tolerance period of trace levels of three withdrawn genetically modified organisms (GMO) products, Ms1×Rf1, Ms1×Rf2 and Topas 19/2 oilseed rape in Great Britain (GB).

Amendment is also required to correct an ongoing failure of retained EU legislation to operate effectively due to an inconsistency between the transitional period in Article 2(b) of retained Regulation (EU) 619/2011 and the tolerance periods for the three withdrawn GMOs. It is necessary to correct this inconsistency and amend these periods so that they align.

This consultation also provided an opportunity for industry stakeholders, consumers and enforcement authorities to provide their comments on potential impacts which may arise, should the extension in the transitional tolerance period for traces of the three withdrawn GMOs (Ms1×Rf1, Ms1×Rf2 and Topas 19/2 oilseed rape) not be extended beyond 31 December 2022.

The main policy proposals were:

- Under powers granted by the European Union (Withdrawal) Act 2018 (EUWA) on dealing with deficiencies arising from the withdrawal of the United Kingdom from the European Union, an amendment of retained Regulation (EC) 1829/2003 is required to reinstate and recast Articles 8(6) and 20(6), to provide the powers to set and extend limited periods of time for existing stocks of products to be used up.
- Correct an ongoing failure in Regulation (EU) 619/2011 by amending it to ensure there is alignment with the tolerance periods for the withdrawn GMO products, and to ensure that the legislation as a whole can operate effectively.
- With the tolerance period for traces of the withdrawn GMOs in place until 31 December 2022, it is necessary to extend the tolerance period.
- An extension of the tolerance period for another three years would be reflective of the same period of time that was granted by Implementing Decision (EU) 2019/1562, and on the previous occasion prior to this current extension. Three years is also the period of time granted within EU law, with Commission Implementing Decision (EU) 2022/736 applicable in Northern Ireland under the NIP.

The questions posed in this consultation were:

- Do you agree with the plans to:
 - a) reinstate Article 8(6) and Article 20(6) in retained Regulation (EC) 1829/2003 to have the appropriate powers to extend the transitional period for traces of the withdrawn GMOs in the food and feed chain in the future;
 - b) correct the ongoing inoperability caused by the inconsistency between retained Regulation (EU) 619/2011 and the retained Decisions; and
 - c) extend the tolerance period for the affected withdrawn GM oilseed rape products?
- Please describe the potential impacts which may arise to your business or stakeholder sector should the extension in the transitional tolerance period for traces of the three withdrawn GMOs (Ms1×Rf1, Ms1×Rf2 and Topas 19/2 oilseed rape) not be extended beyond the 31 December 2022.
- Please share any views or comments relating the approach as outlined under the Policy Proposal section.

Responses were required to be sent to RPconsultations@food.gov.uk by close 4 October 2022.

The FSA is grateful to those stakeholders who responded.

A list of stakeholders who responded can be found at the end of the document.

Comments received and FSA responses to these

Comments from U.S. Canola Association

The U.S. Canola Association (USCA) appreciates this opportunity to express our views on reinstating and correcting deficiencies in powers in retained EU Law (REUL) that are provided for in Regulation (EC) 1829/2003. The USCA supports an extension of the tolerance period for Ms1xRf1, Ms1xRf2 and Topas19/2 for an additional three years.

Measures to ensure the removal of these GM materials from the market have been implemented. These include, steps taken to inform commercial operators in the EU and North America of the discontinued status of these GM events; the implementation of a series of measures to ensure the recall and destruction of remaining commercial seed stocks; the conclusion of agreements with all third parties involved in the commercialization of these GM materials to ensure that the related seed is either sent back to the authorization holder or is effectively destroyed; the deregistration of varieties of the GM events on the Canadian Food Inspection Agency list of Varieties of Crop Kinds Registered in Canada; and the implementation of an in-house program based on a quality assurance process to avoid the presence of these GM events in breeding and seed production.

Recent test results (data for 2019-2021) show that the measures undertaken by industry have been effective. However, these results also show that minute traces (< 0.1 %) of the obsolete events may still be present in the food or feed chain at the end of the transitional period set out in the Implementing Decision (EU) 2019/1562 after 31 December 2022.

The presence of minute traces can be explained by the biology of oilseed rape which can remain dormant for long periods as well as by the farm practices used during cultivation of the MS1 x RF1, MS1 x RF2 and Topas 19/2 events. As a result, the USCA supports an extension of the current transitional period of time also under applicable law in Great Britain.

FSA's Response

Comments noted.

Comments from Nottingham City Council

The Council responded to each of the three questions posed in the consultation in the corresponding order:

1.I agree with all proposals

2.There is the potential that we may have to deal with none [sic] compliant consignments when we are already stretched

3.The approach appears to be eminently sensible as the products were previously authorised at these levels and are therefore unlikely to pose any danger

FSA's Response

Comments noted.

Comments from GAFTA

Gafta is the association representing the international grain and feed trade, established in 1878. Our membership comprises over 1,914 agricultural commodity companies in more than 98 different countries worldwide. It is estimated 80% of the world's trade in grain is shipped on Gafta contract terms.

We would like to thank you for the opportunity to submit feedback on the GMO consultation relating to extending the tolerance period for traces of withdrawn GM products including Ms1×Rf1, Ms1×Rf2 and Topas 19/2 oilseed rape. We note that these GM varieties have been cultivated only in Canada and the extended tolerance refers to imports of agricultural commodities from Canada.

GAFTA then responded to each of the three questions posed in the consultation in the corresponding order:

1. Gafta members fully agree and welcome plans to have appropriate powers which would provide for a more simple and workable system to extend transitional periods for

traces of withdrawn GMOs in food and feed chain more easily. Agri bulk traders are transporting significant volumes of grains and oilseeds around the globe from areas of surplus to deficit countries daily. Transparency and predictability of policies are essential to carry out this role and any inconsistencies in legislation that can be resolved and in between key trading blocs is welcomed to facilitate trade and to ensure food security.

Yes, we fully support the extension of the tolerance period for the affected GM oilseed rape products outlined in the consultation (Ms1×Rf1, Ms1×Rf2 and Topas 19/2 oilseed rape) to ensure legal and regulatory compliance.

2. As previously stated, the role of the agri bulk trade is to transport safe, affordable commodities in an efficient and sustainable manner around the world. Our members are importing food and feed products into the UK and due to the very nature of bulk shipping and the potential for co-mingling along the chain from field, silo, train, to export silo to ship, zero tolerances are not workable.

Furthermore, as positive detections of residual trace presence of the withdrawn GMOs in circulation still today are still appearing in monitoring data, we welcome an extension of the tolerance of 0.1% beyond 31.12.2022. Ensuring legal and regulatory compliance is key for our memberships. If there was no extension, imports could be impacted, and vessels rejected on arrival should a trace residue be found after testing at import. Such product cannot be used in the food industry and would have an impact along the supply chain.

Added to this is the ongoing impact of the Russian invasion of Ukraine on global food security and all other potential origins are needed more than ever to be available to importers and particularly in oilseeds sector.

3. We would ask FSA to make a positive recommendation to UK Ministers on the extension of the tolerance period and on correcting inconsistencies in legislation. As Canada is a key supplier of both EU and GB markets, we would propose to maintain the same extension period as the EU until 31 December 2025.

FSA's Response

Comments noted.

The FSA considers that the responses received sufficiently demonstrate support for the proposed actions detailed within the consultation.

Additionally, no reasons have been identified during the consultation process to warrant changes to FSA policy.

Next Steps

Legislation will be presented to UK Parliament to implement the main policy proposals as documented above, on a GB wide basis, where the proposals will be subject to full Parliamentary scrutiny.

As the proposals include the extension of the tolerance period for traces of Ms1×Rf1, Ms1×Rf2 and Topas 19/2 oilseed rape, if implemented, the FSA will inform the authorisation holder and update the GMO register to reflect the date of extension.

List of respondents

This list does not include those respondents who asked for their response to be kept confidential or responses from individuals.

1. The Grain and Feed Trade Association (GAFTA)
2. U.S. Canola Association
3. Nottingham City Council